



Neutral Citation Number: [2024] EWHC 937 (Admlty)

Case No: AD-2022-000093

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**ADMIRALTY COURT**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 25/04/2024

Before :

**ADMIRALTY REGISTRAR DAVISON**

Between :

**(1) ZURICH INSURANCE COMPANY LIMITED**  
**(trading as NAVIGATORS AND GENERAL) (2)**  
**DANIEL SKORDIS (3) LUADEM SINGLE**  
**MEMBER PRIVATE COMPANY**

**Claimants**

- and -

**(1) HALCYON YACHT CHARTER LLP (2) ALL**  
**OTHER PERSONS CLAIMING TO HAVE**  
**SUFFERED LOSS AND DAMAGE BY REASON**  
**OF THE FIRE ONBOARD THE YACHT "BIG**  
**KAHUNA" AT GOUVIA MARINA, CORFU ON 7**  
**SEPTEMBER 2022**

**Defendants**

-----  
-----  
**Mr Thomas Steward** (instructed by **Penningtons Manches Cooper**) for the **Claimants**  
**Mr James Watthey** (instructed by **DWF Law LLP**) for the **First Defendant**

Hearing date: 10th April 2024  
-----

**Approved Judgment**

This judgment was handed down remotely at 10.30am on 25 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

## Admiralty Registrar Davison:

### Introduction

1. On 7 September 2022, at Gouvia Marina in Corfu, a fire broke out aboard the vessel “BIG KAHUNA”, a Princess V65 motor cruiser. The fire spread to other vessels in the Marina, three of which unfortunately sank. One such was “HALCYON”, a 95 foot classic wooden ketch built in 1929 by John Thornycroft of Southampton. On 15 November 2022, the owners and English insurers of BIG KAHUNA commenced a limitation claim in the Admiralty Court of England & Wales pursuant to the provisions of the 1976 Convention (incorporated into English law by section 185 and Schedule 7 of the Merchant Shipping Act 1995). The only named defendant was Halcyon Yacht Charter LLP, the owner of HALCYON. But (as is conventional) the claim was also expressed to be against “all other persons claiming to have suffered loss and damage by reason of the fire on board the yacht BIG KAHUNA”.
2. On 14 December 2023, the owners of HALCYON issued proceedings against the owners of BIG KAHUNA in the Court of First Instance of Piraeus, Greece seeking compensation for the loss and damage caused by the fire. Limitation may or may not be raised as a defence to the claim in Greece; (see further below). However this may be, there is a significant difference between the limitation regimes in the two countries. Pursuant to Article 15(2) of the Convention, the regime governing limitation claims in England & Wales incorporates a small craft limit for vessels of less than 300 tons. This limit is 500,000 SDR (about £530,000) and would apply to BIG KAHUNA. Greece incorporated the same limit from 1 May 2023. But the new Greek limit is not retrospective. Thus, the relevant Greek limit for BIG KAHUNA in respect of this incident would be calculated in accordance with Article 6 and would be 1,510,000 SDR (about £1.6m).
3. In England & Wales, limitation can be raised in two ways: either by the obtaining of a limitation decree, or by way of a defence. However, as explained in *Admiralty Jurisdiction and Practice* 5<sup>th</sup> Ed at 8.104 - 8.105:

“This course of action [raising limitation by way of defence] should only be adopted if it is envisaged that there will only be one claim brought against the party wishing to limit, as unlike obtaining a decree of limitation, judgment for the amount of the limit is binding only in respect of the claim of the particular claimant in that action, and does not establish any right as against other persons who may have claims. If another person subsequently brings a claim, limitation of liability may of course be pleaded as a defence in the fresh action, but no credit will be given for the previous payment, and the limiting party will have to pay over his limit again

In order to obtain the fullest protection and ensure that the limit will be paid only once, it is necessary to obtain a limitation decree which will be valid against all claims.”
4. The claimants in this limitation claim anticipate that there will be more than one claim against the fund. Therefore, it was correct and in accordance with the practice set out in the passages from *Admiralty Jurisdiction & Practice* quoted above to commence a claim for a limitation decree. (The evidence and submissions are unclear as to whether

this procedure has a direct equivalent in Greece or whether limitation can only be raised responsively to individual claims.)

### **The application for a stay**

5. By Application Notice dated 15 December 2022, Halcyon Yacht Charter LLP have applied for an order staying the English proceedings on the basis of *forum non conveniens* because “the courts of Greece are clearly and distinctly more appropriate as the forum for resolution of both limitation and the underlying substantive claims”. For the purposes of the application, the parties exchanged witness evidence, which included or referred to expert evidence as to Greek law. There were disputes about how to deal with this evidence. The disputes were resolved by a Consent Order dated 13 February 2024 which set out in a Schedule ten propositions which were either fully agreed or agreed to be “properly arguable either way”.

