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NOTICE TO CLIENTS

Desgagnés Transport Inc. v. Wärtsilä Canada Inc., 2019 SCC 58

This case was successfully pleaded by Brisset Bishop's Danièle Dion from first instance all the way to the Supreme Court of Canada in favour of Desgagnés Transport. It revolved around the question whether provincial law prohibiting manufacturers from excluding or limiting their liability for damage arising from latent defects could apply incidentally to the sale of a marine engine part. The Supreme Court agreed with Desgagnés Transport that Wärtsilä was not entitled to rely on its contractual limitation provisions and awarded the full claim of $5.6 million with interest.

Following an incident that damaged one of the shipowner's vessels in 2006, Desgagnés Transport purchased a reconditioned crankshaft from Wärtsilä. The purchase took place in Montreal and the delivery was made to the vessel in Nova Scotia. The contract contained a clause which limited Wärtsilä's liability for defects to the amount of €50,000 (about $78,000). The choice of law clause indicated that the contract was to be governed by the laws in force at the registered office of the supplier which was Montreal, Québec. More than two years after the purchase of the ship-engine part, the crankshaft suffered a catastrophic failure while transiting the Saint-Lawrence River. Desgagnés Transport sued the supplier of the crankshaft for damages arising from a latent defect causing the part's failure for a total of $5.6 million.

The contest was over the applicable law. Canadian Maritime Law is a creation of Federal Parliament encompassing all the law that was applied to maritime activities by English and Canadian admiralty courts. Unless there are specific statutes, like the Canada Shipping Act, the "law" includes federal common law, an amorphous body of non-statutory common law principles governing contract, tort and bailment. The Civil Code of the province of Quebec contains detailed provisions governing all of contracts and delicts, and in particular, as a matter of public order, stipulates that manufacturers are prohibited from limiting liability for losses caused by latent defects in the products they sell. The constitutional question in this case was whether the Federal Parliament (supported by the Supreme Court of Canada in its precedents

over Canadian Maritime Law) had overstepped its powers by excluding any application of provincial law simply because the case involved a maritime activity.

The trial judge concluded that the insufficient tightening of a connecting rod stud amounted to a latent manufacturing defect attributable to Wärtsilä at the time of the sale. The judge applied Quebec civil law after concluding that obligations arising from such a contract of sale are not integrally connected to navigation and shipping. The Court of Appeal reversed the trial judge and concluded that the claim fell squarely within the subject matter of ship repair and supply of ship equipment, and consequently, Canadian Maritime Law applied to the dispute. Canadian Maritime Law does not prohibit any manufacturer from excluding or limiting its liability for damages caused by latent defects existing at the time of sale and the Court of Appeal upheld Wärtsilä's limitation at $78,000.

The Supreme Court of Canada overturned the decision of the Court of Appeal and all nine justices found that provincial contract law contained in the *Civil Code of Quebec* was applicable, albeit for very different reasons.

The majority (6/9) found that the sale of marine engine parts is integrally connected to the federal legislative power over navigation and shipping; however, the sale of goods is also a matter that falls under the provincial power over property and civil rights. This conclusion gave rise to a double aspect scenario: a non-statutory body of federal law and a provincial law both validly directed at the same subject matter. The majority concluded that a contract for the sale of a ship-engine part does not involve the core of the federal power over navigation and shipping. Additionally, it would run contrary to the purpose of federalism to declare that non-statutory rules of Canadian maritime law can prevail over validly enacted provincial legislation. Consequently, the limitation of liability clause was held unenforceable.

The minority (3/9) concluded the dispute arose from a sale which involves the general application of provincial law governing sale. Simply because a matter arises in a maritime context does not automatically consign the matter to the federal power over navigation and shipping. Where a province has enacted a comprehensive body of law governing the sale of goods, the minority cautioned that there is no reason for the Court to disregard it, merely because a claim arising from a particular sale bears some relation to maritime activities.

In the past, Canadian Maritime Law was seen as an exclusive and uniform body of law applicable to maritime activities and not subject to the impact of any differences of provincial law to those activities. However, in *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, the Court had acknowledged that provincial law can apply incidentally in a maritime context without impacting uniformity. This case reaffirms the principle that provincial law can apply incidentally to maritime activities.

Irrespective of the approach taken by the Supreme Court Justices, this decision should serve as a warning to marine suppliers of goods and services to carefully consider their choice of law clauses and the impact provincial laws may have on their contracts. Furthermore, choice of law clauses may not be effective to avoid application of laws which are of public order for contracts entered into or performed in Quebec, such as the prohibition against manufacturers limiting or excluding liability for latent defects.

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