



AUTHOR / KEY CONTACT



Linda Jacques
Partner

✉ Linda.jacques@LA-law.com
☎ 023 8082 7416

Misdelivery claims and time bars

Commercial expediency often results in the carriers of cargo discharging, and then releasing cargo to cargo interests, without the original bills of lading being produced. Although there are legal and insurance reasons as to why carriers should not release cargo in such circumstances, the practise is common.

In a hotly contested battle between the owners of an oil product tanker and cargo owners, the English court has recently expressed its view on what time bar should apply to a misdelivery claim, where that cargo has been carried under a bill of lading, which incorporates the Hague Rules.

The owners operated the tanker MT Alhani. The charterers of the tanker loaded 4,844.90 metric tonnes of bunker fuel on board the vessel and a bill of lading was issued showing Monjasa as a shipper of the cargo. The cargo was to be carried between Lome, Togo to Sotonou in Benin, but, during the court case in England it

appeared to have been accepted by the owners and the shipper that the discharge of the cargo had actually occurred off-shore Lome. The bill of lading incorporated the terms of a charterparty which required any claims to be submitted to the English Courts and for English Law to apply.

The owners discharged the cargo via a ship to ship transfer onto the MT Marida Marguerite at Lome. No bill of lading was produced prior to discharge and the owners said they did so under the instructions given by the charterer.

Monjasa, the shipper, had sold the cargo to a company called Unitaes pursuant to a sale contract. That contract contained a retention of title clause in the event of non-payment. Unitaes had set up a letter of credit to pay for the cargo. However payment was never made to Monjasa, because of documentary discrepancies. Pursuant to the terms of the sale contract Unitaes agents then arranged to sell the cargo back to Monjasa. This is a common practise under many sale contracts. Monjasa then complained that it bought the cargo back in ignorance of the fact that legally title in the goods had never passed to Unitaes, because of the retention of title clause. As a consequence of that they alleged the cargo had been misbelieved to Unitaes and they looked to the owners of the MT Alhani for recompense.

Monjasa started four different sets of legal proceedings in various jurisdictions against the owners, in order to try and obtain security for their claim and have the substantive legal issues dealt with by one of those courts.

In Tunisia the shippers arrested the vessel. Security was provided and the vessel was released. The Tunisian courts then refused to deal with the substantive dispute because of a lack of jurisdiction. The shipper also commenced proceedings in China. Those proceedings also involved the party who had opened the letter of credit. A settlement appeared to have been concluded between the shipper and that party.

The vessel was re-arrested in Le Havre in January 2017 and the French court ordered the owners to provide security, which they duly did, but they ordered Monjasa to commence proceedings for a competent court for substantive relief. The shippers started arbitration in London against the owners in February 2017. They then conceded that there was no valid arbitration clause which gave them the right to arbitrate. In the interim, the owners had started their own legal proceedings in London before the English High Court, asking for a declaration that they were not liable to Monjasa for mis-delivery. In response to this Monjasa claimed damages in contract and conversion against the owners.

The substantive hearing on those issues therefore came before the English Courts. The owners' primary assertion was that Monjasa's claim was time barred because no legal proceedings had been started in the correct forum and under Article III rule 6 of The Hague Rules the claim for misdelivery was time barred. Article 111 Rule 6 contains a one year time bar in which to commence legal proceedings against a carrier. There was no clear authority on whether that one year time bar also included claims for misdelivery of cargo.

The court decided that claims for misdelivery did fall into the one year time bar and on that basis concluded that Monjasa's claims were time barred. The fact that Monjasa had started proceedings in other jurisdictions inside the one year period was irrelevant. As no proceedings had been started in England, the claims were time barred.

