With the Benefit comes the Burden: Does the Duty of Care owed by a Shipowner extend to the Vessel's Demolition even after Sale'

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PRACTICES Shipping, Offshore Oil and Gas

The High Court has left the door open for a negligence claim to be pursued against a UK company on behalf of a shipyard worker who fell to his death dismantling an oil tanker at a Bangladeshi yard.[1]

The vessel had been sold to a buyer on terms requiring it to be scrapped in an environmentally sound manner and in accordance with good health and safety practices. Despite not employing the deceased worker or operating the yard, nor being the legal owner of the vessel at any time, the Court held that the UK company which had arranged for the sale of the vessel arguably owed a duty of care to the deceased worker.

Whilst it remains to be seen whether the negligence claim will succeed at trial, this decision serves as a warning to ship and rig owners that their legal liabilities for disposing of their end-of-life assets may continue beyond the point of sale, regardless of what their sale contracts might say.

Fact summary

In March 2018, Mr Khalil Mollah fell to his death while working on the demolition of a defunct oil tanker named the *EKTA* (formerly the *Maran Centaurus*) at the Zuma Enterprise Shipyard in Chittagong (also known as Chittagong), Bangladesh.

The deceased's wife (the "**Claimant**") brought a claim in negligence against Maran (UK) Ltd ("**Maran**"), a UK entity forming part of the Angelicoussis shipping group and which had arranged for the vessel's sale to Hsejar Maritime Inc, at a price of around US $16 million.[2]

Under the terms of the sale contract, the buyer had agreed that the sale was to be for demolition purposes only, and that it would sell the vessel to a "*competent*" shipbreaking yard for recycling and demolition of the vessel "*in an environmentally sound manner and in accordance with good health and safety working practices".*

Despite this, following delivery of the vessel to Hsejar Maritme Inc, it was subsequently beached at Chattogram, where (as the Claimant argued) it is widely recognised that conditions for shipbreaking workers are inherently dangerous and shipbreaking practices environmentally unsound.

Issues

The Claimant alleged that Maran was responsible for the vessel being sent to Chattogram and that it owed a duty of care to the deceased.

She claimed that Maran effectively knew and condoned that the vessel would be beached and demolished at the Bangladeshi yard (in clear breach of the buyer's obligations under the sale

contract) and that the risk of serious or fatal injury to workers involved in scrapping the vessel in this manner was foreseeable.

Maran applied to the Court to have the claim struck out in a summary judgment. In doing so, it argued it had no control over the working conditions at Chattogram (which it said had led to the deceased's death), and that it was too far removed from the deceased to owe him duty of care.

Outcome

The Court refused Maran's application to strike out, holding that the claim in negligence satisfied the necessary test of having a "real prospect of success". In reaching its decision, the Court considered evidence from the Claimant's experts that:

- According to the International Labour Organisation (ILO), shipbreaking is one of the most dangerous jobs in the world, and in South Asia it is rarely subject to occupational health and safety controls or inspections.[3]
- Over the past ten years, "*more than 70% of the approximately 800 vessels that reach the end of their operating lives annually – representing 80-90% of the tonnage – are broken up using the "beaching" method", and that "out of the nearly 11 million tonnes of oil tankers demolished in 2018, only 80,000 tonnes were broken up in Chinese and Turkish yards" where safer working practices are said to be deployed.*[4]
- Maran had made a decisive choice or series of choices which led to the vessel being sold for demolition at a price which meant that Chittagong was the only possible destination for the vessel[5] (as opposed to, for example, a yard in China, where the sale price would have been much lower).
- The amount of fuel left onboard the vessel at delivery was also said to be a factor which implied Maran knew the vessel would be scrapped in Bangladesh, as it limited the number of yards to which the vessel could reasonable travel from its delivery location in Singapore.

For the purposes of the strike out application, Maran accepted that the beaching method of ship demolition typically carried out in India, Pakistan and Bangladesh is an inherently dangerous working practice. However, it denied that it had any control over this danger.

