

SOUTH AFRICA / JUDGMENT

Repo Wild CC v Oceanland Cargo Terminal (Pty) Ltd (23044/2010) [2013] ZAGPJHC 277 (14 November 2013) [2013] ZAGPJHC 277

COURT

South Gauteng High Court, Johannesburg

BEFORE

Wepener

CASE / FILE NUMBER

23044/2010

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION JOHANNESBURG

CASE NO: 23044/2010

In the matter between

REPO WILD CC Plaintiff and OCEANLAND CARGO TERMINAL (PTY) LTD Defendant

Coram: WEPENER J

Heard: 12 NOVEMBER 2013

Delivered: 14 NOVEMBER 2013

Summary: Shipping – Admiralty Jurisdiction Regulation Act 105 of 1983 – Question of jurisdiction of Local Division raised – agreement between parties relating to land transport only – Claim not a maritime claim as defined – no direct connection between claim arising out of agreement to convey goods by land and the carriage of goods by sea – not matter to be referred to court adjacent to the territorial waters of the Republic.

J U D G M E N T

WEPENER J:

- [1] The plaintiff claims payment of an amount of R1,106,571.96 being damages suffered by it as a result of the defendant's breach of an agreement in terms of which the latter had to insure certain goods belonging to the plaintiff. It is common cause that the agreement was partly oral and partly in writing. It is further common cause that the plaintiff and the defendant

agreed that the defendant would transport goods for the plaintiff in containers that are the property of the defendant. Having failed to insure the contents of the containers as undertaken by it, the defendant is sought to be held liable for the contents of a container which had been lost.

- [2] The duty of the defendant was to convey the containers, containing the plaintiff's property, to the defendant's premises at Landmarine, Kazerne, Johannesburg; to store the goods at Kazerne until the plaintiff provided the defendant with further instructions and to deliver the containers with the plaintiff's goods to a specified container depot in Durban when instructed by the plaintiff to do so.
- [3] From the foregoing it is quite clear that the entire agreement related to the conveyance of goods by land. The vessels for doing so were containers belonging to the defendant. The fact that the plaintiff intended sending the goods from Durban by sea has no bearing on the agreement between the parties and such facts are, in my view, irrelevant for the determination of the dispute between the parties.
- [4] Shortly before the trial was to commence the defendant served a special plea in which it contended that the plaintiff's claim was a maritime claim as defined in s 1(1)(i) of the Admiralty Jurisdiction Regulation Act 105 of 1983 (the Act) and that, accordingly, in terms of the provisions of s 3(3) of the Act, the action should have been instituted in a court whose area of jurisdiction was adjacent to the territorial waters of the Republic. This court, if of course, not such a court.
- [5] The parties were in agreement that the special plea be determined separately in accordance with Rule 33(4) of the Uniform Rules and being of the view that it would be convenient to separate this issue as it is incumbent of a court to determine the issue at the outset pursuant to the provisions of s 7(2) of the Act,[1] I issued an order which separated the hearing of the special plea from all other issues.
- [6] The special plea alleges at 31 to 33:

‘1A.1. The Plaintiff's claim arise from an agreement relating to the conveyance, storage and insurance of a container and its contents;

1A.2. In terms of the Plaintiff's written instructions to the Defendant relating to the aforesaid container, which instruction so are contained in “P2” hereto, the said container was intended for the carriage of goods by sea, its port of loading being Durban and its port of discharge being Shanghai;

1A.3. In the premises:

1A.3.1. The said container was a container as defined in terms of section 1(1) of the Admiralty Jurisdiction Act No 105 of 1983 (the Act);

1A.3.2. The Plaintiff's claim is a maritime claim as defined in terms of section 1(1)(i) of the Act;

1A.3.3. The Plaintiff's action is an action in personam;

1A.4. In terms of the provisions of section 3(3) of the Act, an action in personam may not be instituted in a court of which the area of jurisdiction is not adjacent to the territorial waters of the Republic unless the provisions of section 3(3)(a), (b) or

(c) are applicable;

1A.5. The provisions of sections 3(3)(a), (b) and (c) are not applicable to the Plaintiff's claim;

1A.6. The area of jurisdiction of this Honourable Court is not adjacent to the territorial waters of the Republic;

1A.7. In the premises and in the event of the Plaintiff disputing that its claim is a maritime claim, this Honourable Court ought to determine whether the Plaintiff's claim is a maritime claim and in the event of it holding that such claim is a maritime claim, then matter ought to proceed is a court competent to exercise its admiralty jurisdiction.'

