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September 1 2021

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Time limitation for recourse claim against sea carrier is not generally limited to two years from cargo delivery date

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Introduction

On 16 June 2020 the Copenhagen Maritime and Commercial Court found that a recourse claim that was made by sea carrier (B) against a Danish shipping line had become time barred pursuant to the Danish Merchant Shipping Act (DMSA) as the court decided that the time limitation for such claim was, as a general rule, two years from the date where the damaged cargo had been delivered (for further details please see "Time limitation for recourse claim against sea carrier cannot be more than two years from cargo delivery date").

The decision was appealed to the High Court and in a judgment of 16 June 2021, the High Court set aside the decision and decided that a recourse claim does not, as a general rule, become time barred two years from the date of delivery.

Facts

The circumstances were as follows. A sea carrier (A) contracted the transport of containerised cargo from China to Sweden in Autumn 2014. A sub-contracted the last transport leg from Hamburg, Germany to Gothenburg, Sweden to B, which, in turn, sub-contracted the transport to a Danish shipping line. On 22 October 2014, during the sea carriage

from Hamburg to Gothenburg, the vessel encountered heavy weather, resulting in damage to the cargo. The containers were delivered to the consignees in Gothenburg on 23 October 2014.

A settled the cargo claims with the cargo interests between June 2016 and February 2018 and B, on this basis, indemnified A on 25 May 2018. The compensation was paid by B approximately three-and-a-half years from the date on which the containers had been delivered.

On 15 April 2019 B brought recourse proceedings against the Danish shipping line and submitted a claim for indemnification for the amounts that it had paid, with reference to the liability provisions in the DMSA. This was based on, among other things, the Hague-Visby Rules. B submitted that the time limitation for its recourse claim was to be decided pursuant to section 501 of the DMSA (which is based on the Hague-Visby Rules article 3(6)bis) and that this section should be construed to the effect that the one-year time limit for its recourse claim started to run only when B had compensated A. Section 501(2) states that: "*[f]or claims for recourse in respect of claims as mentioned in… the period of limitation shall be one year from the day on which the claim was paid or the legal proceedings on it initiated*."

Article 3(6)bis of the Hague-Visby Rules reads as follows:

> *Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered.*
>
> *An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.*

The Danish shipping line rejected the recourse claim and submitted that the claim was time barred pursuant to section 501(2) of the DMSA. The shipping line pleaded that the section should be construed to mean that the recourse claim in any event should be deemed as time barred for

one year from expiry of the general time limitation for A's claim against B to the effect that the recourse claim had become time barred on 23 October 2016.

Decision

The High Court set aside the Maritime and Commercial Court's decisions and decided that the recourse claim against the shipping line had not become time barred. The High Court reasoned as follows:

> *As stated by the Maritime and Commercial Court, the main question in the case is from what time the one-year limitation period for recourse claims in Section 501, para. 2, can be calculated at the latest, including in particular whether the time limit is to be calculated from the time of the expiry of the one-year limitation period for the claim giving basis for the recourse claim, cf. section 501, subsection. 1, no. 6, or only from the time of the actual payment of the disputed claim giving basis for the recourse claim, regardless of whether the payment has taken place after the expiry of the one-year limitation period for the claim against the carrier who seeks recourse.*
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> *The question is debated in the preparatory works of the Hague-Visby Rules Article 3(6) bis, which states that the Comite Maritime International's Bill of Lading Committee did not find grounds to propose a general rule according to which recourse claims become obsolete if the party seeking recourse has not paid the initial claim or have been sued within a one-year period from the date of the damage. Instead, it was left to the individual countries to decide whether such a rule should be incorporated into national law.*
>
> *The High Court notes that such a provision has not been incorporated into the DMSA, and finds that neither in the wording of nor in the preparatory work for section 501, subsection 2, 1st sentence, support can be found that the limitation period for recourse claims for damages covered by sections 275 and 276 of the Maritime Act should begin to run from an earlier time than the actual payment of the claim for which recourse is sought or from the time when legal proceedings are brought against the carrier seeing recourse. In addition, damages covered by sections 275 and 276 of the Maritime Act are characterized in part by the fact that the*

tortious event takes place under the auspices of the person liable for recourse, who is thus already aware of the damage from the time of the damage, and that there are potentially a large number of partiers in a contractual chain that seeks recourse between whom the individual claims must be settled before the person entitled to recourse will have sufficient security for the size of the main claim to be able to make a claim against the person liable for recourse.

The High Court therefore finds, after an overall assessment, that in the Maritime Act, section 501, subsection 2, 1st sentence, cf. 1, no. 6, a total limitation period for recourse claims of a maximum of two years from the time of the damage can not be interpreted. The High Court thus finds that the limitation period for recourse claims only begins to run from the time of the actual payment of the claim for which recourse is sought or from the filing of an action against the person entitled to recourse.

As B's recourse claim was raised when this case was brought on 15 April 2019, i.e. within a year after 25 May 2018, when the claim for which recourse was sought was paid by B to A by an internal transfer, the recourse claims are thus not obsolete pursuant to section 501 (1) of the Danish Maritime Act. 2, 1st sentence, cf. 1, No. 6.

Comment

It follows from the High Court's decision that the limitation period for recourse claims between sea carriers covered by the DMSA (the Hague-Visby Rules) is not, as a general rule, two years from the time when the damaged goods were delivered.

The limitation period for a recourse claim will thus begin to run only from the time when the carrier itself seeking recourse has paid compensation or where a lawsuit has been filed against the carrier and which is the basis for the recourse claim. It follows from this that no general limitation period exists for a claim for recourse, and that the limitation period for a recourse claim against a sea carrier will, consequently, in many cases only begin to run several years after the time when the damage that gave rise to the recourse claim occurred.

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