



18 March 2015

## PRESS SUMMARY

### **Braganza (Appellant) v BP Shipping Limited and another (Respondents) [2015] UKSC 17** *On appeal from [2013] EWCA Civ 230*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Wilson and Lord Hodge

#### **BACKGROUND TO THE APPEALS**

Mr Renford Braganza disappeared between 1am and 7am on 11 May 2009 while working as the Chief Engineer on an oil tanker in the mid-North Atlantic managed by the respondents (collectively 'BP'). BP formed the opinion that the most likely explanation for his disappearance was that he had committed suicide by throwing himself overboard. As a result his widow was not entitled to death benefits under his contract of employment, which provided that compensation would not be payable if 'in the opinion of the Company or its insurers, the death...resulted from...the Officer's wilful act, default or misconduct'. The question arising in this appeal is the proper test for the court to apply when deciding whether BP was entitled to reach the opinion it did.

BP set up its own inquiry team into Mr Braganza's disappearance, to examine whether its systems could be improved, and it reported on 17 September 2009. The report identified six factors supportive of suicide and concluded that the most likely scenario was that Mr Braganza had jumped overboard deliberately. The report was forwarded to Mr Sullivan, the General Manager of the BP company which employed the officers on board the vessel. Mr Sullivan made no further inquiries of his own and on the basis of the report concluded that there had been wilful default within the meaning of Mr Braganza's employment contract so that death in service benefits were not payable to his widow.

Mrs Braganza brought a claim in contract against BP for death benefits and damages for negligence under the Fatal Accidents Act 1976 and the Law Reform (Miscellaneous Provisions) Act 1934.

In the High Court the judge was unable to make a finding as to the cause of Mr Braganza's death on the evidence. He upheld the contractual claim, finding that the opinion formed by BP was not reasonable because Mr Sullivan did not direct himself that cogent evidence commensurate with the seriousness of a finding of suicide was necessary and he had failed to take into account the real possibility that Mr Braganza had suffered an accident. The judge rejected the claim for negligence and Mrs Braganza did not appeal against this. BP's appeal in relation to the contractual claim was allowed by the Court of Appeal, which held that the employer did not have to approach the matter the way required by the judge, and that the conclusion of suicide was a reasonable one for BP to reach in all the circumstances.

#### **JUDGMENT**

The Supreme Court by a majority of 3 to 2 allows Mrs Braganza's appeal. In the majority, Lady Hale gives the lead judgment and Lord Hodge gives a concurring judgment. Lord Kerr agrees with Lady Hale and Lord Hodge. Lord Neuberger gives a dissenting judgment, with which Lord Wilson agrees.

## REASONS FOR THE JUDGMENT

The appeal raises two inter-linked questions of principle: (i) the meaning of the general requirement that the decision of a contractual fact-finder must be a reasonable one and (ii) the proper approach of a contractual fact-finder who is considering whether a person may have committed suicide [17].

The court is not the primary decision-maker but will seek to ensure that where there is a conflict of interest for the party charged with making a decision under the contract (which is heightened where there is a significant imbalance of power between the contracting parties), such contractual powers are not abused. The standard of review of contractual decisions is akin to that adopted for judicial review of administrative action [19]. That test involves two limbs: the first focusing on the decision-making process and the second focused on its outcome [24]. The court will imply a term into the contract that the decision-making process be lawful and rational in the public law sense, ie that the decision is made rationally, in good faith and consistently with its contractual purpose [30], but much depends on the context of the particular contract involved.

This case involved an employment contract which has an implied obligation of trust and confidence, in accordance with which any fact-finding function entrusted to the employer concerning whether a person has committed suicide must be exercised [32]. It would have been open to BP to conclude that it was unable to form an opinion as to the cause of Mr Braganza's death but instead it made a positive finding of suicide and the question was what was required for this conclusion [33]. As to this, it is not the consequences of a finding of suicide which demands that there be cogent evidence to support it but its inherent improbability [35]. A decision that an employee has committed suicide is not a rational or reasonable decision unless the employer has had it clearly in mind that suicide is such an improbability that cogent evidence is required to form a positive opinion that it has taken place [36].

On the facts of this case, Mr Sullivan should not simply have accepted the view of the inquiry, which was conducted for a different purpose, that suicide was the most likely explanation for Mr Braganza's disappearance. In order to make a positive finding of suicide he had to direct himself that cogent evidence was required sufficient to overcome its inherent improbability [39]. In this case there were no positive indications of suicide and the six factors relied on in the report were straws in the wind [40]. They should have been set against the evidence of his normal behaviour immediately before his disappearance, his concern about the weather and the fact that he was a Roman Catholic, which increased the inherent improbability of suicide in his case [41]. The lack of evidence supporting the hypothesis of an accident was still consistent with Mr Braganza having sustained an accident through carelessness [59]. Thus the judge had been right to find that the decision was unreasonable in the public law sense of having been formed without taking relevant matters into account [42, 63].

Lord Neuberger agrees with the majority that where a contract allocates power to a party to make decisions which have an effect on both parties the court should review the decision in the same way as it reviews administrative decisions [103]. BP had to carry out the investigation with honesty, good faith and genuineness, and avoid arbitrariness, capriciousness, perversity and irrationality. The court's approach when reviewing this decision should be similar to that of an appellate court reviewing a trial judge's decision. In the present case, Lord Neuberger would have held that there was a combination of reasons which could fairly be said to be sufficiently cogent to justify the finding that Mr Braganza had taken the unusual and tragic course of committing suicide [114-125].

*References in square brackets are to paragraphs in the judgment*

### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.shtml>