



Korea Maritime Law Research Centre

Maritime Law News Update

Vol. 9 January 18, 2015

136-701 CJ Law Hall Room 402, Korea University (School of Law), Anam-dong, Seongbuk-gu, Seoul, Korea || Prof. In-Hyeon, Kim, Director of Maritime Law Research Centre 02-3290-2885 (office), captainihkim@korea.ac.kr / blog.naver.com/captainihkim || Researcher Seul Ki Moon 02-3290-2912 (centre), sseulkii@naver.com || Research Assistant Won gak Kim pathfinder524@hanmail.net

o Korea University Maritime Law Research Centre aims to provide information regarding domestic and foreign maritime law developments regularly to practitioners, for the future development in Korean Maritime Law. We kindly ask for your support and interest.

o This News Letter has been published upon the Maritime Development Fund from **Spark International** (www.sparkinternational.com) **president Sam Park** (The President of the Korean Maritime Insurance Arbitrator's forum). We appreciate Mr. Park's contribution.

1. Law of Flag in the case of Bareboat Charter Registration [Korean Supreme Court case 2014.11.27. Docket No.12014ma1099]

1.1 Facts

The ship was owned by a German owner, and was registered in Germany. The plaintiff, a German bank, had lent money to the ship owner, and a mortgage was settled and registered on the ship's registration book, as the German bank being the mortgagee. The ship was bareboat chartered, and the charterer registered the vessel in Marshall Island. The bareboat charterer supplied the fuel oil for the ship, and the ship manager became the creditor for the payment of fuel oil. When the payment for the fuel oil was not made, the ship manager filed for voluntary auction on the ship, at Jeonju district court. According to article 60 of the Korean Private International Law (hereinafter "KPIL"), whether or not a maritime lien is acceptable relies on the law of the ship's flag. The plaintiff filed for objection against this auction and argued that; (i) the law of flag was German law, since the ownership was registered in Germany, and; (ii) according to the German law, maritime lien did not occur regarding payment of fuel oil. The Jeonju district court accepted this argument, and overruled commencement of the voluntary auction against the ship.

1.2 Court's position

According to article 60 (1) of KPIL, whether or not a maritime lien arises from a certain claim, and the scope of this lien is governed by the law of flag, i.e. the law from where the *ownership* was registered. This is also true for ships that have been bareboat chartered and the charter being registered in another country. Thus, the law governing this case shall be the German law, where the ownership was registered, and not the law of Marshall island, where merely the bareboat charter was registered. With regard to the German Commercial Code, payment bonds for fuel oil are not secured by maritime lien. Therefore, the judgment to dismiss the commencement of voluntary auction against the ship remains to be seen just.

1.3 Comments

In the case that maritime lien is allowed, if the ship is auctioned, the mortgagee will have a subordinated claim, leaving a chance for him to be left with no dividends at all. Therefore the mortgagee has a legal interest regarding the voluntary auction. In this case the German bank, as the mortgagee, was trying to protect its interest by objecting to the voluntary auction.

When maritime cases with foreign relations come before the Korean court, the governing law is decided by KPIL article 60. Unlike Singapore, Germany etc. where they allow bareboat charter registration apart from ownership registration, Korea only allows ownership registration. However, in the case of the former, there will be a bareboat charter registration after the ownership registration. In reality, dual registration will lead to the ship being stateless, therefore the first registration of ownership will suspend, and only the bareboat charter registration will be effective. In countries which allow both juridical and administrative registrations, even if a bareboat charter is registered, the juridical registration will still remain and the administrative registration will suspend.

In a practical sense, when a transaction regarding a ship takes place, the counter party relies on the bareboat charter registration, since that is what appears on the registration books. There was a Korean court judgment, stipulating that since the ownership registration is suspended by the bareboat charter registration, the flag of the ship should be considered as the country where the bareboat charter was registered [*Busan District Court 2013.4.24. Docket No.2012la19, Korean Supreme Court 2013.9.13. Docket No.2013ma816*].

