



Press Summary

13 November 2024

Fimbank Plc (Appellant) v KCH Shipping Co Ltd (Respondent)

[2024] UKSC 38

On appeal from [2023] EWCA Civ 569

Justices: Lord Hodge (Deputy President), Lord Sales, Lord Hamblen, Lord Leggatt, Lord Richards

Background to the Appeal

This appeal involves the interpretation and application of the Hague Rules, a 1924 international convention for the unification of rules of law relating to bills of lading, and of the Hague Visby Rules, the Hague Rules as amended by the 1968 Brussels Protocol. These international conventions govern most contracts for the international carriage of goods by sea [1]. Both the Hague Rules and the Hague Visby Rules provide at article III, rule 6 that a carrier of goods is discharged from ‘all liability’ unless a claim is brought within one year of the date that the goods were delivered or ought to have been delivered: [2]

“In any event the carrier and the ship shall be discharged from all liability [whatsoever] in respect of loss or damage [the goods] unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.” (The amendments made in the Hague Visby Rules are in parenthesis).

In this appeal, the central issue is whether this time bar applies to a claim for misdelivery of goods which arises after discharge from the vessel. Misdelivery occurs where the carrier delivers the goods, without production of the bill of lading, to a person not entitled to receive them [2-3].

The case concerns a cargo approximately 85,510 mt of steam (non-coking) coal shipped aboard the vessel "GIANT ACE" for carriage from Indonesia to India. The cargo was discharged from the vessel in India between 11 and 18 April 2018. Thereafter it is alleged that the cargo was misdelivered.

On 24 April 2020, arbitration proceedings were commenced against the carrier, claiming damages for misdelivery of the cargo. This was more than 12 months after the cargo should have been delivered. It was argued that the Hague and Hague Visby Rules do not apply to circumstances following discharge and so the claim was not time-barred [4-12].

The arbitration tribunal decided that the claim was time-barred. The High Court affirmed that conclusion on appeal. The Court of Appeal dismissed the appeal. It concluded that although the Hague Rules time bar did not apply to misdelivery claims following discharge, the Hague Visby Rules time bar did apply [14-17].

This decision was appealed to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. Lord Hamblen gives the judgment, with which the other Justices agree.

Reasons for the Judgment

The Court first considered the application of the Hague Rules time bar to misdelivery claims arising after discharge. If that applies, the more widely worded Hague Visby Rules time bar necessarily does so. In its judgment, the Court considered the ordinary meaning of the wording of the time bar; its context; its object and purpose; the preparatory works or travaux préparatoires for the Convention; existing English case law; international case law, and relevant textbooks and commentaries.

First, as to ordinary meaning, the provision was intended to have a wide application. It applies “in any event”; to “all liability”; and to claims “in respect of loss or damage” and not just to loss of or damage to the cargo itself. Further, all liability is “discharged,” which involves absolute finality [36-41].

Secondly, as to context, the provision focuses on what is to happen at and from the time of “delivery”. Delivery and discharge are different concepts and delivery may often occur after discharge. The rule as a whole addresses a number of other matters which may occur after discharge, such as the giving of notice of loss or damage, and joint surveys and inspections [42-47].

Thirdly, as to the object and purpose of the time bar, this is to ensure finality for parties who, once the deadline has passed, know there is no need for factual investigation and can close their accounts and books. That object and purpose is best met if all claims arising out of the contract (whether occurring after discharge or not) are covered by the time bar. The Court agrees with the tribunal that practical difficulties would arise if the operation of the time bar in the Rule was dependent upon when discharge was completed [63-67].

Fourthly, as to the travaux [68], these show an intention that there should be a period during which the parties are entitled to the minimum responsibilities and maximum rights specified in the Rules. That period begins upon the loading of the cargo and ends upon discharge. Outside of that period the parties are free to contract on separate terms. The travaux do not, however, address the issue of whether that means that none of the Rules apply outside of that period but they do provide indications that the time bar was meant to be as all-embracing as possible [70].

Fifthly, as to the English authorities [73], they emphasise the wide wording of the Rule, the importance of finality, and the undesirability of having a split regime of time limits. They have also applied the time bar to claims arising out of events occurring before loading, to goods which were never loaded and to misdelivery claims arising prior to the completion of discharge [74-87].

Sixthly, the international case law was reviewed but this did not demonstrate an international consensus [94].

Finally, the Court considered the leading textbooks and commentaries, but they do not specifically address this issue [102].

The appellant's key submission was that the period of responsibility provided for under the rules is limited to the period between the commencement of loading and the completion of discharge and that the time bar equally relates and relates only to breaches of duty which occur during that period of responsibility.

Having considered all the above matters, the Court concluded that although the Hague Rules set out a period of responsibility during which the carrier is subject to minimum responsibilities and liabilities, which cannot be reduced, and entitled to maximum rights and immunities set out, which cannot be increased, the Rules are not only concerned with that period [54; 70; 83; 107]. Other rules relate to the period before loading and after discharge and article III, rule 6 is concerned with the period up to delivery, including events which occur after discharge. The Hague Rules time bar therefore can and does apply to breaches of duty by the carrier which occur after discharge but before or at the time of delivery, including misdelivery. It may equally apply to breaches of duty which occur before loading. In all such cases it needs to be shown that the claim has a sufficient nexus with identifiable goods carried or to be carried. On this issue it disagrees with the contrary conclusion reached by the Court of Appeal [107-109].

If the Hague Rules time bar applies to misdelivery occurring after discharge then the Hague Visby Rules time bar necessarily does so, given its wider wording, which refers to all liability "whatsoever" and to claims "in respect of goods". This is further borne out by the addition of article IVbis and the travaux. On this issue the Court agrees with the Court of Appeal [110-117].

The Court rejected a further argument of the appellants that clause 2(c) of the bills of lading had the effect of disapplying the provisions of the Hague Visby Rules (including the time bar) to events occurring after discharge was completed [118-125].

The court therefore concludes that both the Hague Rules and the Hague Visby Rules time bars apply to claims for misdelivery occurring after discharge and the appeal is accordingly dismissed.

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: [Decided cases - The Supreme Court](#)