



Logistics Bulletin: Supreme Court Rules on Time Bar for Misdelivery Claims

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The Supreme Court held that Article III, rule 6 of the Hague-Visby Rules, applied to a claim for misdelivery, which occurred after discharge of the cargo had been completed. Therefore, the claim against the carrier for misdelivery was time-barred.

The issue to be determined in this case was whether the one-year time limit in the Hague-Visby Rules to bring a claim applied to a claim for misdelivery of cargo after discharge of the cargo from the vessel.

The Background Facts

The vessel M/V GIANT ACE was chartered to carry a cargo of coal from Indonesia to India.

The claimant (FIM Bank) was the holder of 13 bills of lading.

The respondent (KCH Shipping Co Ltd) was the demise charterer of the vessel and the contractual carrier under the bills of lading ("the Carrier").

The charterparty was governed by English law and provided that:

"This Charterparty shall have effect subject to the Hague-Visby Rules, which shall apply to any bill of lading issued under this Charterparty. ..."

The cargo was discharged between 1st and 18th April 2018 at Jaigarh, a port on the west coast of India.

FIMBank ("the bank"), who financed the purchase of the cargo by Farlin Energy & Commodities FZE, became the bill of lading holder, with right of suit pursuant to the Carriage of Goods by Sea Act 1992.

In shipping, it is not uncommon that sometimes the carrier is required to deliver cargo without production of the bill of lading through the provision of a letter of indemnity.

This is precisely what happened in this case. When the ship arrived at the port of destination, after discharge, the goods were stored in a warehouse. The goods were then delivered to someone who was not the lawful holder of the bill of lading without production of the bill of lading.

The bank attempted to collect the payment of the cargo without success. The bank then claimed damages from the carrier for misdelivery of the cargo to persons who were not entitled to receive it.

The Legal Issue

It is an established principle that delivery by the carrier to someone who is not the lawful holder of the bill of lading is a breach of the contract of carriage. There are several cases on this issue. *Glyn Mills Currie & Co v East and West India Dock Co* (1882) 7 App Cas 591; *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd* [1959] AC 576; and, for a recent example, see *Unicredit Bank AG v Euronav NV* [2023] EWCA Civ 471.

Liability is strict, with no need for the bill of lading holder to prove a failure of due diligence or reasonable care on the part of the carrier: *Motis Exports Ltd v Dampskibsselskabet AF 1912 Aktieselskab* [2000] 1 Lloyd's Rep 211.

According to Article III, rule 6, "... *the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered.*"...

The issue, in this case, was whether Article III, rule 6 of the Hague-Visby Rules applies to the bank's claim in a case of misdelivery. If it does not, then the ordinary six-year limitation period would apply, according to the Limitation Act 1980.

The parties' arguments:

Does Article III, rule 6 of the Hague-Visby Rules apply to a claim for misdelivery occurring after the discharge of the cargo has been completed?

The bank argued that the Hague-Visby Rules apply only to carriage by sea, which ends with the discharge of the cargo from the vessel. Therefore, the rules cannot apply to misdelivery of cargo stored on land after discharge. Furthermore, he argued that the carrier's obligation to deliver the cargo against a bill of lading is strict.

The carrier argued that the purpose of the time bar in Article III, rule 6, was to enable the carrier to close the matter if a lawsuit was not commenced within one year from when the goods should have been delivered. Therefore, the carrier's liability, if any, was extinguished by the time bar in Article III Rule 6 in the Hague Visby Rules, i.e., since the claimant did not issue proceedings within one year of the date when the good should have been delivered, it was time-barred from bringing a claim against the carrier for misdelivery.

The Decision

The arbitrator, in the first instance decision, held that Article III, rule 6 of the Hague-Visby Rules applies to a case of misdelivery after discharge.

The Court of Appeal agreed with the arbitrator's decision.

The Supreme Court found that there is no doubt that the terms of Article III, rule 6, are wide. This is emphasised by the words "in any event" and "all liability". Accordingly, the Supreme Court held that Article III, rule 6 applies to claims for misdelivery of cargo after discharge and dismissed the appeal.

Key Takeaway

Beware of limitation.

The carrier and the ship shall be discharged from all liability in respect of the goods unless a lawsuit is brought within one year of their delivery or of the date when they should have been delivered. This also includes cases of misdelivery after the discharge of the cargo has been completed.

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