[7] As I have already indicated, the agreement related not to the conveyance, storage and insurance of a container which was the vessel used for the conveyance and was the property of the defendant, it related to the conveyance of the plaintiff's goods. Also, the fact that plaintiff intended to convey the goods by sea at some later stage had no bearing on the terms of the agreement between the parties and the plaintiff's intention is irrelevant to the determination of the nature of the agreement between the parties unless the defendant can show that, by some operation of law, those facts are indeed relevant. The defendant did not advance any basis upon which it can be held that the plaintiff's intention to later convey the goods by sea has any relevance to the agreement between the parties.

[8] The allegations regarding the intention of the plaintiff are consequently irrelevant. The only relevant allegation is that which is contained in paragraph 1A.1 of the special plea. Again, the agreement between the parties related to the conveyance of the plaintiff's goods from Johannesburg to Durban. The conveyance was by means of a container which was owned by the defendant. Although the special plea alleges that the insurance also related to the container, such is incorrect. The written part of the agreement relied upon by the defendant provides for two general purpose containers to be conveyed and that the "goods in transit to be covered". The goods in transit are the goods which the plaintiff placed inside the containers and which the defendant had to convey to Durban. The claim does consequently not arise from the insurance, or the failure thereof, of the container itself but from the failure to insure the contents of the container.

[9] The only question that is left is whether the claim arises from an agreement relating to the conveyance and storage of a container as pleaded in para 1A.1 by the defendant. I am of the view that it does not. The claim has nothing to do with the vehicle in which the goods were conveyed. It is claim regarding the goods which were conveyed and lost.

[10] That being so, the fact that the container is by definition[2] a container as defined in the Act is of no consequence as no claim is made in relation thereto. Having regard to the foregoing the enquiry effectively comes to an end. The further argument on behalf of the defendant is based on the premise that the plaintiff's claim relates to the conveyance, insurance and storage of a container, which I have held to be factually incorrect. A maritime claim, subject only to the jurisdiction of the court which is adjacent to the territorial waters of the Republic,[3] requires the claim to arise out of or relating to 'any container or agreement relating to any container'.[4] The claim for a loss of goods as a result of a failure to insure it does not arise out of and is not relating to a container nor any agreement relating to the container itself.[5]

[11] In *Sandrina*

[1885] 1 Lloyd's reports Rep 181 (HL) Lord Keith, when dealing with a provision in the English Act, stated the following:

'It would on the other hand be unreasonable to infer from the expression actually used "relating to" that it is intended to be sufficient that the agreement in issue should be in some way connected, however remotely, with the carriage of goods in a ship. There must in my opinion be some reasonably direct connection with such activities.'

[12] In *Admiralty Jurisdiction: Law and Practice in South Africa*,[6] Hofmeyr makes reference to *Cremean Admiralty Jurisdiction in Australia, New Zealand, Singapore and Hong Kong* where it is suggested that:

'Having reference to a similar provision to s 1(1)(g) that in order to constitute a maritime claim there must be a reasonably direct

connection between the claim and the sea carriage in order for the claim to fall within the jurisdiction'.

[13] Hofmeyr suggests that the legislator could hardly have intended that the loss or damage to goods which had at any time previously been carried in a ship, should constitute a maritime claim. I agree with these views and similarly, goods which have not been placed on a ship and are in the process of being stored or transported by land should, in my view, not be dealt with by the Admiralty Courts, particularly where the agreement between the parties relates to the transport of goods on land only.

