

Everbright Commercial Enterprises Pte Ltd v AXA Insurance Singapore Pte Ltd
[2001] SGCA 24

Case Number : CA 99/2000
Decision Date : 12 April 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : Steven Chong SC, Toh Kian Sing and Gavin Khoo (Rajah & Tann) for the insureds; Richard Kuek Chong Yeow and R Govintharasah (Gurbani & Co) for the insurers
Parties : Everbright Commercial Enterprises Pte Ltd — AXA Insurance Singapore Pte Ltd

Contract – Formation – Whether contract of insurance existed between cargo shippers and insurers

Equity – Estoppel – Estoppel by convention – Whether insurers estopped from denying lost cargo covered under terms of marine insurance cover note – Cover note subjected to requirements of Institute Classification Clause (ICC) – Whether insurers are obliged to inform that declared vessel conformed with ICC terms

Insurance – Marine Insurance – Insurance cover note subjected to requirements of Institute Classification Clause (ICC) – Whether chartered vessels fell within scope of ICC's held covered clause – Whether reasonable commercial rate of premium available to enable held covered clause to be invoked by insureds – Rate of premium based on all parties having been aware of all risks involved in shipping cargo on declared vessel

JUDGMENT (on costs):

Cur Adv Vult

1. On 30 March 2001, we handed down our judgment in this appeal, in which we dismissed the appeal and reserved the question of costs for consideration after hearing arguments from the parties. We have since then had the benefit of considering the written submissions of counsel on the question.
2. Four main issues were raised by the parties in this appeal. In the court below, AXA raised a further issue of illegality on which the judge decided against them, and they had not appealed against that part of her judgment. In respect of that issue, she awarded the costs to Everbright. That order as to costs stands, and will not be affected by the order we now make.
3. The four main issues raised before us were also raised below. Of these, a very important issue was whether the Sirena 1 being a chartered vessel fell within the held covered clause in the ICC. Substantial arguments were devoted to and a considerable amount of time was taken up on this issue, both here and below, and on this issue Everbright succeeded. In view of this, the general rule that costs follow the event should not apply, and AXA should be deprived of a part of the costs, to which they would otherwise be entitled.
4. In the circumstances, AXA should have only 2/3 of the costs here and below. We accordingly so order. We reiterate that the order below awarding to Everbright the costs for the issue of illegality raised by AXA is to remain undisturbed. We make the usual consequential order directing the payment to AXA or their solicitors of the security deposit in court, with interest, if any, to account of their costs.

Yong Pung How

L P Thean

Chao Hick Tin

Chief Justice

Judge of Appeal

Judge of Appeal

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