

THE SHIP GO STAR v DAEBO INTERNATIONAL SHIPPING CO LTD (P46/2013)

Court appealed from: Full Court of the Federal Court of Australia
[2012] FCAFC 156

Date of judgment: 7 November 2012

Date of grant of special leave: 11 September 2013

This appeal concerns the choice of law in tort. The general principle applicable to a tortious claim in determining the proper law to apply to the tort is *lex loci delicti*, the place that the tort was committed.

Go Star Maritime Co SA were the owners of the appellant, The Ship Go Star. In 2007, the owners entered into a time charterparty of the appellant with Breakbulk Marine Services Limited ("BMS"). This was the head charterparty. BMS then sub-chartered the ship to Bluefield Shipping Co Ltd ("Bluefield") and in July 2007 Bluefield entered into a further sub-charter of the appellant ship with the respondent ("Daebo"). Daebo then entered into a time sub-charterparty with Nanyuan Shipping Co Ltd ("Nanyuan"). This sub-charterparty provided that delivery of the ship was to occur in Chinese territorial waters at a port near Shanghai. On 3 January 2009, a certificate of delivery was executed, which recorded that delivery to Nanyuan had occurred that day. A day later, Daebo issued an invoice to Nanyuan for the first hire payment and the bunkers.

In the meanwhile, the head charterer, BMS, had fallen into arrears with the payment of hire under the head charterparty. Before Nanyuan had paid the respondent's invoice for the hire and bunkers, the owners' agent, Evaland Shipping Co SA ("Evaland"), advised Nanyuan that it intended to exercise its rights to withdraw the ship under the head charterparty.

After having received these and other communications from the owners' agent, Nanyuan did not pay the invoice furnished by the respondent, and arranged an alternative vessel for its cargo. On or around 15 January 2009, the owners withdrew The Ship Go Star under the head charterparty on the grounds of non-payment of hire. On or around 21 January 2009, the owners chartered the ship to another company, which directed that the ship sail to Albany in Western Australia.

Daebo claimed that the appellant had unlawfully interfered in its contractual relations with Nanyuan and claimed damages against the appellant on those grounds.

The trial judge (Siopis J) resolved the issues in favour of the owners and dismissed the respondent's application. His Honour held that the events alleged to constitute the tort of unlawful interference took place in China. This finding was made on the basis that one Ms Chen, the person in charge on behalf of Nanyuan, was located in China, and the email communications by a Mr Pantelias, acting on behalf of Evaland, were acted upon by Ms Chen in China in respect of a ship then located in Chinese territorial waters. The owners led unchallenged expert evidence that there was no such tort known to the law of China. Consequently Siopis J dismissed Daebo's claim.

On appeal the Full Court (Keane CJ, Rares and Besanko JJ) held that the owners had unlawfully interfered with the contractual obligations between Nanyuan and Daebo. Nanyuan's failure to pay its debts for the bunkers and hire was the breach of contract induced by the vessel owners. The Full Court determined the *lex loci delicti* for the tort of unlawfully interfering with contractual relations by reference to the place where the person, Captain Hu, who was induced to cause Nanyuan to breach the sub-charterparty, was located (namely Singapore).

The ground of appeal is:

- The Full Court erred in law by determining the *lex loci delicti* for the tort allegedly committed by the owners of the appellant vessel, of unlawfully interfering in the contractual relations contained in a sub-charterparty between the respondent and Nanyuan, by reference to the place where the person who was induced to cause Nanyuan to breach the sub-charterparty was located (namely Singapore). The Full Court ought to have determined the *lex loci delicti* for this tort by reference to the place where Nanyuan breached the sub-charterparty, namely in China.