However, the purpose of registering a bareboat charter is not to settle juridical problems, but rather for the convenience in administrative and managerial matters. Regarding safety, it is better to allow bareboat charter registration and manage the ships directly, than tolerating flag of convenience. Maritime lien is related to legal matters, such as ownership, and there was the law of where the ownership was registered should apply. This is the position of the Korean Supreme Court in this case. England also allows bareboat charter registration, and yet lets the legal issues such as ownership, mortgage, the ranking of real rights be determined by the law of the original registration country (article 17(7) of the Merchant Shipping Act 1995). Article 12(3) of the International convention on bareboat charter has the same intent.

2. Ship owner's Liability on Ships under Construction [*Busan District Court 2014.5.15. Docket No.2013gahap47173*]

2.1 Facts

Ship owner A entered into a shipbuilding contract with shipyard B. On March 27, 2012, while the ship was still under construction, A made a registration of ownership preservation. On April 20, the ship's trial voyage failed due to a problem in the engine room. The next day, the ship which was tied in shipyard B, drifted away due to heavy weather, and collided into the wall of a repair shipyard C. As shipyard C could not use its inner dock, it filed a suit for compensation of damages.

C claimed the loss of damages against B on the grounds that B breached its duty of care as the custodian of the ship, and at the same time filed a suit against the ship owner A, based on general tort, vicarious liability, liability of the owner and possessor of the structure.

2.2 Court's position

2.2.1 The liability of shipyard B

Shipyard B, as the defendant of this case, was the custodian of this ship and had a duty to care for the safety of the ships which were moored in its yards. However, B has neglected this duty and therefore has liable for the damages caused to the plaintiff (shipyard C).

2.2.2 The liability of ship owner A

A. General tort claims (Korean Civil Code article 750)

The plaintiff argues that defendant A has started to manage the ship by conducting sea trial etc. and therefore has a duty to care for the ship as the owner. Since A has breached this duty, the plaintiff claims for loss of damage. However, based on the facts that; (i) ship owner A is merely a contractor who has requested the construction of the ship to shipyard B, and therefore the ship was under B's management until it was completely built and handed over to A; (ii) At the time of the accident, the ship's sea trial was not completed and A did not possess the ship, it cannot be established that A had a duty to care for the ship.

B. Vicarious liability (Korean Civil Code article 756)

The plaintiff also argues that since A had dispatched a marine technician X, which was under A's supervision, to the construction, and registered for ownership preservation, A may act as the employer of shipyard B. This will leave A vicariously liable for the actions of B.

However, based on the following grounds; (i) there is no evidence supporting the assertion that X was dispatched to the construction site; (ii) a marine technician cannot supervise the process of constructing a ship, but can only manage the ship itself on board, (iii) A achieving the ownership of the vessel does not amount to conclusion that an employer-employee relationship was established between A and B, the relationship between A and B cannot be recognized as that of a employment.

C. The liability of the possessor of the structure (Korean Civil Code article 758(1))

The plaintiff asserts that A has been handed over the possession of this ship and has taken over the management of the vessel, thus making him liable as the possessor of the structure under Korean tort law.

However, this argument is also invalid for the following reasons; (i) normally a ship is handed over from the shipyard to the owner after it passes the sea trial. In this case the ship had not passed the first test voyage on April 20, 2012, and was scheduled for a second trial until the accident had occurred; (ii) therefore A's chief engineer was on board the ship on April, 20, 2012, solely as the witness of the trial voyage, and this cannot be seen as A being handed over the possession of the vessel, (iii) the ship was actually handed over to defendant A on August 7, 2013 long after the accident occurred.

D. The liability of the owner of the structure (Korean Civil Code article 758(1))

The owner of a structure has liability under the premise, that the possessor did not fail to comply with its duty to take precautions to prevent accidents occurring from the structure.¹ According to the facts of this case, shipyard B has breached its duty as the possessor of this ship, and therefore is liable for the damages it has caused. Thus, the owner A is not liable.

¹¹ Article 758 (Liability of Possessor, Owner of Structure, etc.) (1) If any damages has been caused to another person by reason of any defect in the construction or maintenance of a structure, the person in possession of the structure shall be liable for such damages: Provided, That if the person in possession has exercised due care in order to prevent the occurrence of such damages, compensation for the damage shall be made by the owner.

