

THE HIGH COURT

[2022] IEHC 691

[2010 1592 P]

BETWEEN

PATRICK SHEEHY

PLAINTIFF

AND

MINISTER FOR FINANCE, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

AS CONSOLIDATED PURSUANT TO AN ORDER DATED THE 12TH DAY OF
JANUARY 2015 WITH RECORD NO. 2010/1600P

PATRICK SHEEHY

PLAINTIFF

AND

BALLYCOTTON MARINE SERVICES LIMITED AND CARBERRY ISLES

FERRIES LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Charles Meenan delivered on the 16th day of December 2022

Background

1. The fishing vessel the “Atlantic Mariner” (the “vessel”), built in the USA in 1980, was bought by the Plaintiff in 1990. In 1996 the Plaintiff brought the vessel to Ireland where it was registered in 1997. On 3 March 2008 the vessel was arrested whilst anchored at Church Strand, in County Cork on foot of a warrant issued by the Admiralty Marshal and passed onto the

Customs and Excise Division in West Cork for execution. These actions arose as a result of unpaid bills to a Spanish company in relation to another vessel owned by the Plaintiff, the mfv “Celestial Dawn”, which ran aground in Dingle.

2. On 11 March 2008 as a result of storm force winds in the Church Strand area, the vessel dragged her anchors and was towed by the Defendants to a mooring in Church Strand Bay. Subsequently the vessel foundered and it was declared a total loss. It was accepted by the Defendants that this loss and damage was as a result of its negligence and breach of duty in failing to take the appropriate steps to safeguard and protect the vessel.

3. At a hearing in 2016 the High Court (Noonan J.) delivered a judgment wherein he assessed the damages of €100,000 arising from the loss of the vessel. The Plaintiff successfully appealed this decision to the Court of Appeal which directed a retrial on two issues.

Issues

4. The two issues which the Court of Appeal directed a retrial on were:

- (a) An assessment of damages only as regards the value of the vessel on the date it foundered;
- (b) An assessment of damages only in respect of the claim for loss of use of the vessel.

It was not disputed but that the relevant date was March/June 2008.

Evidence

5. The Plaintiff represented himself and gave evidence. The Plaintiff stated that he bought the vessel for a sum of some \$200,000 and expended a further \$200,000 or more by way of improvements. He upgraded the vessel with new winches which resulted in the vessel having a capacity to tow two nets. The Plaintiff gave evidence of serious financial difficulties which he was encountering in the years 2005/06/07/08. In addition the Plaintiff faced very significant health difficulties.

6. The Plaintiff relied upon a number of matters concerning the valuation of the vessel in March/June 2008. The Plaintiff emphasised that at the time there was a decommissioning programme for fishing vessels. Though he accepted that the vessel did not meet the criteria, he maintained that others who had received large sums of money under the decommissioning programme would have been in the market to purchase the vessel. As for value the Plaintiff gave evidence that in 2006 he put the vessel up for sale at the price of €600,000. As against that he stated that he received verbal offers in the range of €550,000 to €575,000. These were not written offers and the Plaintiff did not engage with any of those who made offers with a view to improving the offer. He did not sell the vessel.

7. The Plaintiff gave extensive evidence concerning his indebtedness. Both the tonnage and the kilowattage attached to the vessel were given to the bank as security and subsequently sold. Notwithstanding this the Plaintiff was satisfied that the boat would have been easily leased for fishing. He was of this view given the amount of money which he said he had spent improving the vessel and also the fact that the vessel had a mackerel and herring licence.

8. Mr. John Kearney, principal of the Baltimore Diving and Watersports Centre, gave evidence on behalf of the Plaintiff. He stated that he saw the vessel virtually every morning and every evening whilst it was moored and that it appeared in good condition. He was asked to do a dive survey of the vessel in Summer 2010. In the course of this dive he gave evidence that the engine machinery and all the necessary fishing equipment was on board including the winches.

9. Mr. John Nolan who had been manager of Castletownbere Co-Op since 1983 gave evidence. Under his guidance and management the Co-Op increased its fleet from about ten boats to 60 boats. Mr. Nolan presented to the Court a report containing an analysis of “gross landing per year” of boats similar to the vessel. Taking into account the various costs associated with fishing, he arrived at a figure of €232,129 as “net profit”. On cross examination he

accepted that he had no direct knowledge of the vessel that the vessels upon which he based his figure were in good condition. He further accepted the vessel had only fished for 35 days and 65 days respectively in the two previous years. Fishing for so few days in a year would be very well short of what was required to produce the figures he gave.

10. Mr. Dermot O'Donovan gave evidence concerning the possibility of the vessel being leased. Mr. O'Donovan was a shipping agent and a Spanish counsel in Castletownbere, County Cork. He stated that he had experience of leasing boats particularly to Spanish fishermen. On cross examination he accepted that there was little possibility of the vessel being leased and without tonnage or kilowattage it would have little or no value to a person who might lease it.

11. The Plaintiff did not call evidence from persons who valued or surveyed the vessel. No evidence was called by the Plaintiff concerning his financial status nor was any documentation furnished. The Plaintiff stated that the relevant documentation had been destroyed at a fire at his brother's premises.

12. A number of witnesses were called by the Defendant. Mr. Vincent O'Driscoll saw the vessel on 17 March 2008 in the context of re-floating it. He had been a party to these proceedings and had some involvement with the vessel in 2008. He assessed the condition of the vessel when it was on the rocks but found that the hull was not damaged. His evidence was that he was inside the vessel and found that there were no electronics in the wheelhouse, the doors were hanging off and refurbishment was required. The vessel did not appear to him as being ready to be leased for fishing.

13. Evidence of the Plaintiff's financial circumstances was given by Mr. Eoghan Lehane, a chartered accountant. He stated that no financial information was provided by the Plaintiff. He examined documentation discovered by the Plaintiff's bank which indicated that the Plaintiff was indebted to the bank for a sum in excess of €850,000. Mr. Lehane concluded that

the Plaintiff did not have a viable business and would not have been financially in a position to carry out what improvements would have been necessary in order to lease the vessel.

14. Evidence of the valuation of the vessel was given by Captain Dave Hopkins on behalf of the Defendant. Captain Hopkins was a master mariner with some 50 years' experience in the marine business ranging from command of various cargo ships to offshore supply vessels. He stated that he was very well acquainted with fishing trawlers such as the vessel. To get value on a vessel it needed to be maintained properly and fished on a regular basis. 35 or 65 fishing days a year is not considered good fishing and will not put a good value on the vessel. Captain Hopkins noted that the vessel had a bad history of engine and machinery problems which was known throughout the industry. This would further reduce any possible value of the vessel. Captain Hopkins had seen the vessel several times from the quay and could say that this vessel was not in good condition. He stated that one could find a similar type of vessel, probably in better condition, for sale in 2019 for between €15,000 and €50,000 whilst vessels in good condition and good working vessels of a similar size fetch between €350,000 to €400,000. Captain Hopkins expressed the view that the vessel was worth no more than scrap value.

15. On cross examination the Plaintiff challenged Captain Hopkins expertise in giving evidence concerning the value of the vessel. The Plaintiff put to Captain Hopkins that though the vessel was not accepted for decommissioning, it would have been suitable to be purchased by a person whose boat had been decommissioned. Captain Hopkins rejected this maintaining that the vessel had a bad reputation in the industry and was known to be troublesome and this was compounded by a poor fishing record. Captain Hopkins stated that in order to maintain the vessel it would have to be put into dry dock every two and a half years at considerable expense amounting to a few hundred thousand euro.

16. Evidence was given by Mr. Dominic Daly, chartered surveyor and valuer. Mr. Daly has professional experience of selling boats, like the vessel, on behalf of CAB/Revenue. Mr. Daly

had regard to the history of the vessel which has already been referred to. His evidence was that, given the information concerning the history of the vessel, its leasing record and the cost of improvements, no value attached to the vessel without its tonnage or kilowattage in 2008. In support of this evidence Mr. Daly referred the Court to a number of sales that had been achieved for boats that could be considered as comparators to the vessel. Sales of such vessels achieved no more than about €12,500.

17. On cross examination by the Plaintiff it was put to Mr. Daly that the comparators which he relied upon were not valid but rather an accurate comparator was the “Syracuse”. This boat was presently on the market for €1.1 million. The Plaintiff did not specify as to why this boat was a comparator. It seems as if “Syracuse” was in good condition however it remains unsold.

18. Mr. John Finn, an executive officer with Customs and Excise, gave evidence of boarding the vessel for the purposes of effecting arrest. Mr. Finn gave evidence that at the time of arrest there were no electronics in the wheelhouse and the vessel did not look as if it was ready to go fishing. In a subsequent conversation with the Plaintiff, Mr. Finn stated that the Plaintiff expressed to him that he had applied to decommission the vessel and that the vessel would not be going fishing anymore and would be scrapped.

19. On cross examination the Plaintiff put a number of photographs of the vessel to Mr. Finn. However, Mr. Finn maintained, in his view, the vessel was not ready to go fishing. The Plaintiff also denied that he said words to the effect that the vessel would not be going fishing anymore or would be scrapped.

Consideration of Evidence

20. In the Court of Appeal decision in this case Gilligan J. cited the following passage from Clarke J. in *Doyle v. Banville* [2012] IEHC 25:

“To that end it is important that the judgment engages with the key elements of the case made by both sides and explain why one or other side is preferred. Where, as here, a

case turns on very minute questions of fact as to the precise way in which the accident in question occurred, then clearly the judgment must analyse the case made for the competing versions of those facts and come to a reasoned conclusion as to why one version of those facts is to be preferred. The obligation of the trial judge, as identified by McCarthy J. in *Hay v. O'Grady*, to set out conclusions of fact in clear terms needs to be seen against that background.”

I have to assess the damages to be awarded to the Plaintiff under two headings. This assessment must be based on the evidence that was given to the Court. The fact that the Plaintiff represented himself does not absolve him of the requirement to put before the Court relevant evidence. The burden is on the Plaintiff to establish the various valuations. The Plaintiff adduced no evidence from a person with the experience and qualifications to put a value on the vessel as of March/June 2008. It appears to have been the case that in the first hearing of this action the Plaintiff did adduce such evidence from Mr. Eoghan O'Regan and Mr. Michael Dillon. Further the Plaintiff adduced no evidence from an accountant, nor did he put before the Court any documentation as might assist the Court in deciding what damages, if any, the Plaintiff was entitled to for loss of use of the vessel. I will now deal with the two issues identified by the Court of Appeal.

Damages for Loss of Use

21. In considering this I have to look at the probability, if any, that the vessel might have been leased to fishermen for use. Mr. John Nolan gave evidence of the level of net profit that might be earned from leasing. He identified a figure of €232,129. Mr. Nolan accepted that a boat had to be in a good condition to return such an amount. However it was the case that were the vessel to be leased, improvements would have to be carried out. It is clear from the documentation from the Plaintiff's bank put before the Court that at the relevant time the Plaintiff was in no financial position to carry out such improvements. Further, Captain Hopkins

referred to the fact that the vessel had a history of engine failure which would have been known throughout the industry. The past fishing record of the vessel is also an indicator of the likelihood of the vessel being leased. It was an accepted fact that the vessel had only fished 35 days in 2006 and 65 days in 2007. This was far too low. The number of days which one would expect from a boat actively engaged in fishing would be well in excess of 200.

22. In looking at damages for loss of use not only would a willing lessee have to be identified but also the Plaintiff would have had to have been a willing lessor. There are a number of factors which indicate to me that the Plaintiff was not seriously in the business of leasing the vessel. Firstly, unfortunately, the Plaintiff was faced with very serious health issues as well as serious financial difficulties. Mr. Finn gave evidence that when he spoke with the Plaintiff after the vessel had been arrested, the Plaintiff spoke words to the effect that the vessel would not be going fishing again and would be scrapped. Although the Plaintiff denied saying this or words to this effect to Mr. Finn, I found Mr. Finn to be more credible on this. All this has to be seen in the context of the Plaintiff seeking to have the vessel decommissioned.

23. Taking all the above matters together I reach the conclusion that, as a matter of probability, the vessel was not going to be leased or used by the Plaintiff himself for fishing. Therefore, I am satisfied that no damage has been identified for loss of use of the vessel.

Value of the Vessel as of March/June 2008

24. The first matter I wish to look at is the purchase price for the vessel paid by the Plaintiff. His evidence was to the effect that he purchased the vessel in the United States for a sum of some US \$200,000 and then carried out improvements to the value of somewhere between US \$200,000 and US \$500,000. One might have thought that this evidence would be uncontroversial. However, various documentation put by the Defendant to the Plaintiff seriously calls into question the actual price paid by the Plaintiff for the vessel. There was a complete absence of documentation as to the improvements that the Plaintiff claimed he carried

out. I have not reached any conclusion on this point but it does indicate to me that the Plaintiff's evidence on the valuations concerning the vessel and its improvements have to be treated with a degree of caution.