[14] Counsel for plaintiff, relying on the passage in *Sandrina*, argued that there should be some reasonably direct connection between the plaintiff's claim and a container or the claim and the agreement relating to the container, before it can be said that the claim arises out of or relates to an agreement relating to a container. I am in agreement with these submissions which would follow from the factual finding made by me.

[15] The legislator could not have intended that every agreement where mere reference to a container is made should be determined by a court under its Admiralty Jurisdiction. If this were so every case relating to the land transportation of goods in containers would be determined in accordance with the rules and procedures applicable to maritime law. In this regard I also heed the cautionary note expressed by Hofmeyr at p 21:

‘The Act, and more particularly a series of amendments to the Act, have served to expand the boundaries of the admiralty jurisdiction further that other jurisdictions which have inherited the philosophy from English Admiralty Law. This enthusiasm to extend the scope of admiralty jurisdiction must not, it is submitted, be allowed to result in the abrogation of principle and the inclusion of claims which do not properly fall within the purview of admiralty proceedings. If the boundaries of jurisdiction are stretched too far, well recognised principles will be diluted and the rationale for a separate admiralty jurisdiction will be undermined.’

[16] Having regard to the nature of the claim and the agreement as pleaded by the plaintiff and the defendant, I find that this court has the necessary jurisdiction to determine the plaintiff’s claim and that the matter does not constitute one relating to a maritime claim and insofar as is necessary I direct that the matter shall proceed in the Gauteng High Court, Johannesburg Local Division.

[17] In the circumstances the special plea is dismissed with costs.

WEPENER J

JUDGE OF THE

HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

JOHANNESBURG

APPEARANCES

COUNSEL FOR THE

PLAINTIFF: G Redman

Instructed by Robert H Kanarek Attorneys

DEFENDANTS: SR Mullins SC with him SW Collins

Instructed by Naidoo Maharaj Inc

[1] Section 7 - Disputes as to venue or jurisdiction:

- (2) When in any proceedings before a provincial or local division, including a circuit local division, of the Supreme Court of South Africa the question arises as to whether a matter pending or proceeding before that court is one relating to a maritime claim, the court shall forthwith decide that question, and if the court decides that-
- (a) the matter is one relating to a maritime claim, it shall be proceeded with in a court competent to exercise its admiralty jurisdiction, and any property attached to found jurisdiction shall be deemed to have been attached in terms of this Act;
- (b) the matter is not one relating to a maritime claim, the action shall proceed in the division having jurisdiction in respect of the matter: Provided that if jurisdiction was conferred by the attachment of property by a person other than an incola of the court, the court may order the action to proceed as if the property had been attached by an incola, or may make such other order, including an order dismissing the action for want of jurisdiction, as to it appears just.

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[2] Section 1(1) of the Act reads: "container" means a container for the carriage of goods by sea, including any such container which is empty or otherwise temporarily not being used for such carriage;

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"container" means a container for the carriage of goods by sea, including any such container which is empty or otherwise temporarily not being used for such carriage;

[3] Section 3(3) of the Act reads: An action in personam may not be instituted in a court of which the area of jurisdiction is not adjacent to the territorial waters of the Republic unless-

- (a) in the case of a claim contemplated in paragraph (a), (b), (j) or (u) of the definition of 'maritime claim', the claim arises out of an agreement concluded within the area of jurisdiction of that court;
- (b) in the case of a claim contemplated in paragraph (g) or (h) of that definition, the goods concerned are or were shipped under a bill of lading to or from a place within the area of jurisdiction of that court;
- (c) the maritime claim concerned relates to a fund within, or freight payable in, the area of jurisdiction of that court.

[3] Section 3(3) of the Act reads:

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- (c) the maritime claim concerned relates to a fund within, or freight payable in, the area of jurisdiction of that court.

[4] Section 1(1)(i) of the Act.

[5] It was common cause that the exclusions contained in s 3(3)(a), (b) and

(c) do not apply.

[6] 2nd Ed, p 32 footnote 84.

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