SPC Guiding Case No. 231: Dongguan Feng [X] Shipping Co., Ltd. v. Dongying Xin [X] Logistics Co., Ltd. (Salvage at Sea Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / salvage at sea / salvage remuneration / same shipowner

Holding

Where salvage at sea is carried out between vessels belonging to the same shipowner, the vessel participating in the salvage shall be regarded as an independent salvor. Where the salving vessel does not fall within any of the circumstances set out in Article 187 of the Maritime Law of the People's Republic of China, the salvage remuneration to which it is entitled under Article 191 of the Maritime Law shall not be forfeited or reduced on account of the fault of the vessel in distress that belongs to the same shipowner.

Basic Facts

On January 1, 2016, Dongying Xin [X] Logistics Co., Ltd. ("Dongying Xin [X] Logistics") entered into a warehousing agreement with Shandong Wan [X] Group Dongying Port Navigation Co., Ltd., under which Dongying Xin [X] Logistics leased two oil tanks, numbered V-6105 and V-6106, belonging to Shandong Wan [X] Group Dongying Port Navigation Co., Ltd.

The shipowners of both the M/V "Mou Sheng You 9" and the M/V "Mou Sheng You 16" were Dongguan Feng [X] Shipping Co., Ltd. ("Dongguan Feng [X] Shipping"). On January 10, 2017, the M/V "Mou Sheng You 16" loaded 6,500 tons of gasoline from the V-6106 oil tank of Shandong Wan [X] Group Dongying Port Navigation Co., Ltd. On January 16, 2017, while the M/V "Mou Sheng You 16", berthed at Berth No. 16 of the South Basin of Dongying Port, was carrying out gasoline loading operations, gasoline leaked into the pump room and engine room because of gaps in the transverse bulkhead between the engine room and the pump room of the M/V "Mou Sheng You 16" as well as negligence in personnel management and operations, creating a major dangerous situation endangering personnel, the vessel and the safety of the port. Law enforcement officers of the Dongying Maritime Safety Administration discovered the situation during an inspection and reported it to the Dongying Maritime Search and Rescue Center. The local government established an emergency response working group for the dangerous situation involving the M/V "Mou Sheng You 16". Pursuant to the arrangements and requirements of the Dongying Maritime Search and Rescue Center and the emergency response working group, multiple entities, including Dongguan Feng [X] Shipping, participated in the salvage and rescue work. On January 19, 2017, Dongguan Feng [X] Shipping dispatched the M/V "Mou Sheng You 9" to enter the port and participate in the salvage. At around 19:00 on January 22, all of the gasoline loaded on the M/V "Mou Sheng You 16" had been transferred to the M/V "Mou Sheng You 9". At noon on February 7, after decontamination, gas freeing and ventilation of the pump room and engine room of the M/V "Mou Sheng You 16", the oxygen and explosion measurements returned to normal values and the dangerous situation was resolved.

Dongguan Feng [X] Shipping brought a lawsuit in the Qingdao Maritime Court, requesting an order that Dongying Xin [X] Logistics (the owner of the loaded gasoline) pay salvage remuneration and corresponding interest and bear the litigation costs. During the litigation, Dongying Xin [X] Logistics contended that the M/V "Mou Sheng You 16" was at fault for the accident in question; that the shipowners of both the M/V "Mou Sheng You 16" and the M/V "Mou Sheng You 9" were Dongguan Feng [X] Shipping; and that, under Article

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187 of the Maritime Law, Dongguan Feng [X] Shipping's salvage remuneration should be forfeited or reduced on account of its own fault.

In addition, after the dangerous situation was resolved, other entities that had participated in the salvage and rescue work brought lawsuits in the Qingdao Maritime Court against Dongying Xin [X] Logistics and Dongguan Feng [X] Shipping as defendants for salvage remuneration. On November 19, 2020, Dongying Xin [X] Logistics and the other entities that had participated in the salvage reached a settlement agreement during enforcement in the Qingdao Maritime Court, and Dongying Xin [X] Logistics paid the salvage remuneration and corresponding interest.

Judgment

On September 26, 2019, the Qingdao Maritime Court rendered Civil Judgment (2019) Lu 72 Min Chu No. 137, dismissing all of the claims of Dongguan Feng [X] Shipping Co., Ltd. After the first-instance judgment was pronounced, Dongguan Feng [X] Shipping Co., Ltd. was dissatisfied and appealed. On March 16, 2020, the Shandong Provincial High People's Court rendered Civil Judgment (2020) Lu Min Zhong No. 14: (1) the Civil Judgment (2019) Lu 72 Min Chu No. 137 of the Qingdao Maritime Court was revoked; (2) Dongying Xin [X] Logistics Co., Ltd. shall pay Dongguan Feng [X] Shipping Co., Ltd. salvage remuneration of RMB 1,290,384 and corresponding interest within ten days from the date on which this judgment takes effect; and (3) the remaining claims of Dongguan Feng [X] Shipping Co., Ltd. were dismissed. After the second-instance judgment was pronounced, Dongying Xin [X] Logistics Co., Ltd. applied for retrial. On November 23, 2020, the Supreme People's Court rendered Civil Ruling (2020) Zui Gao Fa Min Shen No. 4813, dismissing the retrial application of Dongying Xin [X] Logistics Co., Ltd.

Reasoning

In order to encourage vessels belonging to the same shipowner to participate in salvage at sea, to avoid unfairly depriving the crew participating in the salvage of the salvage remuneration to which they are entitled, and to fairly protect the interests of the respective vessel insurers, Article 191 of the Maritime Law provides: "Where salvage is carried out between vessels belonging to the same shipowner, the provisions of this Chapter shall apply to the salvor's right to obtain salvage remuneration." This Article provides that salvage between vessels owned by the same civil subject may likewise give rise to a right to claim salvage remuneration. Article 187 of the Maritime Law provides: "Where the salvage operations have become necessary or more difficult due to the fault of the salvor, or where the salvor has committed fraud or other dishonest acts, the salvage remuneration payable to the salvor shall be forfeited or reduced." This Article provides for the circumstances in which salvage remuneration may be forfeited or reduced in salvage at sea.

Under China's litigation system, a lawsuit may not be brought in the name of a vessel. However, in determining salvage remuneration, the salving vessel may be treated as an independent unit. Where the accident giving rise to the salvage was caused by improper navigation or cargo care of the vessel in distress, the right of the salving vessel, which belongs to the same owner as the vessel in distress, to claim salvage remuneration shall not be affected. The fault and liability of the two vessels in the salvage relationship must not be conflated merely because the two vessels belong to the same owner. Fault by the vessel in distress in navigation and cargo care that led to the maritime accident shall not be regarded as fault of the salving vessel. The "salvor" in Article 187 of the Maritime Law shall be understood as the salving vessel, rather than the owner of the salving vessel. Provided that the salving vessel does not fall within any of the circumstances set out in Article 187 of the Maritime Law, the salvage remuneration obtained by it shall not be forfeited or reduced.

In this case, although the M/V "Mou Sheng You 16" and the M/V "Mou Sheng You 9" belong to the same shipowner, the M/V "Mou Sheng You 9", as the salving vessel, was not at fault for the occurrence of the maritime accident in question, and Dongying Xin [X] Logistics also failed to adduce evidence proving that the vessel had committed fraud or other dishonest acts during the salvage operations. Therefore, the salvage

remuneration of the M/V “Mou Sheng You 9” shall not be forfeited or reduced on account of the fault of the M/V “Mou Sheng You 16” in the maritime accident.

Relevant Legal Provisions

Articles 187 and 191 of the Maritime Law of the People’s Republic of China.

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