

ITLJ – September 2002

Lee & Lee v Airtours Holidays Limited

Central London County Court

October 2002

Case Note

Package Travel and the Athens Convention

Mr. and Mrs. Lee purchased a glitzy package holiday comprising flights to Singapore, a 5 night stay in Singapore, a 5 night cruise aboard the “Sun Vista” thereafter returning to Singapore followed by 8 days in Penang and a couple in Kuala Lumpur. The holiday was advertised on Teletext and purchased over the ‘phone by Mastercard. At no stage did the Claimants see a holiday brochure, nor were they in receipt of the Defendant’s terms and condition until a copy was sent to them printed on the reverse of the confirmation invoice.

Regrettably, all did not go well on the cruise limb of the package. The good ship “Sun Vista” caught fire and sank – but not before Mr. and Mrs. Lee had made it into one of the lifeboats from which they were, in due course, rescued. Alas, none of their belongings was rescued except for a video camera and the clothes in which they made their escape. History does not relate whether Mr. and Mrs. Lee proceeded to Penang and Kuala Lumpur with their video camera, but one rather doubts it.

It will come as no surprise that Mr. and Mrs. Lee complained that there had been an *improper performance* of the obligations under the package holiday contract under regulation 15 of the *Package Travel [Etc.] Regulations 1992* for which improper performance the Defendant was liable. The vessel was not sea worthy, or alternatively, had been negligently mismanaged by the crew such that a fire broke out and was not controlled. They claimed damages for psychiatric personal injury caused by the trauma of their “Titanic” experience; for the loss of valuables deposited in their cabin safe and for the diminution in value of their holiday and loss of enjoyment. Liability was not in dispute, but the extent to which the Claimants were entitled to recover damages was. It was conceded that the Athens Convention applied to the cruise part of the package and it was found by the trial judge that the Defendant was a “contracting carrier” within the meaning of the Convention on the, not unreasonable, grounds that the Defendant had entered into a contract of carriage with the Claimants for the cruise part of the holiday.

All other things being equal, in these circumstances, one would have thought Mr. and Mrs. Lee had a formidable case to recover all that they claimed. Not so, said Airtours. First, it was argued, the *Athens Convention* applied and that limited the extent to which the Claimants were entitled to damages. Secondly, so the argument went, the Claimants were not entitled to recover damages for their lost valuable because such a claim was excluded by article 5 of the Convention. These

arguments were based on the proposition that the *Athens Convention* imposes a free-standing regime applicable to international carriage by sea irrespective of the contractual arrangements between the parties, and notwithstanding anything to the contrary in the *Package Travel [Etc.] Regulations 1992*.

The Convention is given the force of law in the UK by section 183(1) of The Merchant Shipping Act 1995. Article 3 of the Convention provides:

- (1) The carrier shall be liable for the damage suffered as a result of the death or personal injury to a passenger and the loss or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or his servants or agents acting within the scope of their employment.*
- (2) The burden of proving that the incident which caused the loss or damage occurred in the course of carriage, and the extent of the loss or damage, shall lie with the Claimant.*
- (3) Fault or neglect of the carrier ... shall be presumed, unless the contrary is proved, if the death or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with ...fire ...*

Article 14 of the Convention provides:

No action for damages for the death of or personal injury to a passenger, or for the loss or damage to luggage, shall be brought against a carrier or a performing carrier otherwise than in accordance with this Convention.

Article 7 strictly limits the amount of damages recoverable by injured passengers in actions to which the Convention applies.

The Defendant relied on the dictum of Hobhouse J. in *The Lion* [1990] 2 Lloyd's Rep. 144 at page 153:

"All this convention does is to provide a regime and lay down a code which is to apply to govern the rights and liabilities of carriers and performing carriers. It is that type of scheme. It is not one which is contractually dependent. So it is not a scheme which depends upon incorporation of particular provisions into a contract. It is a scheme which imposes its provisions as a matter of law upon the parties. [Emphasis added].

In conjunction with Article 14 (above) which specifically insists that all actions must be brought under the Convention, the Defendant's case for limiting liability looks more compelling. More so when one considers Article 5:

“The carrier shall not be liable for the loss of or damage to [valuables] except where such valuables have been deposited with the carrier for the agreed purposes of safe keeping ...”

Mr. and Mrs. Lee it will be remembered had put theirs in their cabin safe.

Fortunately for Mr. and Mrs. Lee the trial judge was having none of it and ruled in favour of the Claimants allowing their claims to progress without the Convention limitations on the recoverability of damages. He held as follows: