James Watthey in the "The Alhani": The Hague Rules time bar applies to "wrongful misdelivery" claims

In this case, in James Watthey (led by Stephen Kenny QC and instructed by E.G. Arghyrakis & Co) appeared, the Commercial Court finally answered one of the most important and long-standing points of controversy on the application of the Hague Rules: does the time bar in Article III Rule 6 apply to a claim for wrongfully delivering the cargo without presentation of the bill of lading?

A cargo of oil was loaded onboard the tanker "ALHANI" for carriage and a straight consigned bill was issued. The bill of lading contained a Clause Paramount which it was common ground had the effect of applying the Hague Rules as a matter of contract. It was also common ground by the time of the hearing that there was an exclusive English jurisdiction clause.

The cargo was discharged and delivered by ship-to-ship transfer without presentation of the bill of lading in November 2011. Claims were brought by the cargo owner (Monjasa A/S) in Tunisia within a year, but English proceedings were not commenced for another 5 years.

The Hague Rules time bar applies to "all liability in respect of loss or damage". The Hague Visby Rules time bar by contrast applied to "all liability whatsoever in respect of the goods".

The arguments against application of the time bar were as follows:

1. On its language and purpose, the Hague Rules time bar only applied to claims for breaches of the obligations set out in the rules themselves.
2. The obligation to deliver only to the party presenting the bill of lading is not a Hague Rules obligation. It arises independently under the contract of carriage.
3. There is a firm understanding that the Hague Rules do not apply to misdelivery claims, which was recorded in the travaux preparatoires for the Hague Visby Rules and in commentary from the future Lord Mustill.
4. There was no direct or binding authority to the contrary.

According to David Foxton QC sitting as a Judge of the High Court, the answer is that such claims are indeed caught by the Hague Rules time bar. The Judge's reasoning was as follows:

1. The words "in any event" and "all liability in respect of loss or damage" were "wide enough to encompass liability for delivering the goods to someone not entitled to take delivery of the same".
2. The time bar does not only apply to breaches of the Hague Rules but to any breach of the contract of carriage during the Hague Rules period of responsibility which has a relevant "nexus" with the goods.
3. A misdelivery claim can be pleaded as such a breach anyway, at least where discharge and delivery are effectively simultaneous: it is a breach of the obligation carefully to keep, care for and discharge the goods.
4. The purpose of Article III rule 6 was finality and this "would be seriously undermined if it did not apply to misdelivery claims". Also, the time bar would vary according to the law of the contract and/or of the forum.
5. There was no settled view that Article III rule 6 did not apply to such claims, although it had been a matter of

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intense and learned debate and the Hague Visby amendments had sought to clarify the position.

Thus, suit had to be brought within one year, i.e. by November 2012. Whilst the Tunisian proceeding were brought in time, the English proceedings were issued in early 2017. The Judge said that the Tunisian proceedings were not sufficient to stop time running because they had been brought in breach of the English jurisdiction clause; it made no difference that Monjasa were unaware of the clause, which was contained in a charterparty they had not seen. However, it would have been enough if the Tunisian courts had been a competent jurisdiction.

To see the full judgment click here.

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