

Shipping & Transport - Cyprus

Loss of use claim in private yacht claims

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Facts

Decision

Comment

A recent judgment issued by the Admiralty Court of Cyprus is noteworthy for the judge's comments on the damages to which the claimant would have been entitled had he succeeded rather than the reasons for rejecting his claim.⁽¹⁾

Facts

The claim was brought against the Cyprus Tourism Organisation, in its capacity as the entity exercising control and management of the Larnaca marina, for special damages for breach of its duties under Law 67/79 regarding the operation of marinas, and for punitive and loss of use damages for the loss of use of the claimant's pleasure yacht between July 2010 and June 2011. A claim against a second defendant, the previous owner of the pleasure yacht, was dropped following an out-of-court settlement.

The yacht was sold to the claimant under a written agreement dated February 27 2009, but the title was not transferred into the claimant's name until December 22 2011. In July 2010, after financial disputes arose between the claimant and the second defendant (who was still the registered owner of the yacht), the second defendant took the yacht out of the water and moved it to a secure area under the control of the first defendant, and by various means frustrated any attempts to put it back into the water. Both the claimant and the second defendant claimed the right to deal with the yacht: the claimant on the basis that he was the master and the second defendant on the basis that he was still the owner.

Decision

The question was in essence who could deal with the yacht regarding any sort of action, including removing it from or placing it back in the water. The court found that such person was the master, as defined in Law 67/79. Since the definition includes "the owner of the pleasure boat or any other boat and includes her master and every person who at any time has the control of the boat or is responsible for her", the court found that the second defendant had the right to deal with the yacht and rejected the action against the first defendant.

The Judge went on to consider what the outcome and award of damages would have been if the claimant had succeeded. Regarding special damages, the court referred to the settled principle that these must at all times be claimed specially and proven with detailed references.⁽²⁾ Although the claimant had not done this, the court would nevertheless have accepted special damages, since they were specified in the claimant's evidence and the first defendant had raised no objection to them. As to general and punitive damages, the court commented that there was no evidence before it which would excuse the award of such damages.

In addressing the matter of damages for loss of use, the court referred to English case law, particularly the principles set out in *The Mediana*⁽³⁾, *Henry Broughton-Leigh*⁽⁴⁾, *Admiralty Commissioners*⁽⁵⁾ and *The Hebridean Coast*.⁽⁶⁾

Counsel for the claimant advanced the reasoning adopted in *Henry Broughton-Leigh*, proposing a percentage of 6% of the yacht's value per year that the yacht was out of use. However, the court would have rejected this calculation on the grounds that the argument put forward on the claimant's behalf was not adapted to Cyprus and there was no evidence to support it. Taking these factors into consideration, the court would have awarded only nominal damages in the amount of €10 for loss of use.

Comment

There is no reported case law in Cyprus regarding damages for the loss of use of a non-commercial vessel such as a private pleasure yacht used by its owner for recreational purposes. Therefore, the Admiralty Court would most likely seek guidance from English case law, which is not binding, but is highly persuasive. However, 20th century English case law relates to non-profit earning vessels owned by

harbour and dock boards, authorities or trustees, rather than vessels used by private individuals for recreational purposes.

In England, the right to damages for loss of use of a non-commercial vessel was first acknowledged by the House of Lords in *The Greta Holme*⁽⁷⁾ and was thereafter followed in *The Mediana* and *The Marpessa*.⁽⁸⁾ In the cases of *Admiralty Commissioners* and *The Hebridean Coast*, the House of Lords affirmed that in a loss of use claim, the calculation should be based on a percentage of the capital value of the ship at the time, adjusted for the period of time for which it was unavailable. However, the court did not decide how the percentage should be calculated or on what basis.⁽⁹⁾

In *Henry Broughton-Leigh* the court took a commercial approach, concluding that in the absence of any evidence suggesting a different approach, the percentage should be the base rate applicable at the time the cause of action arose, plus a margin of one and a half percentage points where the currency of account is pounds sterling. As the base rate at the time was 4.5%, the relevant rate was 6% per annum.

It remains to be seen to what extent the Admiralty Court of Cyprus will follow the principles laid down in the English cases. Judge Paschalides acknowledged that the claimant would have been entitled to damages for loss of use if he had succeeded in establishing his claim, but this is no more than a statement of the obvious. To claim damages for loss of use of a private yacht in the Admiralty Court of Cyprus, the court must be provided with all of the necessary evidence. Precise information about the value of the vessel and the number of days lost and a well-founded calculation supported by evidence that will allow the court to award such damages are needed. With interest rates at a low level, it would or could make more sense to base the claim on the cost of chartering a suitable replacement vessel.

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Endnotes

- (1) *Marios Smirnios v Cyprus Tourism Organisation*, Admiralty Action (22/2010), September 4 2014.
- (2) See *Vaso Michail v Andrea Onoufriou* (2002) 1B CLR 1349; *Sokratis Zavrou*; *Sofia Zavrou v Ioanni Karitzi* (2006) 1B CLR 977; *Heracleous v Pitrou* (1994) 1 CLR 239; *Heracleous v Speed Boat "Niki" ao* (1994) 1 CLR 510, *Kounouna ao v Costas*; *Kyriacou & Son Ltd ao* (2001) 1 CLR 2126.
- (3) *The Owners of the Steamship Mediana and The Owners, Master and Crew of the Lightship Comet* [1900] AC 113.
- (4) *Henry Broughton – Leigh and Geoffrey Hunton* QBD (Mercantile Court) Case 8MA40015, March 17 2010.
- (5) *Admiralty Commissioners and SS Chekiang* [1926] AC 637.
- (6) *The Hebridean Coast* [1961] AC 545.
- (7) *The Owners of No 7 Steam Sand Pump Dredger and The Owners of SS "Greta Holme"* [1897] AC 596.
- (8) *Mersey Docks and Harbour Board and Owners of the SS Marpessa* [1907] AC 241.
- (9) In *Admiralty Commissioners* it was said that there no absolute rule for calculating damages.

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