SHIPPING & TRANSPORT - DENMARK

Court decides whether CMR carrier was grossly negligent for theft of branded champagne during carriage

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Facts

A Danish contracting Convention on the Contract for the International Carriage of Goods by Road (CMR) carrier (A) submitted a price for CMR carriage to a customer from France to Denmark. The tariff quoted a firm price per pallet and stated that this did not include goods exposed to theft:

> *Offer does not include goods subject to high taxation or particularly exposed to theft and temperature-sensitive cargoes as well goods exposed to high risk of deterioration.*

In an email dated 11 April 2018, the customer booked transport for a consignment of 11,176 bottles of champagne (five pallets) from France and attached a copy of a *pro forma* invoice issued by the champagne manufacturer, which set out the value of the goods at €69,150.42. In an email dated 17 April 2018, the customer requested that the carriage should include six additional pallets of champagne (2,190 bottles) with a value of €93,094.20.

The contracting carrier subcontracted the transport to its subcarrier (B) and set out the booking instructions:

> *Security/Parking: Trailers must never be left unattended. Uncoupling of trailer only at [A's] sites or at Hauliers site, where area is secure, fenced and under surveillance. When parking, choose always a large illuminated parking and whenever possible use only secured parking.*

B's driver parked the trailer containing the champagne at a car park in France. There was no video surveillance of the car park, but it was lighted. During the night while the driver was sleeping in the cabin, the tarpaulin trailer was cut and seven pallets of champagne were stolen. A foam extinguisher powder was sprayed on the remaining four pallets.

The customer judged that the four remaining pallets had diminished in value as the original boxes had been broken and the bottles had needed to be cleaned. The customer brought proceedings against A and claimed compensation for the value of the stolen bottles and the damage to the remaining bottles. A rejected the claim and submitted that liability for the damage could be limited under the CMR regulation and that evidence had not been presented that the remaining champagne had diminished in value.

In support of its claim, the customer submitted that A should have taken precautions to protect the goods against theft and advised that the champagne could not be transported in a responsible manner if the carriage was to take place pursuant to the terms of A's general tariff. Accordingly, A should have presented an offer of a suitable transport method which recognised the cargo's importance.

A denied any unlimited liability and referred to the car park and the method applied by the subcarrier which did not constitute gross negligence as the customer had contracted for the carriage of general cargo and had received "exactly the service ordered by the customer".

Decision

The Maritime and Commercial Court decided that the carrier could limit its liability for the theft, stating as follows:

> *On the basis of the evidence presented the court finds that the transport contracted by [the customer] was booked pursuant to the tariff of 11 January 2018 and that the [customer] did not state any specific demands or requirements relevant to the performance of the transport, including carriage by and storage in box-trailer during the transport and did not state that breaks and overnight stays should take place at guarded or particular protected places. The transport was, thus, as agreed, performed with a tarpaulin trailer as usually done in the cooperation between the parties.*(1)

The court further found that it had not been proven that the four pallets with champagne delivered to the customer had depreciated in value. The court found that:

> *As no independent assessment with respect to the question of reduction of value has been produced and as the bottles neither with respect to their condition or content based on the presented evidence were damaged and since they were sold by the customer, no loss legible for compensation has been proven.*

Comment

The judgment is in line with Danish court practice concerning liability for the theft of high value and exposed goods. On 21 February 2013 the Supreme Court decided (UfR 2013.1521) that such goods may be carried in a similar way as general cargo unless a specific agreement has been entered into setting out that the transport must be performed with specific adherence to particular safety measures or precautions relevant due to the nature and value of the cargo. No such agreement had been entered into by the customer and A. It may be argued that the customer – unless agreed to the contrary – as a general rule should be deemed to require that goods particularly exposed to theft are carried with the relevant precautions taken. However, the Supreme Court has decided that no such presumption can be relied on in Danish law.

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Endnotes

(1) Maritime and Commercial Court judgment of 13 September 2020 (case BS-17637/2019-SHR).