



### Cruising for a Bruising? Jurisdiction in Cruise Cases

In a number of recent cases the County Courts have been asked to strike out cruise claims on the basis that they have no jurisdiction to hear them. Sarah Prager and Jack Harding of 1 Chancery Lane examine the issues.

#### *the High Court's jurisdiction to hear cruise claims*

Pursuant to CPR Part 61.2(1), claims under the Merchant Shipping Act 1995 or for loss of life or personal injury specified in s.20(2)(f) of the Supreme Court Act 1981 *must* be started in the Admiralty Division of the High Court. The Athens Convention has the force of law in the UK under s.183 of the Merchant Shipping Act 1995, and s.20(2)(f) of the Supreme Court Act refers to:

“any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of-

- (i) the owners, charterers or persons in possession or control of a ship ; or
- (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship.”

It will be appreciated that almost all claims arising out of cruise holidays will fall within the jurisdiction of the Admiralty Division.

### *the County Court's position*

The County Court does not have jurisdiction to hear claims of this nature. Pursuant to the Civil Courts (Amendment) (No 2) Order (SI 1999/1011) the County Court's jurisdiction to hear Admiralty claims issued after 26<sup>th</sup> April 1999 was revoked. However, by virtue of s.42 of the County Courts Act 1984,

"(1) Where a county court is satisfied that any proceedings before it are required by any provision of a kind mentioned in subsection (7) to be in the High Court, it shall order the transfer of the proceedings to the High Court; or if the court is satisfied that the person bringing the proceedings knew, or ought to have known, of that requirement, order that they be struck out.

(2) Subject to any such provision, a county court may order the transfer of any proceedings before it to the High Court.

(3) An order under this section may be made either on the motion of the court itself or on the application of any party to the proceedings..."

Essentially, therefore, although the County Court does not have jurisdiction to hear a cruise claim which ought to have been issued in the Admiralty Division, it has the power to transfer such a claim to that Division. However, where it is satisfied that the Claimant knew or ought to have known that the claim should be issued out of the High Court, it may order that the proceedings be struck out.

The Court of Appeal decision in *Official Receiver & another v Pafundo (1998) 1 BCLC 208* provides assistance for courts considering whether to transfer or strike out such proceedings. Morritt LJ, handing down the judgment of the court, approved the guidance given by the Court of Appeal in *Restick v Crickmore [1994] 1 WLR 420*:

"...provided proceedings are started within the time permitted by the Statute of Limitations, are not frivolous, vexatious or abuse of the process of the court and disclose a cause of action, they will not as a rule be struck out because of some mistake in procedure on the part of the plaintiff or his advisors. Save where there has been a contumelious disobedience of the court's order, the draconian sanction of striking out an otherwise properly constituted action, simply to punish the party who has failed to comply with

the rules of court, is not part of the court's function. No injustice is involved to the defendant in transferring an action which should have been started in the wrong court to the correct court..."

*the issue in practice: a case study*

The issue arose in a recent case heard in Swansea County Court on 13<sup>th</sup> March 2009. The claim arose out of a cruise taken by the Claimant and his family between 21<sup>st</sup> and 28<sup>th</sup> April 2006. It was alleged that there had been an outbreak of norovirus aboard the vessel prior to 21<sup>st</sup> April, and that the ship was insufficiently cleaned and disinfected prior to turnaround on that date. As a result, a further outbreak occurred during the cruise taken by the Claimant. The Claimant himself fell ill on 24<sup>th</sup> April. His illness was of short duration and was self limiting.

By letter dated 19<sup>th</sup> July 2006 the Claimant's solicitors notified the Defendant of the claim. After undertaking investigations, by letter dated 31<sup>st</sup> May 2007 the Defendant denied liability for the Claimant's illness. Accordingly, on 10<sup>th</sup> April 2008 the Claimant issued proceedings out of Basingstoke County Court seeking damages of up to £5,000. In its Defence dated 19<sup>th</sup> September 2008 the Defendant put in issue diagnosis, liability, contributory negligence, causation, and quantum. The claim was transferred to Swansea County Court and at a case management conference on 6<sup>th</sup> January 2009 the matter was allocated to the fast track and directions were given.