2.3 Comments

A ship under construction at shipyard B had gone under trial voyage and ownership preservation registration, drifted away and caused damage to another shipyard C. Thus, C claimed for the loss of damages under tort against shipyard B and the ship owner A.

The court accepted that B had a duty to care for the ship as the possessor. However regarding the issue on whether or not A was liable, the court denied the plaintiff's general tort claim and liability as the possessor of the structure claim, because it saw that a ship which had not yet passed the sea trial was not actually handed over to the owner. Regarding vicarious liability, the court reviewed whether contractor A could be seen as the employer of subcontractor B. Unless there was actual conduct and supervision from A, the court rendered that there was no employer-employee relationship between A and B under the Korean law. If the ship had passed its sea trial, and the accident occurred with the master and crew on board, there would have been a better chance in accepting the plaintiff's argument that A was liable as the possessor of the ship. Lastly, the court saw that, since A was not the possessor of the ship, he was not liable under Korean Civil Code article 758, and since B was liable as the possessor, under the same provision, A did not have strict liability as the owner of the ship.²

3. Events

(1) Year 2014, Korea University Maritime Law lecture

- o On December 4 to 5, the 6th Maritime Law Expert Program took place
- o Mr. Yamaguchi (Okabe & Yamaguchi, Japan) and Mr. Byung-Tae, Kang (vice-president of the Korea Trade Insurance Corporation) were invited as guest lecturers.
- o Prof. In- Hyeon, Kim as the chairperson, Mr. Gang- Suk, Joo (Executive director, Sinokor Merchant Marine Co., Ltd.), Mr. Woo- Young, Jeong (Partner, Lee & Ko LLP), Mr. Jong-Gu, Kang (Partner, Bae, Kim & Lee LLP), Mr. Sang-Gap, Ahn (Executive director, Hanhwa Insurance Co., Ltd.) attended at the Round-Table Talk the details of which were published in the Monthly Maritime Korea January 2015 issue(Vol. 496).

(2) The 7th East Asian Maritime Law Forum

- o On November 8 to 9, 2014, the 7th East Asian Maritime Law Forum was held at Waseda University, Japan.
- o Subject: (i) the Maritime Law trends in Korea, China and Japan; (ii) the current state and development of Maritime Courts and Maritime Arbitration in the 3 countries.
- o From Korea, Prof. Lee-Sik, Chai (Korea University), Prof. In-Hyeon, Kim (Korea University), Mr. Chul- Won, Lee (Partner, Kim & Chang LLP), Mr. Hae-Yeon, Song (Partner, Sechang & Co.) attended and gave presentations.
- o The 8th Forum will be held in Dalian, China in October, 2015.

(3) International Seminar on Maritime Safety

- o From October 31 to November 1, 2014, Korea University and the Korean Association of Shipping and Logistics jointly held an international seminar.

² When the possessor is exempt from liability, the owner is under strict liability. *Yoon-jik Gwak, Individual provisions on Claims (Parkyoungsa), 2007, p.424.*

- o Prof. James Hu (Shanghai Maritime University), Mr. Lianjun Lee (ReedSmith Richards Butler LLP), Mr. Takahashi (Maritime Consultant, Toda law office), Prof. Ho-Sam, Bang (Jeonnam University) gave presentations.

(4) The 12th Shipbuilding and Ship financing Study Group

- o On October 17, 2014, Mr. Woo-Young Jeong (Partner, Lee & Ko) gave a special lecture on the "Maritime Guarantee Agency".

(5) The 2nd Maritime Law Intensive Course by Korea University and University of Hong Kong

- o HKU which has grown to become the No.1 law school in Asia (No.17 Worldwide by the QS evaluation) and KU Law school ranked as the top 50-100 worldwide have concluded a mutual exchange agreement for the development of maritime law.
- o In January or February, KU and HKU have opened a Maritime Law Intensive Course.
- o From January 22 to 28, 2015, the 2nd course will be held in HKU.
- o 5 Maritime Majoring students from KU Law school and a student from Kyushu University will attend.
- o Prof. Felix Chan (HKU), and Prof. In-Hyeon, Kim (KU) etc. will participate as lecturers.

