

THE SUPREME COURT

DETERMINATION

Supreme Court record no: S:AP:IE:2020:000054

Court of Appeal record no: A:AP:IE:2019:000297

High Court record no: 2018 No. 8692 P Admiralty

29 06 2020

Clarke C.J.
Dunne J.
Baker J.

IN THE MATTER OF THE M/V ALMIRANTE STORNI

BETWEEN
SPAMAT S R L
PLAINTIFF
AND
THE OWNERS

AND

ALL PERSON CLAIMING AN INTEREST IN THE M/V ALMIRANTE STORNI
DEFENDANTS

APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.3° OF THE CONSTITUTION APPLIES

RESULT: The Court does not grant leave to the Plaintiff to appeal to this Court from the Court of Appeal

REASONS GIVEN:

ORDER SOUGHT TO BE APPEALED

COURT: Court of Appeal

DATE OF JUDGMENT OR RULING: 9th March, 2020

DATE OF ORDER: 9th March, 2020

DATE OF PERFECTION OF ORDER: 15th April, 2020

THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 28th April, 2020 AND WAS IN TIME.

General Considerations

1.

The general principles applied by this Court in determining whether to grant or refuse leave to appeal having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this Court in *B. S. v. Director of Public Prosecutions* [2017] IESCDT 134 and in a unanimous judgment of a full Court delivered by O'Donnell J. in *Quinn Insurance Ltd. v. PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 IR 812. It follows that it is unnecessary to revisit the new constitutional architecture for the purposes of this determination.

2.

Furthermore, the application for leave filed and the respondent's notice are published along with this determination (subject only to any redaction required by law) and it is therefore unnecessary to set out the position of the parties.

3.

Any ruling in a determination concerns whether the facts and legal issues meet the constitutional criteria identified above, is particular to that application, and is final and conclusive only to that extent and as between the parties.

4.

The respondent opposes the grant of leave to appeal.

The Application

5.

This is the application of Spamat S.R.L. (“the applicant”) for leave to appeal to this Court pursuant to the provisions of Article 34.5.3° of the Constitution from the order of the Court of Appeal of 9 March 2020 for the reasons given in a written judgment of 9 March 2020 of McGovern J. in *Spamat S.R.L. v The Owners and All Persons Claiming an Interest in the M.V. Almirante Storni* [2020] IECA 58, dismissing the appeal against the decision of the High Court that the applicant was not entitled to enforce a debt for services rendered at port against her owners NSC Shipping, and all persons claiming an interest in the M.V. Almirante Storni (“the respondents”).

6.

The respondent, a German limited liability partnership, and at the material time the demise charterer of the vessel under a Charter made 12 February 2018 and the disponent owner of the vessel, entered into a time charter with GK Shipping, a Greek company, on 5 February 2018.

7.

The applicant claims €38,314.07 in respect of disbursements made for the operation or maintenance of the ship “Almirante Storni” (“the vessel”) contracted to be performed at port by GK Shipping at the port of Bari, Italy between 4 March 2018 and 13 March 2018.

8.

The applicant had at or near the same time entered into a separate contract with the demise charterer for the performance of different services not the subject of the present claim.

9.

The vessel was arrested under Courts Maritime Conventions Act 1989 as the claim was formulated as a “maritime claim” under the International Convention for the Unification of Maritime Law on the Arrest of Sea Going Ships 1952 (“the Arrest Convention”).

10.

In a judgment delivered *ex tempore* on 24 May 2019, McDonald J. dismissed the claim on the grounds that the services had been ordered by GK Shipping, that the applicant was aware of the legal difference between GK Shipping and the owners of the vessel, and that it had not been established that the owners had a personal liability in respect of the services provided.

11.

On the question of whether the applicant was entitled to pursue its claim *in rem* and have recourse to the vessel to satisfy its claim, the trial judge held that there was no such entitlement as the existence of such a right would require personal liability on behalf of the owner.

12.

In the Court of Appeal the applicant argued that the claim was one on account of “disbursements made by ... agents on behalf of a ship” and therefore within Article I(n) of the Arrest Convention. Consequently, the claim was argued to be treated as a claim *in rem* against the ship, independent of any personal liability on the part of the owner.