25. It would appear that in 2004/5 the vessel was valued at €600,000 for insurance purposes. However the Plaintiff, for financial reasons, was not in a position to keep this insurance in place. The Plaintiff put the vessel up for sale in 2007 with an asking price of €600,000. The Plaintiff states that he received verbal offers in the range of €550,000 to €575,000. He did not seek to negotiate with these potential purchasers. At the time the Plaintiff was in negotiations with his bank to restructure his finances. The bank reached the conclusion that there was no interest in the vessel. The Plaintiff adduced no evidence from a valuer as to whether or not there was any reality in seeking an asking price of €600,000. In my view the value placed by the Plaintiff on the vessel at the time of its attempted sale does not assist me in assessing the value of the vessel as of March/June 2008.

26. Clearly the value of the vessel as of March/June 2008 depends upon its condition. There was conflicting evidence on this. Both the Plaintiff and Mr. John Kearney gave evidence that the vessel was in good condition. Mr. Kearney carried out an inspection of the vessel whilst diving.

27. The evidence that the vessel was not in good condition at the relevant time was more comprehensive. Captain Dave Hopkins gave evidence that while the vessel was alongside the North Pier in Baltimore he would have seen it several times from the quay. His view was that the vessel was not in good condition. He believed certain control equipment like winches had been removed. Mr. Vincent O'Driscoll who had worked with small boats for some 40 years and was involved in the consolidated proceedings described the vessel as being "pretty rough". He stated that there were no electronics in the wheelhouse, doors hanging off and refurbishment required. Mr. John Finn, who effected the arrest of the vessel, expressed the view that the vessel

was not in good condition and it did not look like a vessel that was ready to go fishing. He indicated to the Court that over 42 years or so he would have inspected very many fishing vessels. I am of the view that, as a matter of probability, the vessel in March/June 2008 was not in good condition. Firstly, the vessel had a very limited fishing history. Secondly, if the vessel were to be leased improvements were required which the Plaintiff was not in a position to carry out. Thirdly, given the Plaintiff's financial and medical conditions at the time, together with views which he expressed to Mr. John Finn, I am satisfied that the Plaintiff had not maintained the vessel in good condition.

28. Although the vessel did not meet the criteria for decommissioning, the Plaintiff maintained that there would be a ready market from other owners who had decommissioned boats to buy the vessel. It must be the case that any such potential purchaser would require value for money and would not buy a boat at a price that could not be justified.

29. As for the monetary value of the vessel in March/June 2008 the Plaintiff, as I have stated before in this judgment, did not adduce any evidence. The Defendants relied on the evidence of Captain Dave Hopkins and Mr. Dominic Daly, chartered surveyor and valuer. Both of these expressed the opinion that the vessel had no value. The comparator put forward by the Plaintiff, the "Syracuse", was, correctly, not accepted as being such.

30. In the face of this evidence I could reach the conclusion that the vessel at the relevant time had no value. However, it is my view that the vessel, albeit in a poor condition, must have had some value in March/June 2008. An indicator of this is the statement in the Report of Captain Dave Hopkins which stated, "One can find similar type vessels, probably in somewhat better condition, for sale today between €15,000 and €50,000..." (this report was dated April 2019). In his report Mr. Daly referred to the sale of a fishing boat, by direction of the Cork Circuit Court, for €12,500 in September 2005. This report also noted a number of other fishing

boats were not sold at the time even though one had tonnage. Taking these figures into account, I would value the vessel as of March/June 2008 as being €25,000.

31. In reaching the conclusion that the vessel at the relevant time had a value of €25,000, I am conscious that this matter came back before the Court, the Plaintiff having successfully overturned a judgment in his favour of €100,000. However, as I have stated in this judgment the valuation I have reached is based on the evidence or, rather, lack of evidence on the part of the Plaintiff before this Court.

Conclusion

32. I find that the Plaintiff is entitled to the sum of €25,000 being the value of the vessel in March/June 2008 and will give judgment for that amount accordingly. As this judgment is being delivered electronically any submissions as to costs should be in writing (no more than 2,000 words) to be filed on or before 13 January 2023. I will put the matter in before me for final orders on Friday 27 January 2023.