Maran further claimed that because nearly all end-of-life vessels end up in South Asia to be scrapped, it could not be said have deviated from standard practice. The Court rejected this argument, stating that if the "standard practice" was inherently dangerous, it could not be condoned as acceptable simply because other shipowners did the same.[6]

The Court noted that its task was not to find a remedy to punish allegedly scrupulous shipowners (and their agents) seeking to avoid their responsibility for end-of-life vessels. Rather, the correct approach for the Court was to consider whether it could be fairly and properly said that Maran had created a danger to which the deceased was exposed.[7]

The Court refused to accept that the danger to the deceased had been created solely by the deceased's employer (who was unknown) or by the operator of the yard, finding that "on a broader, purposive approach the accident resulted from a chain of events which led to the vessel being grounded at Chattogram."[8]

It could therefore not rule out Maran's responsibility for the danger faced by the deceased. The Claimant is now free to continue the negligence claim against Maran.

Shipowners' obligations for their end-of-life vessels

As is often the case, the particular facts of the Maran case will have a significant bearing on its ultimate outcome. However, the Court's decision to date raises serious questions for owners as to the legal risks they face when selling their end-of-life vessels, even once their interest in the vessel has been transferred.

Contractual terms in the sale contract which require the buyer to recycle the vessel at a competent shipbreaking yard and in a safe and environmentally-friendly manner will, without more, likely be insufficient to shield the former shipowner from liability. This is particularly so in circumstances where the owner turns a blind eye (whether deliberately or otherwise) to the future treatment of the vessel, and potentially, to the well-being of the workers involved in its demolition.

Accountability of shipowners is not only relevant in terms of possible negligence claims under common law. Owners of ships and other vessels have existing obligations under international conventions and national regulations to ensure that their vessels are properly dismantled and disposed of.

The application of these rules and regulations is complex[9] and will depend on a variety of factors, for example: where the ship is flagged; its location (including at the time of sale and when the decision is made to recycle); which countries it will pass through *en route* to its final recycling destination; and the presence of hazardous waste onboard or forming part of the vessel. Shipowners must take care to ensure that the relevant requirements are both identified and complied with.

Conclusion and Comment

Within our wider practice of advising on ship and rig recycling transactions, our experience is that owners contemplating selling their end-of-life vessels are becoming increasingly aware of their potential exposure, both in terms of legal risk and reputational damage.

One of the potential ramifications of the Maran case is that there may be a legal necessity for shipowners to maintain a more active post-sale involvement in the recycling of their ships than previously thought.

This is likely to be viewed by many as a positive step to drive much-needed improvements in significant parts of the ship recycling industry.

Owners intending to sell their vessels for recycling should consider not only how robust the contractual clauses in their sale contracts are, but also that the applicable regulatory requirements are (and will continue to be) met. In light of recent developments, it would also be prudent for owners to ensure that they are afforded sufficient contractual rights to maintain an active involvement in the post-sale recycling of their vessel.

In the current climate, a shipowner seeking to pass on all liability for recycling to the buyer and simply washing their hands of the matter is unlikely to be considered favourably.

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[1] *Bergum (on behalf of Mollah) v Maran (UK) Limited* [2020] EWHC 1846 (QB). Decision handed down on 13 July 2020.

[2] Although arranging the sale, Maran was not itself a party to the sale contract, the seller being the registered owner of the vessel, Centaurus Special Maritime Enterprise (a single vessel owning company).

[3] Paragraph [13] of the decision

[4] Paragraph [14]

[5] Paragraph [17]

[6] Paragraph [15]

[7] Paragraph [53]

[8] Paragraph [83]

[9] See for example, in respect of the transfer of waste, the *Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal 1989* (including the "Ban Amendment" which came into force on 5 December 2019) and the *European Waste Shipment Regulation (EC) No 1013/2006*, and in respect of the recycling of ships, the *Hong Kong International Convention of the Safe and Environmentally Sound Recycling of Ships 2009* (not yet in force) and the *European Ship Recycling Regulation (EU) No 1257/2013.*