13.

In his judgment delivered on 9 March 2020, McGovern J., with whom the other members of the Court agreed, upheld the decision of the trial judge

and considered that his finding that the services had been ordered by GK Shipping was supported by the evidence, and that there was no evidence to suggest that the contract had been ratified by the owners or that GK Shipping were agents for the owners.

14.

The judgment of the Court of Appeal noted that the claim that there existed a right *in rem* derived from the performance of services for the benefit of a ship or her owner could not arise on the facts as the services were expressly made for the benefit of the time charterer. The questions that remained therefore were whether a lien could be said to arise by reason of the Arrest Convention or the Act, whether a ship owner could derogate from the statutory duty *in rem*, whether knowledge of the agent that he was contracting with a party other than the owner could deprive him of the statutory right, and whether for that purpose a distinction was to be drawn between a demise charterer and a time charterer.

15.

The Court of Appeal held that as a matter of law there could be no maritime lien in the absence of personal liability of the owner and that on the facts the trial judge had found that no personal liability could arise. The weight of the evidence was against the existence of an agency relationship between the time charterer and the owners. No evidence of actual or ostensible authority was established, nor were there any operative representations. There was no doubt on the facts that the disbursements were not made on behalf of the ship or her owners.

16.

The court held therefore that on the facts none of the indicia of a maritime claim within the meaning of the Arrest Convention 1952 existed that might give rise to a right to enforce against the ship. The trial judge was correct that the onus of proof was on the applicant to establish that the owners of the vessel had a personal liability in respect of the services provided and it had failed to do so.

Discussion and Conclusion

17.

The first matter of general public importance asserted by the applicant concerns the nature of the statutory right *in rem* provided by the Admiralty Court (Ireland) Act 1867 to a ship's port agent who has made disbursements on behalf of a ship. The applicant contends that the statute creates personal liability on behalf of the owner and that an owner is entitled to derogate from this right only where it had parted with possession of the ship under a demise charter. If the ship is under a time charter, the shipowner can derogate from the right only where the terms and conditions of the charter have been made known to the ship's agent by actual notice.

18.

The second matter of general public importance concerns whether the Arrest Convention 1952 and sections 4 and 5 of the Jurisdiction of the Courts (Maritime Conventions) Act 1989 extend the law on this matter.

19.

The third matter of general public importance concerns whether the principles of liability for debts incurred on behalf of a ship which arise in the case of a demise charter, expressly applied by Finnegan P. in the High Court in *Campus Oil Ltd v Owners of MF/v Avro Hunter* [2004] 4 JIC 2701, ought to be extended to a time charter, as was done by McGovern J. in the High Court in *Atlas Baltic OÜ v. The Owners and all Persons Claiming an Interest in the Lady Magda* [2018] IEHC 426.

20.

The respondents oppose the application for leave on the basis that the Court of Appeal applied well-established principles of law in determining the proceedings. They deny that there is any uncertainty in the law requiring resolution by the Supreme Court.

21.

The Court does not rule out the possibility that the principles to be applied in considering whether rights *in rem* exist by operation of law to enable a claim to be enforced against the owner of a ship, whether under the Convention or the Act of 1989 may, in a suitable case, meet the constitutional threshold, but considers that the present application fails to meet that test on account of the findings of fact made by the High Court which the Court of Appeal held were supported by the evidence and which led to the conclusion that the owners could not be personally liable and that no action *in rem* could lie.

22.

The High Court having found that the applicant was aware of the identity of the owner of the vessel and that of the demise charter, that the time charter was not the agent of the owner, that the circumstances did not point to ratification of the acts of the time charterer by the owner, that the applicant had sought payment from the time charterer before leaving port, and had left port in the mistaken belief that the payment had been transmitted, this Court considers that these legal questions could not fall to be considered in an appeal. No issue of general public importance can therefore be said to arise for consideration.

23.

The interests of justice for which the applicant contends are the interest of the applicant to have recourse to the ship where that owner has taken the benefit of services to the ship. On the facts that question cannot now arise.

24.

Accordingly, leave to appeal should be refused.

And it is hereby so ordered accordingly.