
Case Notes

El Greco (Australia) Pty Ltd v Mediterranean Shipping Company SA **[2003] FCA 588**

Sarah Derrington *

Pursuant to a bill of lading issued in Brisbane on 16 February 2000, a container of some 130,000 prints and posters was shipped from Brisbane to Antwerp and then to Piraeus. When the container was opened in Piraeus, the cargo was found to be damaged. Justice Kiefel accepted that the damage was caused by the ingress of seawater through a hole in the top of the container during the voyage from Antwerp to Piraeus. The carrier did not rely on any exceptions or defences and was unable to adduce any evidence to satisfy the onus it bore to establish that the damage occurred by a cause other than seawater and during a different period. This much of the case is unremarkable.

Of significance, however, is her Honour's discussion of the carrier's ability to limit its liability pursuant to Article 4 r5 of the Amended Hague Rules and, in particular, the construction her Honour placed on the meaning of the phrase "number of packages or units" enumerated in the sea carriage document. Article 4 r5(a) provides, relevantly, that carrier shall not be liable for any loss or damage to goods in an amount exceeding 666.67 units of account per package or unit. Article 4 r5(c) provides:

Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the sea carriage document as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

The bill of lading described the cargo as:

*[1] x 20ft FCL/FCL general purpose container said to contain
200945 pieces
posters and prints*

In addition, cl 21 of the contract of carriage provided:

Where goods have been packed into containers by or on behalf of the Merchant, it is expressly agreed, that such container shall constitute one package for the purpose of the application of limitation of the Carrier's liability.

Kiefel J held that cl 21 purported to lessen the liability of the carrier otherwise than as provided for by the Amended Hague Rules and was thus void pursuant to Article 3 r8. The question which therefore followed was whether the carrier could limit its liability by reference to the "[1] container", or whether the reference to "200945 pieces" was a sufficient enumeration of the cargo within the container. Her Honour held that the insertion of the word "pieces" clearly conveys a choice that the posters and prints are to be treated as individual pieces, or units of cargo and therefore that container was not to be regarded as the unit for the purposes of Article 4 r5. Her Honour observed that

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the contrary conclusion would have been at least equivocal had the bill of lading read “one container said to contain a number of posters and prints”.

An appeal from Kiefel J’s decision was heard by the Full Court of the Federal Court of Australia on 18 and 19 February 2004.