### **Applicable legal principles**

6. The legal principles were not in dispute and I therefore simply recite the relevant passages from Dicey & Morris, *The Conflict of Laws*, 16<sup>th</sup> Ed.
7. Dicey Rule 41 is in these terms:
  - “(1) English courts have jurisdiction, whenever it is necessary to prevent injustice, to stay or strike out proceedings in England.
  - (2) An English court has power to order a stay of proceedings commenced as of right on the basis that England is an inappropriate forum (*forum non conveniens*), if the defendant shows there to be another court with competent jurisdiction which is clearly or distinctly more appropriate than England for the trial of the action, unless the claimant can show that it is unjust for it to be deprived of the right to trial in England.
  - (3) In considering whether to assume jurisdiction in any of the cases mentioned in Rule 35 (service out of the jurisdiction with the permission of the court) the court will generally require the claimant to show England to be clearly or distinctly the appropriate forum for the trial of the claim.”
8. The leading case is *The Spiliada* [1987] AC 460, the principles of which are helpfully reduced to seven propositions in *Dicey* at 12-029:

“The following propositions may be derived from the speech of Lord Goff of Chieveley, which has been applied in many subsequent cases. The framework that is set out in the points that follow will be used on applications for a stay of proceedings where the defendant has been served as of right. Where these criteria are applied to an application for permission to serve out of the jurisdiction, they operate as a mirror image, considered under clause (3) of this Rule. First, in general the legal burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay. The evidential burden will rest on the party who seeks to establish the existence of matters which will assist that party in persuading the court to exercise its discretion in its favour. Secondly, if the court is satisfied by the defendant that there is another available forum, which is clearly a more appropriate

forum for the trial of the action, the burden will shift to the claimant to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in England. Thirdly, the burden on the defendant is not just to show that England is not the natural or appropriate forum, but to establish that there is another forum which is clearly or distinctly more appropriate than the English forum; accordingly, where (as in some commercial disputes) there is no particular forum which can be described as the natural forum, there will be no reason to grant a stay. Fourthly, the court will look to see what factors there are which point in the direction of another forum as being the “natural forum”, i.e. that with which the action has the most real and substantial connection. These will include factors affecting convenience or expense (such as availability of witnesses) and such other factors as the law governing the transaction and the places where the parties reside or carry on business, and also whether the claim is part of a larger overall dispute which would be damaged by being fragmented; or where the court has specialist expertise which ought to be made available in related cases. Fifthly, if the court concludes at that stage that there is no other available forum that is clearly more appropriate for the trial of the action, the court will ordinarily refuse a stay. Sixthly, if, however, the court concludes that there is some other available forum that *prima facie* is clearly more appropriate, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should not be granted. In that enquiry, the court will consider all the circumstances of the case, including circumstances that go beyond those taken into account when considering connecting factors with other jurisdictions. Seventhly, a stay will not be refused simply because the claimant will thereby be deprived of “a legitimate personal or juridical advantage”, provided that the court is satisfied that substantial justice will be done in the available appropriate forum.”

### **The defendant’s submissions**

9. Mr Watthey’s submissions for the first defendant can be summarised as follows:
  - i) Greece was an available forum, which was clearly more appropriate. This was the jurisdiction in which the tort had been committed, whose law would be the governing law and which was *prima facie* the natural forum for the determination of disputes arising out of the tort; (see *The Albaforth* [1984] 2 Lloyd’s Rep 91).
  - ii) Relevant witnesses, such as marina staff, emergency & (subsequently) wreck removal personnel, would be based in Greece. The HALCYON’s Greek skipper, Mr Theodoros Boukas and a local diver, Mr Christos Mourikis, who was present at the incident in a RIB, were based in Greece. Such documents as might be relevant would be Greek documents expressed in the Greek language. To the extent that expert evidence was required, it would be more proportionate and cost-effective for such experts to be based in Greece.
  - iii) The parties (including prospective parties in the form of other damaged or destroyed vessels and the Marina itself) and their insurers would legitimately expect that disputes arising out of the fire would be resolved in Greece according to Greek law; (see also sub-paragraph (v) below). Because the limitation amount in Greece was three times that in England, it was highly likely that other claimants would bring their claims in Greece. A rough approximation of the

aggregate value of all likely claims (including for the loss of HALCYON) was in excess of £2 million. The overall “shortfall” in Greece would therefore be something in excess of £0.5 million, whereas in England it would be something in excess of £1.5 million. Although this discrepancy would not arise if the Greek court recognised and gave effect to an English limitation decree, this was agreed to be “properly arguable either way”. A Greek court might refuse to recognise an English limitation decree “on the basis that it was given without jurisdiction in the eyes of a Greek court”; see proposition 10 of the Schedule to the 13 February 2024 Order.

