Breach of Contract - Late redelivery under a time charter
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Late redelivery under a time charter
Transfield Shipping Inc v Mercator Shipping Inc – The Achilleas

The House of Lords, the United Kingdom's Supreme Court, has reviewed and re-defined the long established rules on foreseeability and remoteness of damages for breach of contract.

The case concerned the overrun of a charter period. An owner had time chartered its vessel for a period of five to seven months to end no later than midnight on 2 May 2004. The charterers told the owner that the vessel would be redelivered no later than that date. Accordingly the owner chartered the vessel to a new charterer for a period of about four to six months at a rate of US$39,500 per day with a delivery date no later than 8 May 2004. The vessel was delayed on its last voyage under the first charter and was not redelivered until 11 May 2004. Because of the delay the new charterer agreed to take delivery of the vessel under the new charter but only at a reduced rate of US$31,500 per day.

The question for the House of Lords was whether the first charterers were liable to pay damages for late redelivery at the market rate which amounted to a loss of US$158,000, or whether they were liable to pay as damages the difference between the charter hire the owner would have got from the new charterer had the ship been delivered into the new charter on time and what the owner in fact got, a loss of US$1,365,000.

The owners were successful in arbitration and were awarded the sum of US$1,365,000. Both the High Court and the Court of Appeal upheld the award on the basis that missing a subsequent fixture was a likely and foreseeable consequence of the late redelivery of the vessel. The owner’s loss of profit arose naturally from the charterer’s breach and was therefore recoverable in full.

The House of Lords overturned the decision of the lower courts on the basis that the traditional test of foreseeability of loss alone was too simplistic an approach when deciding what damages are recoverable under complex contractual arrangements. The House of Lords said that a second question must be asked in this case: had the charterer, at the time of entering into the contract, accepted responsibility for the risk of the owner’s loss of profit if he re-delivered the vessel late? The House of Lords thought not.

In general terms the ruling means that it will now no longer be enough to show that the losses which arise from a breach of contract are a foreseeable and natural consequence of that breach. It is now necessary to prove with reference to contract terms and background correspondence exactly what risks have been impliedly agreed and assumed by the party committing the breach.

This decision has a significant impact on English contract law and particularly on charterers if they have a detailed knowledge of an owner’s next fixture, as those losses could be recoverable under the special knowledge rule that is now implied into the question of foreseeability and/or assumed contractual risk.

A copy of the text of the House of Lords’ decision is available from the Managers