

Newsflash

Summary: House of Lords decides that where a carrier contracts unwittingly to carry non-contractually conforming goods and chooses to perform the carriage internationally by road, CMR applies with its benefits and burdens, and that the carrier's restrictions or its own conditions of contract will be relevant only if and in so far as they may assist the carrier to avoid liability under article 17(2) of the Convention on the Contract for the International Carriage of Goods by Road ("CMR"). In this case, the conditions restricting liability were held to be null and void and unlimited liability based on a finding of wilful misconduct was imposed on the carrier.

Datec Electronics Holdings Limited and others (Respondents) v. United Parcels Service Limited (Appellants) [2007] UKHL 23 - 16th May 2007

Facts of the case: Datec was the consignor of three packages of high value goods that UPS had carried by air from UK to Germany and then by road to the Netherlands. The goods were lost in transit. UPS could show evidence that the goods had arrived at UPS's distribution hub in Amsterdam but nothing more. Datec and the consignee in the Netherlands brought a claim for damages for the loss, against UPS. The goods lost were (in aggregate) worth \$377,856. UPS argued that its standard terms and conditions ("UPS's conditions") were incorporated in an umbrella or framework agreement with Datec. This was important because the UPS conditions stated that UPS did not agree to carry any individual package worth more than US\$50,000. As such UPS argued that because the packages exceeded the stipulated value there was actually no contract of carriage at all. It was common ground that if a contract was found to have existed then the carriage would have been subject to CMR. Datec argued that this was a CMR contract and that UPS was guilty of wilful misconduct. UPS also denied wilful misconduct.

At first instance it was held that the contract was subject to CMR, but that UPS was not guilty of wilful misconduct on the basis that there was insufficient evidence of employee theft. The Court of Appeal agreed on the first issue, but decided that there was sufficient evidence of employee theft and accordingly UPS was guilty of wilful misconduct and the limitation of liability was set aside. UPS appealed to the House of Lords on both issues.

Held: The Lords rejected UPS's contention that CMR did not apply to the carriage of the goods. The Lords concurred with the courts below. The fact that UPS's conditions stated that it did not agree to carry goods exceeding US\$50,000 per package did not prevent a contract from coming into existence, particularly as the conditions did not say that no contract of carriage would come into being if such a package was presented and accepted. Additionally, referring to UPS' conditions, Lord Mance stated ".....Article 41 of CMR renders null and void *any stipulation which would directly or indirectly derogate from the provisions of this Convention*", adding that *"the nullity of such a stipulation shall not involve the nullity of the other provisions of the contract"*. So far as the first part of clause 3(e) of UPS's conditions purports to remove liability for loss, damage or delay which UPS would otherwise incur under article 17 of CMR, clause 3(e) is null and void." In other words, UPS's conditions had attempted, unsuccessfully, to oust the CMR.

The Lords also held that the cause of the loss was UPS's wilful misconduct. The theft by one or more of UPS's employees was the probable cause of the loss and this had been proved on the balance of probabilities. UPS's appeal was dismissed entirely.

If you have any queries regarding this case or matters generally then please contact any of the following: -

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