

CJC ACT FOR SUCCESSFUL OWNERS IN THE HIGH COURT - HAGUE RULES TIME LIMIT APPLIES TO MISDELIVERY CLAIMS

Deep Sea Maritime Ltd v Monjasa A/S (The Alhani)

Ian Short, Trudy Pisani-Cerulli and the CJC Team have acted for the successful owners in a High Court judgment given today 15 June 2018. In the judgment, David Foxton QC (sitting as a Deputy Judge of the High Court) held that the time bar created by Article III Rule 6 of the Hague Rules applies to misdelivery claims where a shipowner has delivered the cargo to a third party without production of the bill of lading. Nevil Phillips and Tom Bird of Quadrant Chambers were the counsel instructed to act for the successful owners.

The facts

The claimant shipowners sought a declaration that they were not liable to the defendant (“Monjasa”) as regards Monjasa’s claims under or in relation to a bill of lading under which the cargo in question was carried. The bill incorporated the Hague Rules (which took effect as a matter of contract) as well as an exclusive jurisdiction clause in favour of the English High Court

On 18 November 2011 the owners discharged the cargo onto another vessel by ship-to-ship transfer without production of the bill. The discharge and delivery of the cargo occurred simultaneously.

Monjasa subsequently brought actions in multiple forums against the owners, including in Tunisia, where Monjasa had arrested the vessel in April 2012 and advanced a claim on the merits. Those proceedings had been dismissed for want of jurisdiction in July 2015 but were the subject of an outstanding appeal.

The owners applied for summary judgment on their claim for a negative declaration on the ground that Monjasa’s claims had been extinguished pursuant to Article III Rule 6 of the Hague Rules, which provides:

“In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.”

The issues

As the judge noted, this case raised two important issues in relation to the law of carriage of goods by sea.

The first was whether the time bar created by Article III Rule 6 of the Hague Rules applies to claims for wrongful delivery, where the shipowner has delivered the cargo to a third party without production of the bill of lading.

The second was whether the requirement in Article III Rule 6 that “suit is brought within one year after delivery of the goods or the date when the goods should have been delivered” can ever be satisfied if proceedings are commenced in the courts of one country, when the bill of lading incorporates a clause from a charterparty giving exclusive jurisdiction to the courts of another country.

The decision

On the first issue, the judge held that Hague Rules time limit did apply to misdelivery claims. In summary, he found that:

1. Approached purely by reference to its language and purpose, Article III Rule 6 was capable of applying to misdelivery claims. The words “*in any event*” and “*all liability*” are wide and the object of finality (which the time limit was intended to achieve) would be “*seriously undermined if the Rule did not apply to misdelivery claims*” (para. 48).
2. Article III Rule 6 was not limited in its application to breaches of the Hague Rules obligations (though even if it were, the misdelivery claim in the present case was capable of being pleaded, and had in fact been pleaded, as a breach of the Hague Rules). The time limit applies to breaches of the shipowner’s obligations which “*occur during the period of Hague Rules responsibility*” and which have a “*sufficient nexus with identifiable goods carried or to be carried*” (para. 65).
3. There was no “*settled understanding*” that Article III Rule 6 does not apply to misdelivery claims.

Accordingly, he concluded that the Article III Rule 6 time limit applies to misdelivery claims, at least where the misdelivery occurs during the period of the Hague Rules period of responsibility.

As regards the second issue, the judge considered the question of what the effect of bringing suit in one set of proceedings had on the application of the Article III Rule 6 time bar in another set of proceedings.

He held that if the first proceedings are brought in a particular court in breach of an agreement to bring claims in another forum, then, save perhaps in exceptional circumstances, they will not constitute proceedings before a competent court. Monjasa could not rely on the Tunisian proceedings as the bringing of suit because they had been brought in breach of the exclusive jurisdiction clause in favour of the English courts.

Discussion

This is an important decision on the scope of the Article III Rule 6 time bar and resolves an issue which has long been the subject of divergent views – whether the time limit applies to misdelivery claims.

It is submitted that the result would have been no different had the Hague-Visby Rules been incorporated into the bill of lading: the language of the Hague-Visby Rules time bar is, if anything, even more emphatic, providing that the carrier and the ship shall “*in any event be discharged from all liability whatsoever in respect of the goods*”.

One question that remains open, however, is whether the Hague Rules time limit applies to wrongful delivery which occurs *after* the discharge of the cargo from the vessel, as when a container is discharged onto the quayside and delivered some weeks later. That issue will have to be determined in another case.

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