SHIPPING & TRANSPORT - DENMARK

# Cargo claim heard in Denmark despite exclusive jurisdiction agreement referring to High Court in London

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On 25 February 2020 the Danish High Court decided in a despite as to whether legal proceedings against a Danish shipping company, which had contracted to carry containers from China to Copenhagen, could proceed in Denmark irrespective of the fact that the claimant and the shipping company had agreed that the dispute should be heard exclusively by the UK High Court. The Danish High Court decided that the case could nevertheless be heard in the substance by the Danish courts.

## Facts

A Danish importer booked the sea carriage of a container from Shanghai to Copenhagen with a Danish freight forwarder which subcontracted the carriage to a Danish shipping company. The agreement between the freight forwarder and the shipping company was entered into in Shanghai by the parties' respective Chinese subsidiaries. The shipping company's Chinese subsidiary issued as agents a non-negotiable waybill, which named the freight forwarder as consignee. The port of loading was Shanghai and the port of discharge was Copenhagen. The waybill included the following choice of law and jurisdiction clause:

> *26. Law and Jurisdiction*
>
> *For shipments to or from the U.S. any dispute relating to this bill of lading shall be governed by U.S. law and the United States Federal Court of the Southern District of New York is to have exclusive jurisdiction to hear all disputes in respect thereof. In all other cases, this bill of lading shall be governed by and construed in accordance with English law and all disputes arising hereunder shall be determined by the English High Court of Justice in London to the exclusion of the jurisdiction of the courts of another country. Alternatively and at the Carrier's sole option, the Carrier may commence proceedings against the Merchant at a competent court of a place of business of the Merchant.*

During the voyage, the vessel encountered rough weather and lost three containers in the Mediterranean Sea.

The freight forwarder was held liable by the importer and its cargo insurers which brought legal proceedings against the freight forwarder in Copenhagen. The freight forwarder issued proceedings against the shipping line before the same court and claimed that the shipping line should hold it harmless for the claims brought. The shipping line submitted that the proceedings against it should be dismissed as it had been agreed that the dispute should be decided in London, which was undisputed by the parties. However, the freight forwarder argued that the case could be heard in Denmark irrespective of the jurisdiction agreement pursuant to the Danish Merchant Shipping Act due to the fact that:

- both the freight forwarder and the shipping line were Danish companies domiciled in Denmark;
- the claim arose out of a contract of carriage with an agreed place of delivery in Denmark;
- the agreement was governed by the Merchant Shipping Act and its rules on jurisdiction, which implies that that there was jurisdiction in Denmark as these rules can be departed from only by way of a jurisdiction agreement if such agreement must be recognised by the Danish court pursuant to the recast EU Brussels Regulation (1215/2012); and

- the recast EU Brussels Regulation was inapplicable as the mater at dispute was not an international case as it had no international aspects and no particular connection to London.

The shipping company submitted that the jurisdiction agreement in the waybill should be recognised under the recast EU Brussels Regulation as the case was international in nature. In support, the shipping line submitted that:

- the container had been shipped from China;
- the contract of carriage had been entered into in China and the waybill had been issued in China by the shipping line's Chinese subsidiary to the freight forwarder's Chinese subsidiary; and
- the container had been lost in the Mediterranean Sea.

**Decision**

The Danish High Court upheld the city court's decision that the case could proceed in Demark, reasoning as follows:

> *The parties are in agreement that the jurisdiction agreement prevails over the mandatory rules in the DMSA on jurisdiction if the contract of carriage has such connection to more countries that the legal relationship must be deemed to be international in nature. The High Court agrees, on the basis of the hearing of the evidence, that the specific agreement on transport of goods from Shanghai to Denmark, is not an international legal relationship. The High Court attach emphasis to the fact that both the shipping company and the freight forwarded are Danish companies with their head offices in Denmark and that the place of delivery of the goods is in Copenhagen where the importer [NN] also has its domicile. On this basis, the fact that the contract of carriage is entered into between on the one side a Chinese company [the freight forwarders subsidiary] who issues transport documents as agent of the freight forwarder and – on the other side – a Chinese company [the Shipping Company's subsidiary] as agent to the shipping line, and the fact that the goods was transported from Shanghai to Denmark and allegedly was lost due to a storm in the Mediterranean sea off Algeria, cannot result in that the legal relationship is international in nature.*

**Comment**

Section 310 of the Merchant Shipping Act states that court proceedings can be brought against sea carriers in Denmark in cases where the sea carrier receives goods for carriage in Denmark or delivers goods after the completion of the carriage in Denmark. However, Section 310 does not apply if a jurisdiction agreement which excludes Danish jurisdiction has been entered into pursuant to the recast EU Brussels Regulation, which applies only in international cases without this being explicitly stated in the regulation and the regulation does not define what constitutes an 'international case'.

However, Article 1(2) of the Convention of 30 June 2005 on the Choice of Court Agreements sets out that a case is deemed 'international' unless the parties are resident in the same contracting state and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that state. The Convention of 30 June 2005 on the Choice of Court Agreements does not apply to the carriage of goods and therefore does not apply to contracts for the carriage of goods by sea. The Danish High Court found that the case against the shipping company was not international to the effect that the recast EU Brussels Regulation did not apply and as a result the shipping line could not rely on the jurisdiction clause in the waybill.

It is unclear what definition of an 'international case' the Danish High Court adopted. By way of example, it follows from Section 225 of the Administration of Justice Act that the Maritime and Commercial Court is competent in international cases and that the applied definition in this regard is that a case is deemed to be 'international' if it relates to the parties in different countries or concerns a commercial dispute between companies in the same country if the dispute arises from international road transport or international sea carriage.

It follows from the Danish High Court's decision that court proceedings, in a number of instances, can be heard in Denmark against owners and sea carriers despite a jurisdiction agreement which grants a foreign court exclusive competence.

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