

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2015-02237

BETWEEN

STEPHEN TEELUCKSINGH

CLAIMANT

AND

**NATIONAL ENERGY CORPORATION OF
TRINIDAD AND TOBAGO LIMITED**

FIRST DEFENDANT

GULF SHIPPING LIMITED

SECOND DEFENDANT

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. E. K. Roopnarine for the Claimant

Mr. R. Nanga instructed by Ms. L. Mendonca for the First Defendant

Mr. M. S. De la Bastide for the Second Defendant

Decision on Preliminary Point

1. On the 23rd April, 2013, there was a collision at the Point Lisas Anchorage located offshore Point Lisas in the Gulf of Paria involving the NEC Pride (a tug boat) owned by the First Defendant and insured by the Second Defendant and the MT Trade Union (a large cargo ship). At the material time, the Claimant was a passenger on the NEC Pride and was being transported to the MT Trade Union. The Claimant alleged that the Defendants by their servants and/or agents negligently operated the NEC pride causing the aforementioned collision. As a result of the collision the Claimant filed this action for damages for personal injuries and consequential loss.

2. The Defendants have taken the point *in limine* that the claim is statute barred pursuant to section 397 of the Shipping Act Chap. 50:10 (“the Act”). The Claim was instituted on the 30th June, 2015, over two years subsequent to the date of the collision.

3. Section 397 (1) of the Act provides as follows:

*“Subject to this section, no action shall be maintainable to enforce any claim or lien against a ship or its owners in respect of any damage or loss to another ship, its cargo or freight, or to any property on board, or in respect of damages for loss of life or personal injuries suffered by any person on board **the ship**, caused by the fault of the first-mentioned ship, irrespective of whether such ship be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered.”*

4. The issue that arises is whether the term “*the ship*” highlighted above refers to the NEC Pride or the MT Trade Union. As such, the issue of limitation therefore hinges on this finding.

Submissions

5. It is the submission of the Defendants that “*the ship*” refers to the NEC Pride. As such it is the contention of the Defendants that the limitation period of two years pursuant to section 397(1) of the Act applies where an individual is claiming against a vessel upon which he was a passenger.
6. Counsel for the First Defendant relied upon Section 190(1) of the Merchant Shipping Act 1995 of England and Section 396(1) of the Navigation Act 1912 of Australia to depict the distinction between those sections and Section 397(1) of the Act. Counsel for the First Defendant submitted that upon examination of the English and Australian provisions, it is clear that the limitation period in those provisions is only applicable where the claim is being brought against another vessel.

7. Section 190(1) of the Merchant Shipping Act 1995 of England states as follows:

“This section applies to any proceedings to enforce any claim or lien against a ship or her owners—

(a) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or

(b) for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship.”

8. Section 396(1) of the Navigation Act 1912 of Australia states as follows:

“No action shall be maintainable to enforce any claim or lien against a ship or its owners in respect of any damage or loss to another ship, its cargo or freight, or any property on board the ship, or damage for loss of life or personal injuries suffered by any person on board the ship, caused by the fault of the former ship, whether such ship be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein

are commenced within 2 years from the date when the damage or loss or injury was caused or the salvage services rendered were terminated.”

9. It is the submission of Counsel for the First Defendant that Section 397(1) of the Act applies to two broad types of claims. The first being a claim brought in respect of damage or loss to another ship, its cargo or freight or any property on board that ship and the second being a claim brought in respect of damages for loss of life or personal injuries suffered by any person on board the first ship which caused the accident (“the Defendant Ship”). It was further submitted that had this not been the intention, there would have been no need to state “*the ship*” a second time in relation to loss of life and personal injuries.

10. In construing section 397(1) of the Act, Counsel for the Second Defendant found it useful to break down the section into the following parts:

- i. “...no action shall be maintainable to enforce any claim or lien against a ship or its owners...”*(referred to as Part I)
- ii. “...in respect of any damage or loss to another ship, its cargo or freight, or any property on board....”*(referred to as Part II)
- iii. “... Or in respect of damages for loss of life or personal injuries suffered by any person on board the ship...”*(referred to as Part III)
- iv. “...caused by the fault of the first mentioned ship....”*(referred to as Part IV)

11. Counsel for the Second Defendant submitted that the first and second limbs of Part II are to be read conjunctively since there are no words suggesting otherwise. Therefore, the second limb referred to cargo, freight and property on board the other ship and not cargo, freight and property on board the Defendant ship. However, it is the contention of the Second Defendant that Part III ought to be read disjunctively due to the phrase “*or in respect of damages*” that appears at the beginning of Part III.

12. Therefore, it is the submission of the Second Defendant that the repetition or insertion of the phrase “*or in respect of damages*” at the beginning of Part III is indicative of the

draftsman's intention, that is, Parliament's intention, that Part II and Part III are to be read disjunctively.