- iv) If there was an Article 4 response to the limitation claim (i.e. that “the loss resulted from [the person seeking to limit’s] personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result”) then the natural and appropriate forum for that issue was the place of domicile of the owner, i.e. Greece; (see *The Falstria* [1988] 1 Lloyd’s Rep 495 at 499).
- v) The claimants’ approach was opportunistic, tactical “forum-shopping” which was unfair to the other vessel owners. Apart from HALCYON, only one of these, the yacht “ARGENTOUS”, was English owned. The defendant had therefore been used as an “anchor” defendant in a way that those other parties / potential parties would find surprising and unfair. It would be open to them to apply to set aside the limitation decree, if made, and this, in combination with likelihood of substantive proceedings in Greece, was “incredibly disorderly and wasteful of parties’ costs and court resources”.

### **Discussion**

- 10. Powerful and attractively phrased as they were, there are short, decisive answers to Mr Watthey’s submissions. (Mr Steward’s submissions for the claimants, which I have substantially accepted, appear sufficiently from what follows.)
- 11. It is true that the natural forum for the underlying claims is Greece. But the limitation claim is a separate and distinct claim. In this, or any, limitation claim there are usually just two issues: (1) the amount of the limitation fund and (2) an Article 4 defence, if raised. The first of these is an arithmetical calculation, which rarely gives rise to a dispute (and does not here). The second is a defence which, since the introduction of the more tightly-drawn wording of Article 4 of the 1976 Convention, is notoriously difficult to make out, is therefore seldom raised and for which there is, in this case, to date, no support. The cause of the fire is simply unknown. Eighteen months have elapsed and no evidence has emerged to suggest that it was started deliberately or recklessly. In answer to a question from me, Mr Watthey was also unable to point to potentially fruitful lines of enquiry that were being pursued. An Article 4 defence is therefore speculative and, on present material, improbable. A speculative and improbable Article 4 defence is no basis upon which to find England an inappropriate forum. I do not, in these circumstances, need to decide whether England or Greece would be the natural and appropriate forum for an Article 4 defence, if one were raised. All I will say is that the witnesses and evidence to which Mr Watthey referred were primarily concerned with dealing with the fire, once underway, and its aftermath. If an Article 4 defence were raised, the evidence would be directed towards how the fire was started and the state of mind of the vessel’s owners or those acting for them. Evidence

directed to these issues would not necessarily come from the factual witnesses to whom Mr Watthey referred – and certainly not exclusively from those witnesses.

12. It is commonplace for the limitation claim and the underlying claims to be tried (or arbitrated) separately and in separate jurisdictions. Examples include *Bouygues Offshore S.A. v Caspian Shipping* [1998] 2 Lloyd’s Rep 461; *The Volvox Hollandia* [1988] 2 Lloyd’s Rep 361 (especially at 370) and *The Falstria* (*ibid*). If the proper forum for a limitation claim were to default to the jurisdiction of the tort (which is what, despite elegant denials, Mr Watthey’s submission came to), a defendant could always trump the claimant’s choice of forum. But it has been emphasised that “a shipowner is at liberty to choose his domiciliary court as the forum in which to set up his limitation fund and establish his right to limit his liability; see *The Volvox Hollandia* (*ibid*) at 379. English courts “should be exceedingly slow to interfere with such a settled practice which has international ramifications”. The first claimant is the English insurer and the second claimant is the English beneficial owner of the vessel in respect of which a decree is sought. I see nothing sinister or untoward in them (together with the registered owner) bringing this claim against a Welsh company, of whom at least one of the beneficial owners is Welsh, in this jurisdiction. Although the insurer of HALCYON is not a defendant, that insurer is also an English company. Of other potential claimants against the fund, with the exception of the Marina itself, not one is Greek. On the contrary, they represent a variety of different nationalities and flags, including Germany, Malaysia, Italy and the Cayman Islands. In these circumstances, there seems little reason to disturb the “settled practice” referred to in *The Volvox Hollandia* – something an English court should be “exceedingly slow” to do.
13. Further, it seems to me that the disorderly scenes evoked by Mr Watthey are unlikely to arise. For there to be a limitation claim in England whilst substantive claims are made in Greece (if that happens – at the present time there is only the claim by the owners of HALCYON) would, I repeat, be commonplace. There would be nothing “disorderly”. Indeed, the reverse is the case. The availability in England of a single, unitary limitation claim (as opposed to the need to raise limitation as a defence to each substantive claim) allows the orderly management and ranking of a full cohort of claims against the fund. As to disorder provoked by a clash of limitation decrees, it is relevant to observe that the claimants (defendants to the Greek proceedings) have been careful not to say that a limitation defence will necessarily be raised in Greece, let alone adjudicated upon; see paragraphs 3 and 8 of the Schedule to the 13 February 2024 Order. The claimant may see little utility in seeking judicial recognition of an English limitation decree in circumstances where there are no assets in Greece and no prospect of enforcement of a Greek judgment in England save to the limit of a limitation fund constituted here, (which would not, strictly speaking, be “enforcement” at all). The clash of limitation decrees is unlikely to arise. But even if limitation is raised in Greece, an English court cannot be deterred from proceeding with a limitation claim here by the prospect that a court in another jurisdiction may not recognise its limitation decree. Self-evidently, that would be no basis to conclude that that other court was the more appropriate forum.
14. Finally, it does not seem to me that the claimants can fairly be accused of “forum-shopping”. Given the primacy afforded to the shipowner as to choice of jurisdiction (see above), it is hard to see how that can have frustrated the expectations of other potential claimants. There was nothing untoward in bringing the claim here against an

