Transfield Shipping Inc - v - Mercator Shipping Inc (the "ACHILLEAS") [2008] UKHL 48

On 9 July the House of Lords reversed a majority Tribunal, a Commercial Court Judge and the Court of Appeal in holding that, following late redelivery, charterers were not liable for shipowners' loss of profit on their next fixture, and among the five opinions one sees either application of the familiar rule in Hadley - v - Baxendale or else perhaps bold attempted modification of it.

In what she said might have been an examination question, Baroness Hale summarised the facts as follows:

> "*Ship-owners let out their ship for a period of five to seven months, to end no later than midnight on 2 May 2004. The charterers notified the ship-owners that the ship would be back no later than then. The ship-owners therefore contracted to let the ship to new charterers for a period of about four to six months, promising that they could have the ship no later than 8 May 2004. The agreed price of hire was $39,500 a day. The ship was delayed on its last voyage and the owners did not get their ship back until 11 May 2004. The new charterers agreed to take the ship, but by then the market had fallen and they would only take it at a reduced price of $31,500 a day. Are the first charterers liable to pay only for the use of the ship for the number of days that they were late at the market rate then prevailing? Or are they liable to pay the difference between what the owners would have got from the new charter had the ship been returned in time and what the owners in fact got?*"

Though lacking any precedent, shipowners had previously succeeded with the latter argument, but House of Lords ruled that charterers could not reasonably be regarded as having assumed the risk of shipowners' loss of profit on the following charter. In the absence of special knowledge, in entering into a charter the parties can only be supposed to be considering, in the context of any breach, the losses which will happen in the general course of things. But this loss was not such a thing. It happened only because of unusual volatility in the freight market, which had firstly allowed shipowners' an advantageous following transaction and then compelled them to a lower rate as the price of keeping that fixture when the vessel was redelivered late. At the time of the fixing the charterparty in issue, several years before, such a loss could not have been reasonably foreseen and was therefore too remote.

This decision alters the controversial result in this particular case, and perhaps deprives others of key precedent, but it does not settle the law on remoteness of damage in breach of contract cases. Their Lordships' varied consideration of this, and in particular the approach of Lord Hoffman, is beyond the scope of this short bulletin, and we will be addressing it at greater length either in the next edition of our Marine, Trade and Energy Newsletter or in a separate discussion paper. If in the meantime you would like to consider any particular potential significance of the decision, please either write to the email address below or get in touch with your regular contact at Hill Dickinson LLP.

For a free transcript of the case, please use the following URL:
http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/trans-1.htm

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