

KS.13.Unicredit A.G. v Euronav N.V.

Mis delivery claim under bill of lading contract – UniCredit lose case

The Electronic Trade Documents Bill, UK is a promising development in this area.

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In a decision capturing the interest of financing banks, shipowners and cargo interests alike, the Court of Appeal has upheld the High Court's decision dismissing Unicredit's claim for damages against Euronav N.V. for delivering cargo to a third party without the presentation of the original Bill of Lading.

However, contrary to the High Court's findings, the Court of Appeal found that following novation of the charterparty, the Bill was not a mere receipt but became evidence of the contract of carriage.

Background

BP Oil International Limited entered into a voyage charterparty with Euronav, Owners of m/v Sienna. Acting as both Charterer and Shipper, BP sold a cargo of low-sulphur fuel to Gulf Petrochem. On 1 April 2020, Gulf made payment to BP by way of a Letter of Credit from Unicredit. Unicredit financed Gulf's purchase of the cargo, on the agreement that once the cargo was resold, the sub-buyers would make direct payment to the Bank. On 6 April 2020, under a novation agreement Gulf replaced BP as the Charterer of the vessel.

The cargo was discharged from the vessel by STS transfer in late April/May 2020 without production of the Bill. At this time, the Bill was still in BP's possession. The invoices from

the sub-buyers then fell due in late July/early August, by which time, Gulf was facing liquidity distress. It was at this point that BP indorsed the Bill of Lading to the Bank.

Unicredit was not repaid by Gulf or the sub-buyers and brought a claim against Euronav for delivering the cargo without production of the Bill.

High Court Proceedings

At first instance, the court rejected Unicredit's claim as follows:

The Bill was a mere receipt, rather than evidencing a contract of carriage, because the shipper and voyage charterer (i.e. BP) were the same. This remained the case following novation of the charterparty. Therefore, at the time of discharge, Euronav was bound solely by the obligations set out in the Charterparty, which allowed for discharge without production of Bills if ordered to do so by the Charterers. There was therefore no breach of contract.

Even assuming the Bill did evidence a contract of carriage at the time of delivery, breach by the Owners did not cause Unicredit's loss. If Euronav had performed its obligations by refusing to discharge without production of the Bill, Unicredit would have instructed Euronav to discharge the cargo without the production of the Bill, in which case Unicredit's security interest in the cargo would have been lost in any event. Even assuming the Bill did evidence a contract of carriage at the time of delivery, breach by the Owners did not cause Unicredit's loss. If Euronav had performed its obligations by refusing to discharge without production of the Bill, Unicredit would have instructed Euronav to discharge the cargo without the production of the Bill, in which case Unicredit's security interest in the cargo would have been lost in any event.

Court of Appeal Decision

Unicredit appealed both findings above.

On the first issue, Unicredit succeeded. The Court held that the question of whether a Bill serves as a contract of carriage or a mere receipt hinges upon the contractual intentions of the parties at the time of its issuance. Considering the specific circumstances in this case, the court concluded that the Bill was not a mere receipt during discharge. When the Charterparty was novated to Gulf, the Bill subsequently became evidence of the contract of carriage. Therefore, at the time of discharge, Euronav breached this contract by discharging the cargo without production of the Bill.

Even if the court was mistaken in finding that the Bill had become a contract of carriage subsequent to the novation, the court held that in accordance with Section 2(1) of the Carriage of Goods by Sea Act (COGSA), the moment the Bill was endorsed by BP to the

bank, it became a contract on the terms of the Bill. In this case, Euronav had breached these terms by discharging the cargo without production of the Bill.

On the second issue, the Court upheld the High Court's ruling that the breach of contract did not cause Unicredit's loss, for the reasons set out above.

Conclusion

This judgment provides a useful analysis of the status and function of a Bill of Lading and how its role can change throughout the period of a single trade. Each case will turn on its specific facts and it is worth noting that in this case Euronav were able to seek instructions to discharge the cargo without production of the Bill, without breaching the contract of carriage. This will not always be the case.

It is that this judgment will result in banks carrying out additional due diligence on trading parties. This case may also provide further impetus behind the prospect of electronic bills of lading. Here physical documents were stuck in the supply chain during the Covid 19 pandemic, and it is likely that use of electronic bills of lading could have avoided these problems happening in the first place. **The Electronic Trade Documents Bill , UK is a promising development in this area.**