13. Accordingly, it is the Second Defendant's submission that the construction of section 397(1) provides as follows:

“No action shall be maintainable to enforce any claim or lien against a ship or its owners in respect of any damage or loss to another ship its cargo or freight, or to any property on board caused by the first mentioned ship (Part I, Part II and Part IV), and

No action shall be maintainable to enforce any claim or lien against a ship or its owners in respect of any damage for loss of life or personal injuries suffered by any person on board the ship caused by that ship (Part I, Part III and Part IV),

Unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused.”

14. The Claimant puts forward the case that the two-year limitation period imposed by 397(1) of the Act only applies to claims for death or personal injury suffered by persons on board a ship other than the Defendant ship. It is the submission of the Second Defendant that the Claimant's construction would mean that whereas passengers on board the innocent ship, or their personal representatives would have a period of two years within which to bring a death or personal injury case against the Defendant ship, passengers on board the Defendant ship would have twice as long (four years) to bring such an action. That if there is to be a difference in the limitation periods then surely it is the passengers on board the innocent ship and their personal representatives who should have a longer period to bring such claim, since depending on the circumstances in which their personal injury or death occurred they or their personal representative may face difficulties in identifying the Defendant ship or the owners of such a ship. Conversely, passengers on board the Defendant ship are unlikely to face such difficulties.

15. As such it is the argument of the Second Defendant that there is no logic or rationale in Parliament enacting legislation that reduces the limitation period to two years for death

and personal injury claims made by passengers on board an innocent ship against the defendant ship, and leaves a four-year limitation period for such claims made by passengers onboard the defendant ship.

16. Counsel for the Claimant countered by submitting that Section 397(1) of the Act does not apply to him. Alternatively, the Claimant sought the Court's discretion to extend the limitation period to the date of filing of his claim.

17. Counsel for the Claimant contended that a simple and ordinary reading of section 397(1) reveals its meaning. That the first line of section 397(1) makes the following clear:

“No action is maintainable against NEC Pride for damages done to another ship that is, MT Trade Union or personal injuries suffered by any person on board MT Trade Union caused by the negligence of NEC Pride unless persons on board MT Trade Union brought the action against NEC Pride within two years”.

18. It is the contention of the Claimant that the section clearly refers to persons or cargo on board the MT Trade Union which is *“another ship”*. Further, that the section does not apply to a passenger injured on board the NEC Pride.

Law and analysis

19. It is a fundamental rule that when the Court is called upon to determine the manner in which a statutory provision should be interpreted, the Court must first look to the ordinary meaning of the words of the section.

20. **Bennion on Statutory Interpretation 6th edition**, pages 780 and 781, describe this rule of statutory interpretation as follows:

“The term ‘literal meaning’ corresponds to the grammatical meaning where this is straightforward. If, however the grammatical meaning, when applied to the facts of the instant case, is ambiguous then any of the possible grammatical meanings may be

described as the literal meaning. If the grammatical is semantically obscure, then the grammatical meaning likely to have been intended (or any one of them in the case of ambiguity) is taken as the literal meaning. The point here is that the literal meaning is one arrived at from the working of the enactment alone, without consideration of other interpretative criteria. When account is taken of such other criteria (for the purpose of arriving at the legal meaning of the enactment), it may be found necessary to depart from the literal meaning and adopt a strained construction. The initial presumption is in favour of the literal meaning in the sense just explained, since Parliament is taken to mean what it says. The presumption is of very long standing, being embodied in early maxims of the law. ”

21. **Lord Reid in Pinner v. Everett (1969) 1 WLR 1266 at page 1273C-D** stated as follows:

“In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in the context of the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of legislature that it is proper to look for some other possible meaning of the word or phrase.”

22. This court is of the view, that the natural and ordinary meaning of “*the ship*” as contained in the section is pellucid. It can only be a reference to the ship upon which the Claimant was a passenger having regard to the words which immediately follow, that is, “*caused by the fault of the first-mentioned ship*”. In other words, “*the ship*” as used in the section cannot be a reference to the first mentioned ship which is the ship that is at fault. It must therefore be a reference to the other ship mentioned in the section, namely the ship which is not at fault as far as the particular cause of action between ships is concerned.
23. Further, it is equally clear that “*the ship*” as used in the section is the same ship as “*another ship*” referred to earlier on in the section. So that when read as a whole, the section imposes a limitation period for claims for damage or loss whether it be cargo or freight, or property on board, or in respect of damage for loss of life or personal injuries suffered by any person on board a ship which is a party to a cause of action against

another ship (which is at fault). This in the court's view is the clear interpretation of a section and so the court is not called upon to have recourse to any other aid to interpretation. The section speaks for itself.

