Travel, cruise and leisure

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HOLIDAYS IN FRANCE ALWAYS STRICT LIABILITY?

In accordance with the High Court's decision in *Committeri v Club Mediterranee SA*[1], it is in the interest of any companies that provide package holidays to France to ensure that the contracts between them and the buyers of the holidays are governed by English law. This will ensure that travel companies will not be strictly liable to provide compensation in the event of an injury during the holiday.

The facts

Club Mediterranee contracted with a client for a team building holiday in France for certain employees, including Mr Committeri. Significantly, the contract contained a clause stating that English was the applicable law. During one of the organised team building activities Mr Committeri slipped and fell from an ice wall, sustaining injuries. He sought to claim damages from Club Mediterranee, pursuant to article L211-16 of the French Code de Tourisme (the Code). Prior to the trial, Mr. Committeri discontinued all his fault based claims.

1 [2016] EWHC 1510 (QB)

2 Judgement of Cour de Cassation dated 17th November 2011

3 *Hone v Going Places* [2001] EWCA Civ 947 [15] Longmore LJ

Issues

The determination and overall success of Committeri's claim turned out to be a question of whether French or English law applied. This is because, if the claim was subject to French law, Club Mediterranee would be strictly liable to compensate Mr. Committeri for his injuries[2]; whereas if it was subject to English law the basis of liability depended on the terms of the contract[3]. To establish the applicable law to the claim, Dingemans J, set out the main issues for determination as follows:

1. Whether the claim under the Code was contractual or non-contractual in nature.

2. If it was contractual, whether the clause contained in the contract was a valid choice of law clause making English law the applicable law under art 3(1) of Rome I. If not, then the claim would be governed by French Law pursuant art 4(1)(b) of Rome I.

3. In the event that the claim was non-contractual the court would determine the applicable law under either the general rule, the exception to that rule or the escape clause set out in arts 4(1), (2) and (30) of Rome II, respectively, according to the circumstances of the case.



Decision

The court concluded that the nature of the claim was contractual since the obligation to compensate Mr Committeri was "freely consented" to by the parties when Club Mediterranee agreed to provide the package holidays[4]. Furthermore, the court decided that the clause in the contract was a valid choice of law clause that applied to the whole of the contract, meaning that the contract was governed by English law. In this regard, the claim of Committeri was dismissed.

Advice

For travel companies that provide package holidays in France so as to reduce the risk of their liability in cases of personal injury claims:

1. They must ensure that the whole of the contract (covering: payment, modification, cancellation, responsibility and performance), between them and the buyers, is governed by English and not French law. This can be done by inserting a valid choice of law clause stating that English law will be governing the contract.

2. English law does not absolve all liability travel companies might face by claims of buyers that have suffered personal injuries. Under English law the basis of liability depends upon the terms of the contract. So, it is important that the contract should prescribe a fault-based liability. In this way, companies can avoid absolute liability by ensuring that they will only be liable for their own acts or omissions.

4 Case C-359/14 *Ergo Insurance v If P&C*

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