Québec Superior Court Re-Ignites Debate On The Scope Of Maritime Law In Canada

April 21, 2016

Transport Desgagnés Inc. v. Wärtsilä Canada Inc., 2015 QCCS 5514

In brief

In a case that raises interesting constitutional questions, the Québec Superior Court recently held that the sale of a bedplate and crankshaft for the use aboard a vessel falls outside of the scope of Canadian Maritime Law. As a result, the professional seller is not entitled to benefit from the limitation of liability clause under the contract of sale. Rather, the prohibition against limitation or exclusion of liability clauses for hidden defect under the Québec Civil Code applied. The Québec Court of Appeal is currently seized of the matter.

Case summary

(i) Facts

Transport Desgagnés Inc. ("Desgagnés") operates a fleet of vessels in Canadian and international waters. In 2006, the company bought a new bedplate and reconditioned crankshaft for one of its vessels from the Wärtsilä group ("Wärtsilä"). In October 2009, after more than 13,000 running hours, the new crankshaft suffered a total breakdown while the vessel was operating near Les Escoumins (Québec), causing damages agreed by the parties to be approximately $5.6 million.

(ii) Arguments

The fact that the failure was caused by the insufficient tightening of one of the connecting rods was not disputed, nor an issue at trial. Desgagnés alleged that the crankshaft was defective and badly installed when it was delivered. Wärtsilä for its part argued that it was Desgagnés who was responsible for the improper tightening of the connecting rods after routine maintenance. It further argued that, under the terms of the sales contract between the parties, Desgagnés had agreed to a limitation of liability clause. Desgagnés answered that the contract was covered by the Civil Code of

Québec ("CCQ") and that as a consequence, the limitation of liability clause was invalid in the circumstances.

(iii) Decision

The two main issues at play were (A) what law governs the transaction: Canadian Maritime Law or the Québec civil law?; and (B) based on the governing law, is Wärtsilä entitled to limit its liability by means of the contractual limitation of liability clause?

(A) With respect to the applicable law, the Superior Court was of the view that the conflict between the parties stems from a simple contract of sale. As such, the transaction between the parties is not integrally connected with the Federal Parliament's jurisdiction over navigation and shipping.[1] The Superior Court also found that differences in provincial rules concerning a professional seller's obligations do not negatively impact federal policies regarding shipping and navigation. Therefore, as the contract of sale was entered into in Québec, it is the laws of Québec that must apply, pursuant to the provincial powers governing property and civil rights.[2]

(B) The Superior Court reiterated that, under the rules of the CCQ governing hidden defects, a seller of property must give warranty that the property is free of latent defects.[3] In the case of a sale of property by a professional seller, such "*defect is presumed to have existed at the time of sale if the property malfunctions or deteriorates prematurely*".[4] Lastly, a professional seller may not exclude or limit liability unless the defects of which he was aware or could not have been unaware are disclosed.[5]

The Superior Court found that these provisions apply to the transaction between the parties. As a result, the defect to the crankshaft is presumed to have existed at the time of sale – and Wärtsilä has not been able to rebut that presumption. Moreover, being a professional seller, Wärtsilä is presumed to have known of the existence of a defect at the time of sale. In order to exonerate itself, Wärtsilä must demonstrate that (1) the buyer or a third person caused the defect or (2) that only scientific or technological discoveries made after the product was sold would have permitted discovery of the defect at the time of sale. As a result, any exclusion or limitation clause in the contract between the parties is rendered invalid.

The Superior Court therefore found that Wärtsilä is liable for the damages caused by the malfunctioning of the crankshaft.

(iv) Comment

The constitutional analysis underlying the decision of the court is problematic. In earlier cases, such as Pêcheries Guy Laflamme Inc. c. Capitaines propriétaires de la Gaspésie (A.C.P.G.) Inc., 2015 FCA 78, the Federal Court of Appeal had concluded that services offered by a marina and dry dock form an integral part of Canadian Maritime Law, as defined and described by the Supreme Court of Canada's decision in *ITO-Int'l Terminal Operators v. Miida Electronics*, [1986] 1 S.C.R. 752.

It would seem that a contract for the sale and installation of bedplates and crankshafts falls squarely within the definition of Canadian Maritime Law as defined in section 2 of the *Federal Courts Act*, in addition to sections 22 (1) and (2)(n) of that Act. As such, such a sale is subject to Canadian Maritime Law. Under Canadian Maritime Law, the

limitation of liability clause in the contract between Desgagnés and Wärtsilä would likely be considered valid.

While it is true that the provinces have jurisdiction over a commercial sale, the real constitutional question is whether the doctrines of paramountcy or interjurisdictional immunity render the provincial law inoperative. Wärtsilä has appealed to the Québec Court of Appeal (case number 500-09-025791-153), so that the highest court in Québec will have an opportunity to weigh in on the matter. This summary will be updated once a final verdict by the Court of Appeal has been reached.

[1] Section 91 (10) of the *BNA Act*.

[2] Section 92 (13) of the *BNA Act*.

[3] Section 1726 CCQ.

[4] Section 1729 CCQ.

[5] Section 1733 CCQ.

By

Nils Goeteyn

Expertise

Insurance Claim Defence, Shipping

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749