English defendant with an English insurer and there was at least one other English defendant which could also have been sued here as of right. The defendant's real complaint is that a limitation fund established here will be one third the size of a limitation fund established in Greece. But if England is a forum where the limitation claim may be tried "suitably for the interests of all the parties and the ends of justice" (a phrase originating from the judgment of Lord Kinnear in *Sim v Robinow* (1892) 19 R. 665) a juridical advantage such as this is not relevant. In a well-known passage from *The Spiliada*, Lord Goff said this:

"... an advantage to the plaintiff will ordinarily give rise to a comparable disadvantage to the defendant; and simply to give the plaintiff his advantage at the expense of the defendant is not consistent with the objective approach inherent in Lord Kinnear's statement of principle in *Sim v Robinow* ..."

15. Lord Goff went on to say that a court should not, in a proper case, be deterred from granting a stay of proceedings simply because the claimant will be deprived of such an advantage. By the same token, a court should not, in a proper case, be deterred from refusing a stay simply because the claimant will thereby retain such an advantage. In *The Herceg Novi* [1998] 2 Lloyd's Rep 454 the application of these principles led the Court of Appeal to stay an English action in favour of Singapore, even though the English claimants were thereby deprived of the higher limits of the 1976 Convention (in force in England & Wales) in favour of the lower limits of the 1957 Convention (then in force in Singapore). The Court of Appeal held that "in terms of abstract justice" neither Convention was "objectively more just than the other". Therefore the only question was whether substantial justice would be done in Singapore, which the judge below (Clarke J) had already found to be clearly or distinctly the more appropriate forum. The Court of Appeal held that substantial justice would indeed be done in Singapore and therefore granted a stay of the English proceedings.
16. The facts of *The Herceg Novi* have resonance in this case. Greece has not been shown to be clearly or distinctly the more appropriate forum for the limitation claim. It is true that there is a large difference in the limitation regimes for small vessels which prevailed in England & Wales and in Greece for this casualty. But the regime prevailing in Greece cannot be said to be objectively more just than that prevailing here, (the more so, perhaps, given that the two regimes have now equalised). It cannot be said that substantial justice is not available in England. The higher Greek limit, which I apprehend to be the main driver for the defendant's application, is therefore no basis upon which to grant the relief sought.

### **Conclusion**

17. For these reasons, I refuse the application for a stay of the English proceedings.

### **Postscript**

18. Because I have concluded that the application for a stay fails on its merits, it has not been necessary to address what might otherwise have been called a threshold point, advanced by the claimants. In *The Falstria* (*ibid*), Sheen J held that it was not open to the court to stay a claim for a limitation decree on the basis of an application by only one of a number of anticipated claimants against the fund, (who, in the slightly confusing terminology of limitation claims would, in fact, be defendants to the claim).

“On that short ground” Sheen J described the application as “misconceived”. But, in case he was wrong, he went on to deal with the substance of the application, which he refused. The judgment is, on this threshold point, brief and unreasoned. I agree with Mr Watthey that, on the face of it, there is at least tension with Rule 41 of Dicey and the principles enunciated in *The Spiliada*. But this is an argument for another day.