4. Developments in the Research Centre

(1) Prof. Lee-Sik Chai

- o Returned from Bonn University after finishing research.
- o Gave a lecture on "My 30 years of Maritime Law" at the 2014 Maritime Law Expert Lecture on December 4, 2014.
- o He will retire from Korea University as of February 25, 2015.

(2) Prof. In Hyeon Kim

- o On October 25, 2014, gave a presentation on "The outcome and challenges of 120 years of modern Korean Maritime Law".
- o On November 7, 2014, gave a presentation on "Limitation of Liability of the Carrier under the Korean Law" at the International Maritime Law Seminar held in City University of Hong Kong.
- o On November 8, 2014, gave a presentation at the East Asian Maritime Law Forum held at Waseda University, Japan.
- o On November 10, 2014, attend a memorial seminar at the Busan Ship Finance centre as a discussant.
- o On November 26, 2014, received an best teaching award from the President of the KU for his lecture in the 1st semester of 2014.
- o On November 27, 2014, presented on "Measures to vitalize the Korean Maritime Court" at the Korean Maritime Law Association.
- o On December 13, 2014, presented on "The Maritime Lien incurred by the Time Charterers" at the Commercial Law Research Association.
- o On December 24, 2014, appointed as a committee member (non-executive board member) and inspection commissioner for the Incheon Port Authority.
- o From January 19 to 30, 2015, stayed at University of Hong Kong as a visiting fellow.
- o On January 22, 2015, gave a lecture on "The Legal Implications of the Sewol Accident" at HKU.

(3) Prof. Felix Chan

- o On December 19, 2014, conducted a maritime workshop at the Carriage of goods by sea course at KU.

(4) Jon Zinc and others

- o On November 4, 2014, 3 Lawyers including Jon Zinc from Keesal, Young& Logan, a US maritime law firm which has its main office in LA, visited Korea and had a meeting with Prof. In-Hyeon, Kim.

(5) Mr. Yamaguchi

- o On December 4, 2014, visited KU and agreed to provide internship program for the maritime law students of KU with Prof. In-Hyeon, Kim.
- o Ms. Darim Yoon will be dispatched to Okabe & Yamaguchi, Japan as an intern student in February, 2015.

(6) Prof. Martin David

- o On December 11, 2014 Prof. Martin David from Tulane University visited Korea, and was greeted by Prof. In-Hyeon, Kim as the Director of the Maritime Law Research Centre with the presidents of the Korean Maritime Law Association.

5. Newly arrived Maritime Law References

* The following materials are open to the public and sent by request.

- o 2014 revised version of German Maritime Law.
- o 2014 Maritime Law Expert Lecture Proceedings, Korea University Maritime Law Research Centre, November, 2014.
- o The 7th East Asian Maritime Law Forum Proceedings.
- o Prof. In-Hyeon, Kim, "Ship owner's Limitation on Liability regarding the Oil Leaking Accident of Taean", Journal of International transaction Law Association (Feb. 2015).
- o Prof. In-Hyeon, Kim, "The outcome and challenges of 120 year's modern Korean Maritime Law", scheduled to be published by Justice (Feb. 2015).
- o Dr. Chan Young, Kim, "Research on the rational adjustments between interests regarding an agreement on carriage of goods by sea: focusing on the parties and 3rd parties interests" (K U PhD in Law dissertation, Dec. 2014).
- o Mr. Byung Su, Jeong, "A Comparative Study on the Liability of the Carriers by Land, Sea and Air between the Commercial Code and International Conventions" (KU LLM dissertation, Dec. 2014).
- o Mr. Sang Hyup, Lee, "A Comparative Study on the Scope of Ships subject to Pre-judgment attachments" (KU LLM dissertation, Aug. 2014).
- o Dr. Yong Chul, Choi, "A Comparative Study on the Real Rights Granted by way of Security between Korea and China" (KU PhD. in Law dissertation, Feb. 2014).
- o Mrs. Hye Sung, Park, "A Comparative Study on the Contract for Carriage of Goods by Sea between Singapore Law and Korean Law" (KU LLM dissertation, Aug. 2014).
- o Miss Hyo Jung, Park, "A Comparative Study between Maritime Lien and Special rights for wage: focusing on the wage claims" (KU LLM dissertation, Aug. 2014).