



# SEMAPHORE

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## Anchor Antics – When Ships Collide and Courts Decide

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### **Denver Maritime Ltd v Belpareil As (The “Kiran Australia” And The “Belpareil”) [2024] EWHC 362**

#### **Introduction**

Admiralty Court Justice Andrew Baker’s decision in the case of *Denver Maritime Ltd v Belpareil AS*, provides a comprehensive examination of causative fault and the apportionment of liability in a straightforward two-ship collision.

The judgment applied section 187 of the Merchant Shipping Act 1995, and the principles enunciated in *The Miraflores and The Abadesa*,<sup>2</sup> resulting in a 70/30 liability split between the two vessels involved.

This case serves as a cautionary tale about the importance of effective communication, timely actions and the responsibilities of vessel masters in preventing maritime collisions. It also highlights the Court’s approach to assessing liability based on common law principles of negligence rather than specific maritime regulations.



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#### **Factual Background**

The factual background of the case involves a collision between two Supramax bulk carriers, the Claimant Kiran Australia (KA) and the Defendant Belpareil. Both vessels were anchored at Chattogram Anchorage off the coast of Bangladesh in the Bay of Bengal.

On 1 November 2021, KA arrived at Chattogram and after dropping anchor commenced cargo discharge operations into two barges (one moored on each side of the vessel) On 7 November 2021, Belpareil arrived and dropped anchor approximately 0.5 nautical miles from KA. Belpareil also commenced discharging cargo into barges shortly after her arrival.

On the evening of 8 November 2021, both vessels were respectively undergoing cargo discharge operations. At all material times, both vessels were under the command of chief officers and second and third officers and had anchor lights and deck lights switched on. At approximately 2300, strong winds and tidal currents caused the Belpareil to drift towards KA whilst dragging anchor. The immediate response from Belpareil’s crew was thwarted by engine issues. Both vessels attempted in vein to communicate via VHF and Belpareil’s calls to Chattogram Port Control for tug support were unsuccessful. In the lead up to the collision, both vessels unsuccessfully attempted evasive manoeuvres.

On or around 0110 on 9 November 2021, Belpareil’s anchor cable made contact with KA’s rudder and propeller following which Belpareil’s port bow collided with KA’s starboard quarter.<sup>3</sup>

## ***Allegations of Fault***

KA alleged several faults against Belpareil, including negligence due to anchor dragging and failure to:

- promptly inform nearby vessels, including KA, about her situation (ie, vessel was dragging anchor and unable to control her position due to engine issues);
- call for tug assistance; and
- deploy a second anchor.<sup>4</sup>

Both parties attributed responsibility for the collision to each other, arguing that the other should bear greater responsibility.<sup>5</sup>

The Court referred to the principle of negligence enunciated in *The Miraflores and the Abadesa* stating: “It is axiomatic that a person who embarks on a deliberate act of negligence should, in general, bear a greater degree of fault than one who fails to cope adequately with the resulting crisis which is thus thrust upon him ...”<sup>6</sup>

The Court sought guidance from Court-appointed nautical assessors (known as Elder Brethren), on the reasonableness of the actions of the respective masters in the collision. Commodore William Walworth and Captain Stephen Gobbi provided expert advice on maritime practices and the actions of the vessels involved assisting the Court in understanding the technical and navigational aspects of the case.

Belpareil’s voyage data recorder (VDR) provided detailed information about vessel movements, engine settings, and communications, which were used to assess the actions of both vessels. Data reconstructions of the incident by Marine Accident Data Analysis Suit (MADAS) software provided visual aids in the form of figures that depicted the vessel positions and movements at critical moments leading up to the collision.

## ***Causative Fault***

The Court relied on previous cases, *The Exeter City and Sea Serpent*<sup>7</sup> and *The Brabant*<sup>8</sup> as authorities for the legal principle that a vessel dragging its anchor creates a rebuttable presumption of negligence. It is the responsibility of the dragging vessel to counter this presumption by demonstrating that the dragging was not due to negligence or that it could not have been prevented through the exercise of reasonable skill and care.