24. With regard to the submission of the defence that *section 397(1)* of the Act is distinguishable from *section 190(1) of the Merchant Shipping Act 1995* of England and *section 396(1) of the Navigation Act 1912* of Australia, this court cannot with respect accept the submission as being demonstrative of the correct state of the law. In fact, it appears that the gravamen of the submission ought properly to lie in the opposite of the argument. It is clear that the legal interpretation of *section 397(1)* of the Act appears to be in keeping with the legislation of other Commonwealth territories in that the section treats with limitation periods in respect of maritime claims which involve more than one ship where the issue between the parties involves the imputation of liability by one ship, or its owners, or its crew or its passengers against another ship. The distinction between the varying legislative provisions lies with the choice of descriptions of the parties to the cause and not with the substance of the provision. It is therefore clear in the courts view, that when the ordinary and natural meaning is ascribed to "the ship" as used in *section 397(1)* of the Act, the result is the same as that set out in England and Australia in relation to the present claim.

25. Further, the court is of the view that the fact that there appears to be a distinction between the limitation period for a claim brought by a passenger to a ship against that ship as opposed to a claim by a passenger to a ship against another ship other than the one upon which he is travelling is not suggestive of an absurd or arbitrary result upon interpretation of the words "*the ship*" in their ordinary and natural meaning. The court so finds for several reasons.

26. Firstly, the issue between the parties on the cause of action in this case is that between the ship and the passenger for damages for personal injuries as a consequence of negligence. This is not a claim in maritime law. It is certainly not a claim against the other ship involved in the incident namely the MT Trade Union or its owners. In the usual course of

events, the four-year limitation period applies to claims in tort for personal injuries. This claim is a claim in tort for personal injuries against the ship in which the Claimant was a passenger and therefore the import of section 397(1) of the Act by its exclusion of such claims is entirely consistent with the general limitation period for matters of the like kind. Should the claim have been in the form of a maritime claim against the MT Trade Union by the owners of the owners of the NEC Pride, the position may have been quite different in the court's view.

27. Further, the court does not agree with the submission of the Second Defendant that the result of such an interpretation would be the anomalous legal situation where the passengers of one ship would have a longer limitation period than the passengers of the other. The application of the provision is specifically dependent on the institution of the action against the ship at fault based on the presumption that the ship in which the party instituting the claim was travelling was not the ship at fault. By way of example, assuming that both ships A and B were carrying passengers who were injured, the applicable period of limitation for the passengers of ship A to bring action in tort against the owners of ship A would be the same as the period of limitation for passengers of ship B to bring an action in tort against the owners of ship B, namely four years. Should passengers of either ship wish to bring a claim against the other ship, (not the ship in which they were travelling), the limitation period is set at two years by section 397(1). In relation to actions between the ships themselves or the owners thereof the limitation remains two years under the Act. The court is of the view that there is nothing absurd or irrational in this result.

28. Moreover and in any event, a court need only have recourse to a secondary meaning if the ordinary and literal interpretation of a provision results in an absurd or irrational meaning. This rule is commonly referred to as the Golden Rule and is well rooted in English common law: *See Halsbury's Laws of England Volume 96 (2012), paragraph 1179, River Wear Commissioners v Adamson (1877) 2 App Cas 743 at 764, per Lord Blackburn, Williams v Evans (1876) 1 Ex D 277 at 284 per Field J.* In this case, the court having found that the application of the literal meaning of the words “*the ship*” does

not result in an absurdity, irrationality or inconsistency no obligation lies on the court to apply a secondary meaning or to have recourse to external aids to interpretation.

29. For these reasons the court would dismiss the *point in limine*.

The non-application of time for institution of claim

30. If, however the court had found that the claim was brought outside of the period of limitation this court would have in any event extended the time for the claim to be brought by ordering that the limitation of two years does not apply to this claim for the following reasons.

31. It has not been demonstrated that the Defendants would suffer any prejudice. None has been set out by the Defendants and indeed none is reasonably foreseeable. Further, the length of time between the would be expiry of the limitation period for the bringing of the claim and the actual institution of the claim is but approximately two months and seven days. So that it is more likely than not that no prejudice would be suffered by the Defendants should the court permit the claim to stand on the basis of the non-application of the limitation period.

32. Further, it appears that having regard to the intervening period of approximately two months, the evidence to be adduced by the Defendants is unlikely to be less cogent than that which would have been available had the claim been brought within two years. Indeed, no such state of affairs is suggested. Finally, the court is of the view that having regard to the short time period, fairness and justice would demand that the discretion of the court is exercised in favour of permitting the claim to proceed as opposed to the shutting out of the litigant who has brought his claim some mere two months outside of the prescribed limitation period.

33. The preliminary point taken by the Defendants on the issue of limitation is therefore dismissed. The parties will be heard on the issue of costs.

Dated the 6th day of October 2016

Ricky Rahim
Judge