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OF PARAMOUNT IMPORTANCE - TANGA PHARMACEUTICALS PLASTICS LIMITED AND OTHERS V EMIRATES SHIPPING LINE FZE, (THE ALION) [2025] EWHC 368 (COMM)

OVERVIEW

On 27 February 2025, the High Court handed down judgment on Tanga Pharmaceuticals Plastics Limited and others v Emirates Shipping Line FZE, (The Alion) [2025] EWHC 368 (Comm) (The "**Alion**"). The judgment provides useful guidance on the approach to be taken in instances where the Hague Rules are contractually incorporated into a bill of lading but conflict with another clause in the contract, and clarified the position that, unless parties have made it clear to the contrary, a "clause paramount" will override any inconsistent contractual provision.

The judgment also provides a useful contractual analysis of how one should approach the interpretation of clauses incorporated from a text outside the contract. Ultimately, this will depend on the specific circumstances; for example, sometimes the clauses of the incorporating document will, explicitly or implicitly, give an indication as to which clause is to take precedence.¹

BACKGROUND

This case concerns an application by Emirates Shipping Line FZE (the "**Defendant**") for summary judgment against Tanga Pharmaceuticals Plastics Limited and others (the "**Claimants**") on the basis that the Claimants' claims were time-barred.

The Claimants had interests in 548 containers and their contents (the "**Cargo**") which were shipped aboard the MV Alion (the "**Vessel**") for carriage to Mombasa, Kenya in September 2021. The Defendant was the time charterer and carrier under the relevant bills of lading.

The Cargo was shipped under identical bills of lading (the "**Bills of Lading**") for carriage from India, the UAE, and Saudi Arabia to Mombasa.

The Vessel suffered a motor engine failure on 15 September 2021 off the Salalah coast in the Arabian Sea.

On 21 September 2021, salvage services were rendered on LOF² terms, and general average was declared on or around 5 October 2021.

¹ See paragraphs [32] to [35] of the Judgment, Citing Finagra (UK) Ltd v OT Africa Line Ltd [1998] 2 Lloyd's Rep. 622, per Rix J at p. 627 lhc and Wood v Capita Insurance Services Ltd. [2017] A.C. 1173, at [10] to [15].

² Lloyd's Open Form.



With the assistance of salvage agents, the Cargo was discharged at Mombasa on 6 December 2021 and later was released to receivers when salvage and general average security had been provided.

On 3 November 2022, the Claimants notified the Defendant of the claims they intended to bring under the contract of carriage (the terms of which were evidenced by the Bills of Lading) seeking an indemnity for their liability to salvors and for particular average.

The claim form was dated 16 June 2023, and service took place on 16 December 2024 following an Order from the Court extending the period of validity of the claim form.

BILLS OF LADING AND RELEVANT CLAUSES

The carrier's standard bill of lading terms contractually incorporated the Hague Rules by way of a clause paramount:³

"2. CLAUSE PARAMOUNT

(1) Save where the English Carriage of Goods by Sea Act 1971 applies the Hague Visby Rules compulsorily to this Bill of Lading, in which event this Bill of Lading shall be subject to the Hague Visby Rules, the Hague Rules shall apply and the Carrier shall be entitled to the benefit of all privileges, rights and immunities contained in Articles I to VIII of the Hague Rules, save that notwithstanding the provisions of Article III Rule 8 of the Hague Rules, the limitation sum for the purpose of Article IV Rule 5 of the Hague Rules shall be £100 pounds sterling."

The following provisions were also of particular relevance:

Art III rule 6: *"...In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered..."*

Art III rule 8: *"Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect..."*

The carrier sought to rely on **clause 18** ('Notice of Loss or Damage, Time Bar') in the standard terms in the bills of lading. The second sentence of clause 18, what was referred to as the **'20-day Provision'**, provided:

"Any claim against the Carrier for any adjustment, refund of or with respect to freight, charges or expenses or any claim other than for loss or damage to Goods must be submitted fully documented to the Carrier or its agent in writing within 20 days from the day when the Goods were or should have been delivered, failing which such claim will be time-barred."

And in the final sentence referred to as the **'Service Provision'**:

"Suit shall not be considered to have been brought within time specified unless process shall have been actually served and/or jurisdiction obtained over the Vessel or Carrier within such time."

