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Quadra Commodities SA v XL Insurance Company SE & Ors [2023] EWCH Civ 432¹

Summary

On 21 April 2023 the Court of Appeal handed down its judgment in *Quadra Commodities SA v XL Insurance Company SE & Ors* [2023] EWCA Civ 432.

Both at first instance and on appeal, the question considered was whether, under a Marine Cargo Open Policy, Quadra Commodities SA ("Quadra"), the policyholder had an insurable interest in cargoes of grain which were purchased by them and in respect of which they were subsequently victims of a fraud perpetrated by their sellers.

Mr Justice Butcher ("**Butcher J**") ruled in favour of Quadra at first instance, deciding that Quadra had an insurable interest. Permission to appeal was granted but the Court of Appeal ultimately upheld the decision. The decision of the Court of Appeal provides welcome clarity on the question of insurable interest, particularly as it relates to unascertained goods.

Facts

The Claimant, Quadra was a trader of agricultural commodities that entered into a series of contracts for the sale and purchase of grain with companies within the Agroinvest Group, the contracts were intended to provide pre-export financing to the group. Quadra was insured under a Marine Cargo Open Policy with XL Insurance Company SE & Ors (the "**Insurers**"), pursuant to which it was covered for "*loss of or damage to goods...through the acceptance by the Assured of...fraudulent shipping documents*", as well as a clause covering Quadra for loss "*directly caused...by misappropriation*".

Under one of the contracts in question, Quadra undertook to pay 80% of the purchase price against certain original documents (including the warehouse receipt) with the balance payable against originals of shipping documents for delivered and accepted goods. The warehouse receipts confirmed that the specified

quantity of cargo was in storage. All cargoes were declared to the Insurers, giving detail of where they were stored. In addition, Quadra carried out inspections to ascertain the existence and condition of these goods.

In February 2019, a fraud perpetrated by the Agroinvest Group was uncovered whereby commodities stored in warehouses in Ukraine were routinely sold and refinanced multiple times, and ultimately misappropriated, via the issuance of fraudulent warehouse receipts. This resulted in the goods purchased by Quadra having disappeared from the warehouses in which they were apparently stored.

Quadra made a claim on their policy in relation to a number of different cargoes (the "Cargoes"), liability was denied by the Insurers on the basis that Quadra did not have an insurable interest, the insured goods either never having existed, alternatively on the basis that the loss was financial rather than physical.

Commercial Court decision

Butcher J held that:

1. On the balance of probabilities Quadra had shown that goods corresponding to the warehouse receipts were physically present in the warehouses;
2. The Claimant did not acquire a share in the commingled undivided bulk under section 20A of the SGA;
3. The Claimant had an insurable interest in the unascertained goods of the relevant description by virtue of having paid the purchase price (i.e. an equitable interest was sufficient);
4. The Claimant had an immediate right to possession under the warehouse receipts under Ukrainian law and therefore an insurable interest in goods covered by the same;
5. The claimant's loss was covered by the misappropriation clause, rather than the fraudulent

¹ <https://www.bailii.org/ew/cases/EWCA/Civ/2023/432.html>

documents clause (which was interpreted restrictively); and

6. That the Insurers had not breached the Insurance Act 2015 in respect of their handling of the claim.

Court of Appeal

The Insurers were granted permission to appeal on the following grounds:

1. Were there goods corresponding in quantity and quality (i.e. description) to the Cargoes physically present in the Elevators at the time the Warehouse Receipts were issued?
2. Did Quadra have an insurable interest in the Cargoes in circumstances where they did not form part of a bulk which was sufficiently identified?
3. Did Quadra have an immediate right to possession and thereby an insurable interest in the Cargoes?
4. Were the practical consequences of the decision sufficient to indicate that the decision was wrong?

Quadra in turn sought to have the decision upheld on three additional grounds:

1. That Quadra had provided sufficient evidence of the physical presence of the goods to satisfy its prima facie burden of proof and the Insurers had not adduced any evidence to the contrary;
2. Quadra's proprietary interest in the bulk by virtue of s.20A SGA; and
3. If necessary, to the extent Insurers could establish there were competing interests in each of the cargoes, the assured's loss would nonetheless be covered by the "Fraudulent Documents" clause in the policy.

The Court of Appeal dismissed the Insurers' appeal on the basis that Butcher J at first instance was correct that Quadra had an insurable interest in all the Cargoes both by virtue of payment or part payment and by virtue of having an immediate right to possession of them as a matter of Ukrainian law. Given that its decision on these two points sufficed to dismiss the appeal, the Court of Appeal declined to make an obiter decision as to whether the goods were sufficiently identified for the purposes of section 20A of the SGA such that Quadra had an insurable interest in the grain. It also declined to address Quadra's third additional ground.²

In remarking on Insurers' fourth ground of appeal, Sir Julian Flaux C commented that "*the insurers will have received the full premium from each insured for the risk*

they undertook, it is unremarkable that the law should require them to fulfil their contractual obligations".

Comment

The decision provides clarity to assureds that an insurable interest can arise in unascertained goods, regardless of whether they form part of an unascertained bulk and where title and/or a proprietary interest has not yet passed to the assured, so long as payment or part payment has been made.

On a practical level, the case highlights the importance of evidence. The Commercial Court, in a finding that was endorsed by the Court of Appeal, placed significant weight on the inspection reports, describing it as "the most important evidence". Buyers would be well advised to commission contemporaneous inspections of warehouses and ensure that reports of those inspections are provided and recorded.

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² Paragraphs 133-134 of the Court of Appeal's judgment.