The Court acknowledged that addressed the poor holding ground of Chattogram Anchorage (suboptimal seabed conditions for anchors increasing the likelihood of dragging) and the inclement weather conditions (strong winds and currents) but indicated that there was no evidence that the conditions were unusually severe to create a situation that would be too difficult to overcome even with reasonable care and skill.<sup>9</sup> The Court held that Belpareil’s anchor dragging into close quarters with KA was negligent.<sup>10</sup>

Furthermore, the Court reviewed Belpareil’s actions while dragging and found that Belpareil was negligent in not issuing a clear warning of the presented risk in time for other vessels, being KA, to respond appropriately to avoid the collision.<sup>11</sup> Furthermore, Belpareil was found to be at fault for failing to deploy her starboard anchor upon realising that the engine was malfunctioning.<sup>12</sup>

In the moments leading up to the collision, the Court found that KA was at fault for allowing the vessel to fall astern and to starboard, causing the vessel to remain on course for collision, despite Belpareil’s communications.<sup>13</sup> However, Belpareil was also at fault for maintaining course and not taking action to avoid the collision. According to the Court, Belpareil should have taken action to avoid the imminent risk.<sup>14</sup>

## Apportionment

The Court applied the principle in *The Miraflores and The Abadesa*,<sup>15</sup> and section 187 of the Merchant Shipping Act 1995, in assessing each vessel's faults based on blameworthiness, causative potency and overall responsibilities.<sup>16</sup> The Court found Belpareil more responsible for the collision than KA, resulting in a 70/30 liability split,<sup>17</sup> stating both parties were equally at fault for poor communication, but the Court emphasised the multitude of Belpareil's fault.<sup>18</sup>

## Comments

The case serves as an illustration of how liability is assessed in maritime collision incidents, where both parties are found to be at fault to varying degrees. The significance of the case lies in the analysis of the negligence of one party weighed against the negligent response of the other party to the initial negligent acts or omissions. The Court found that both Belpareil and KA were at fault, but Belpareil bore substantially greater responsibility, leading to a 70/30 apportionment of liability in favour of KA.

The judgment also highlights the expectations placed on the masters of vessels in such situations, particularly the master of a vessel that is dragging its anchor and the master of a vessel being approached by a dragging vessel, and how their actions or inactions contributed to the collision.

This case underscores the critical importance of effective communication and timely actions in maritime navigation to prevent collisions. Belpareil was found negligent for not promptly informing nearby vessels, including KA, about her predicament. According to the Court, this failure to communicate effectively was a significant factor in the collision.

Interestingly, despite the case concerning a collision, the Court did not invoke Section II of the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) instead, it determined liability via common law principles of negligence. This approach emphasises the Court's reliance on established legal principles rather than specific maritime regulations.

It could be said that the inclusion of the expert opinions of nautical assessors enhances the judgment by ensuring it is well-informed with practical maritime knowledge. The Elder Brethren offered advice on the actions of the vessel masters, which the Court considered in determining the faults and responsibilities of each party.

The VDR data and MADAS software reconstruction were critical in the Court's findings, particularly in determining the faults of each vessel. It helped establish the sequence of events and the decisions made by the masters, which were critical in apportioning liability. The MADAS reconstruction was used at trial as the primary means of setting out and exploring the collision narrative.

## Bio

Louis Osborn is an associate at Clifford Chance in the litigation and dispute resolution practice, specialising in arbitration and dispute resolution in the construction, energy and resources, maritime and aviation sectors.

He has extensive experience acting for multinational clients in largescale international arbitration and litigation, and has worked on arbitration proceedings under International Centre for Settlement of Investment Disputes (ICSID), International Chamber of Commerce (ICC), United Nations Commission on International Trade Law (UNCITRAL), Australian Centre for International Commercial Arbitration (ACICA) and Singapore International Arbitration Centre (SIAC) arbitration rules, concerning projects across the Asia-Pacific, Africa and Europe.

Mr Osborn has also acted for clients in statutory adjudication proceedings, regulatory investigations and other forms of alternative dispute resolution.

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- 1 Louis Osborn is an Associate at Clifford Chance. The author thanks Sophie Anderson for her assistance with this publication
- 2 *The Miraflores and The Abadesa* [1976] 1 AC 826
- 3 [2024] EWHC 362, [1]
- 4 [2024] EWHC 362 (24 February 2024) [50]
- 5 [2024] EWHC 362 (24 February 2024) [9]
- 6 [1967] 1 AC 826 [847]-[848]
- 7 *The Exeter City and Sea Serpent* (1922) 12 Ll. L. Rep. 42
- 8 *The Brabant* (1938) 60 Ll. L. Rep. 323 at 327
- 9 [2024] EWHC 362 (24 February 2024) [80]
- 10 [2024] EWHC 362 (24 February 2024) [81]-[82]
- 11 [2024] EWHC 362 (24 February 2024) [96]
- 12 [2024] EWHC 362 (24 February 2024) [107]
- 13 [2024] EWHC 362 (24 February 2024) [128]
- 14 [2024] EWHC 362 (24 February 2024) [134]
- 15 [2024] EWHC 362 (24 February 2024) [140]
- 16 [2024] EWHC 362 (24 February 2024) [8]
- 17 [2024] EWHC 362 (24 February 2024) [143]
- 18 [2024] EWHC 362 (24 February 2024) [145]