On 18<sup>th</sup> February 2009 the Defendant applied to strike out the claim on the basis that it should have been issued in the Admiralty Division of the High Court. It was accepted on behalf of the Claimant that the County Court did not have jurisdiction to hear the claim. However, the Claimant's representatives invited the court to transfer the claim to the Admiralty Division under the provisions of s.42 of the County Courts Act 1984.

The Claimant contended that transferring the claim would be in accordance with the overriding objective of doing justice between the parties, whereas striking it out would be disproportionate and would give rise to injustice. The Defendant contended that the claim should be struck out because the

Claimant's solicitors knew or ought to have known that it ought to have been issued in the High Court.

It was accepted that the claim was wrongly issued in the County Court through an oversight, but it was not accepted that this was something the Claimant's solicitors knew or ought to have known. The Claimant relied on the following matters in support of this stance:

- Such claims are commonly issued out of the County Court with no difficulties. Neither Defendants nor courts take any jurisdictional point, indicating that they consider that the County Court has jurisdiction to hear them.
- It is only recently that Defendants have taken this point. The Claimant's solicitors were not aware of the potential difficulty with jurisdiction.
- Neither the court of issue in the case in question (Basingstoke) nor the court to which the claim was transferred (Swansea) had taken the jurisdictional point. This illustrated the novelty (or at least the unusual nature) of the point.
- The Defendant itself did not take the point when it filed the Acknowledgement of Service (which provides for an indication to be given of any challenge to the court's jurisdiction).
- The Defendant did not take the point on filing the Defence, although in that document it took every other point to be made.
- The Defendant in its Allocation Questionnaire answered Question B (is there any reason why the claim should be transferred to another court to be heard?) in the negative, and went on to assert that the claim should be dealt with in the fast track.
- At the case management conference on 6<sup>th</sup> January 2009 the Defendant's solicitor gave no indication that a point on jurisdiction would be taken or that there was any difficulty with jurisdiction. He allowed the matter to be allocated to the fast track and directions to be given, with no demur.

The Deputy District Judge concluded that:

- The claim should have been issued in the High Court.

- The Claimant's solicitor did not know but ought to have known that the claim ought to have been issued in that court.
- However, he had an unfettered discretion regarding whether to transfer the claim to the High Court or to strike it out. In exercising his discretion he applied the following *dicta* of Stuart Smith LJ in *Restick v Crickmore* [1994] 1 WLR 420:

"The construction I prefer accords with the well established policy of the courts: ...Save where there has been a contumelious disobedience of the court's order, the draconian sanction of striking out an otherwise properly constituted action simply to punish the party who has failed to comply with the rules of court, is not part of the court's function. No injustice is involved to the defendant in transferring an action which should have been started in the wrong court (sic) to the correct court."

The judge concluded that there was no injustice to the Defendant in having the matter transferred to the High Court. Accordingly, he did so. He made no order for costs on the basis that although the Defendant had not succeeded in its application, it was rendered necessary by the Claimant's failure.

### *some tentative conclusions*

Those acting for Claimants in cruise cases should beware: such claims must be brought in the Admiralty Division of the High Court and should not be brought in the County Court. Any claims issued out of the County Court are susceptible to an application to transfer them to the Admiralty Division; indeed they *must* be transferred if the court is to have jurisdiction to hear them.

However, those acting for Defendants have little cause for celebration. Even where a claim is wrongly issued out of the County Court, District Judges have little desire to strike it out, preferring to transfer proceedings to the Admiralty Division in order to remedy the error. It is suggested that both parties in such cases would be well advised to agree to transfer proceedings to the High Court as an administrative exercise in order to ensure that the court hearing the claim has jurisdiction to do so.

Nevertheless, it is thought that as the issue becomes more widely known, the courts will be less sympathetic to Claimants erroneously issuing out of the County Court, and may indeed begin to strike out cruise claims brought within that jurisdiction. It will be crucial that future claims are brought within the appropriate forum, therefore.

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