Limitation of liability: the Court of Appeal rules that a marina is a "dock" and can limit liability

Holyhead Marina Ltd v Farrer & ors [2021] EWCA Civ 1585

Overnight on 1 – 2 March 2018, Holyhead Marina was destroyed by Storm Emma, leading to the total loss of 89 vessels moored on the floating pontoons from which the marina was constructed. The total claim value was in the region of £5 million but the owner of the marina commenced a Limitation Action in the Admiralty Court, seeking a declaration that it was entitled to limit its liability on the basis that it was the "*owner of [a] dock*" for the purposes of section 191 of the Merchant Shipping Act 1995. The statutory definition of "*dock*" in section 191(9) "*includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties*".

The decision of Teare J at [2020] EWHC 1750 (Admlty) was that the marina was not a "*dock*" in the usual meaning of the word but that its constituent pontoons were "*landing places*", "*jetties*" and/or "*stages*". As he put it: "*in ordinary usage the pontoons which make up the Marina are both mooring places and landing places*". Thus the marina's liability was limited to 500,000SDRs (being around 10% of the full claim value). The first instance judgment from Teare J is discussed here.

Flaux LJ gave permission to appeal on 11 January 2021. Notwithstanding that the judgment was one of the "*extremely experienced Admiralty Judge*", his Lordship agreed that the appeal had a realistic prospect of success, and considered that it was of real importance to the marine leisure sector and the related insurance market.

The Court of Appeal hearing was live streamed on 26 October 2021 due to its importance and can be view here. The vessel owners argued that the Judge had taken the interpretation of the statutory language too far. He had been right that the marina was not a "*dock*" on the usual meaning of the word but he was wrong to say that an arrangement of pontoons assembled for the purpose of berthing and storage of boats was a "*landing place*", at least in the absence of any evidence that the pontoons were used in such a way. Further, if each pontoon was a "*dock*" this would mean that there would be a separate limitation sum for each of them, thus effectively leaving the claim unlimited. Meanwhile a stage or jetty was simply another type of structure entirely. In response, the marina argued that the Judge had been right to find that the marina had mixed uses as a place for berthing and/or landing and indeed should have gone further and found that it was a dock on the ordinary meaning of the word.

The Master of the Rolls (with whom Males and LJJ agreed) upheld Teare J's "*erudite …. excellent judgment*". Indeed, the Master of the Rolles went on to say that the Judge "*could have gone further and held that the Marina itself was a landing place*" rather than a collection of multiple landing places, which dealt with the vessel owners' alternative "multiple funds" point.

> "*Ultimately, I conclude that terms as general as "landing place", "stage" or "jetty" should not be construed so narrowly as to exclude either a collection of pontoons joined together to form a marina or the Marina itself*".

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Additionally, while the chief aim of the Limitation regime was to facilitate international trade, this was not its only purpose, and it applied both to pleasure craft (as was common ground) and to marinas used by them. Finally, if and to the extent that the decision was surprising to the yacht insurance market, the position had now been clarified.

Males LJ emphasised the importance of "*common sense*" and added that the statutory definitions were "*not technical terms and there is a considerable overlap between them*". Stuart-Smith LJ agreed with both judgments.

The Court of Appeal's full judgment can be found here. James Watthey appeared as sole Counsel before the Admiralty Judge for the owners and insurers of the destroyed vessels. He appeared in the Court of Appeal as Junior to Nigel Cooper KC. James and Nigel were both instructed by Daniel Crockford of Ince & Co.

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