



## HIGH COURT OF AUSTRALIA

6 December 2023

### KARPIK v CARNIVAL PLC & ANOR [2023] HCA 39

Today, the High Court unanimously allowed an appeal from the Full Court of the Federal Court of Australia.

The appellant ("Ms Karpik") was a passenger on the *Ruby Princess* passenger ship when it embarked on its voyage from Sydney on 8 March 2020. During the voyage there was an outbreak of COVID-19 and the voyage was cut short. Ms Karpik commenced representative proceedings under Pt IVA of the *Federal Court of Australia Act 1976* (Cth) ("the Federal Court Act") asserting claims in tort and under the Australian Consumer Law ("the ACL") against the respondents (collectively, "Princess") for loss or damage allegedly suffered by passengers who were on the voyage, or their relatives.

Before the primary judge, Princess brought an interlocutory application for a stay of the claims as they related to another passenger on the voyage ("Mr Ho") whose passage contract was made outside Australia. In support of the application, Princess relied on particular contractual terms and conditions, which included, relevantly, an exclusive jurisdiction clause in favour of the United States District Courts for the Central District of California and a class action waiver clause. A majority of the Full Court of the Federal Court enforced the exclusive jurisdiction clause and stayed the representative proceedings in respect of Mr Ho's claims against Princess. The majority rejected Ms Karpik's contentions that the class action waiver clause was void as an unfair term under s 23 of the ACL, and that the clause was otherwise unenforceable by reason of Pt IVA of the Federal Court Act.

The High Court unanimously held that s 5(1)(c) and (g) of the *Competition and Consumer Act 2010* (Cth), in their terms, expressly extended the norm of conduct in s 23 to engaging in conduct outside Australia by a body corporate carrying on business within Australia. There was no dispute that Princess was carrying on business in Australia selling and marketing cruises, and that it had engaged in conduct outside Australia when the contract with Mr Ho was made. The Court found that s 23 of the ACL applied to Mr Ho's contract and that the class action waiver clause was an unfair term and void. The class action waiver clause was not separately unenforceable by reason of Pt IVA of the Federal Court Act.

In re-exercising the discretion as to whether to enforce the exclusive jurisdiction clause, the High Court refused a stay of Mr Ho's claim against Princess. Given the class action waiver clause was void, Princess could not rely on it to support the stay. Mr Ho had a strong juridical advantage in remaining as part of the representative proceedings in the Federal Court because he may not have been able to participate in a class action in the United States. Further, enforcement of the exclusive jurisdiction clause would have resulted in the fracture of the litigation.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*