THE LEGAL ARGUMENTS

The Defendant argued that because the Hague Rules only applied as a matter of contract, the parties could amend or depart from the limitation regime in the Rules. The Defendant also asserted that the 20-day provision in clause 18 had the effect of relieving the Defendant from liability that would otherwise be attached but stated that the incorporation of the Rules (including Article III Rules 6 and 8) was intended to be subject to clause 18, insofar as it had a contrary effect.

The Claimants argued that the 20-day provision set out in clause 18 did not apply in this case because (i) it is not intended to apply if the claim is for "loss or damage to Goods" and (ii) the claims here fall within that phrase.

As to the Service Provision, the Defendant sought to argue that this was not inconsistent with the Hague Rules relying on the wording of Article III Rule 6 which does not prescribe any specific way of identifying when suit is brought. The Claimants on the other hand, pointed to clause 24 of the contract (law and jurisdiction) which provided for English law and jurisdiction under which suit is deemed brought when the claim form is issued.

³ A clause paramount is a provision in a maritime contract, usually a charterparty or bill of lading, which acts as a mechanism to incorporate the Hague, Hague-Visby or other relevant rules into the contract.



The Court therefore had three principal questions to consider:

1. Is the incorporation of the Hague Rules in clause 2 (the Clause Paramount) made subject to clause 18, such that clause 18 prevails if there is any inconsistency;
2. If clause 18 prevails, does the 20-day provision apply; and
3. Is the Service Provision compatible with Article III Rule 6 and Rule 8 of the Hague Rules.

JUDGMENT

On the first issue and as a matter of interpretation, the Hague Rules were held to prevail over clause 18 for various reasons, including:

- I. A clause paramount is well known within the shipping industry as a clause by which one of the Hague Rules, Hague Visby Rules or Hamburg Rules are incorporated into a contract of carriage and overrides any express exemption that is inconsistent with the relevant set of rules;⁴
- II. The Court thought it was significant that Article III Rules 6 and 8 were incorporated at all. This is because the Hague Rules were not incorporated in their entirety with some articles, notably Article IX, being purposefully omitted;
- III. Clause 18 did not contain any indication that it was intended to take precedence over the Clause Paramount; and
- IV. If it had been intended that the Claimants were to forego the rights under Article III Rules 6 and 8, then it is to be expected that this would have been made clear, as per the principle set out in *MUR Shipping BV v RTI Ltd* [2024] UKSC 18 that valuable contractual rights should not be listed without clear and express wording.

The Court's determination on issue 1 meant that it was no longer necessary to consider issue 2. However, in relation to issue 2 (the 20-day provision), the Court provided some useful obiter

observations at paragraphs [45] to [58] of its judgment, namely that claims for indemnity in respect of salvage and particular average were within the scope of "loss or damage to Goods" and not subject to the 20-day time bar.

As to issue 3 (the service provision), the Court highlighted that it is well-known that different jurisdictions take differing approaches as to when suit is brought. For example, in many common law countries suit is brought when the claim form (or similar) is issued. By contrast, in many civil law countries suit is brought upon service of the claim form (or similar). As the contract provided for English Law and jurisdiction, and under English law suit is brought when the claim form is issued, the Court held that the Service Provision would improperly relieve the carrier from liability. The Defendant's argument was therefore rejected.

The application for summary judgment therefore failed.

COMMENT

This judgment serves as a useful reminder that a clause paramount is to be treated as paramount, and if parties do intend to contract out of any part of the Hague Rules or to give priority to any other clause, they must be expressly clear in their drafting that the relevant parts of the Hague Rules are not to apply. Similarly, where the contractual provisions of a bill of lading are in conflict, careful analysis of the drafting and language will be required.

This judgment also provides helpful guidance as to the approach to be taken when interpreting clauses incorporated from a source outside of the contract. For example, consideration should be given to:

1. The specific language or wording used and whether this indicates that the clause in question is intended to take precedence;
2. Whether specific rules have been omitted or included;
3. Whether the clause in question is titled a "Clause Paramount"; and
4. The specific circumstances of the case at hand.

⁴ citing *Nea Agrex SA v Baltic Shipping Co Ltd* (The *Agios Lazaros*).



The full judgment can be found here: [TANGA PHARMACEUTICALS PLASTICS LTD AND OTHERS V EMIRATES SHIPPING LINE FZE](#)

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