



WAREHOUSE RECEIPTS, FRAUD AND ATTORNMENT: AN ENGLISH COMMERCIAL COURT JUDGMENT

The English Court has again considered a case arising out of fraud in warehouses. The judgment in *Natixis -v- Marex and Access World*¹ looks at the relationship between warehouse operators and metal owners, the status of warehouse receipts and the function of the acknowledgement from the warehouse operator that it holds the goods on behalf of the owner.

¹ [2019] EWHC 2549 (Comm)

Background

The Claimant, Natixis, bought nickel under five spot purchase contracts from Marex. The nickel was stored at warehouses operated by Access World. As part of the purchase contract terms, Marex provided to Natixis warehouse receipts originally issued by Access World to a third party. Those receipts were forgeries. When Natixis discovered the true nature of the warehouse receipts, it closed out its futures positions opened to hedge the purchase contracts and claimed losses (including under the futures contracts) of US\$32 million from Marex. Marex in turn claimed from Access World.

The Natixis Claims

Natixis claimed that Marex had breached the purchase contracts by failing to deliver the required documentation. Under English law, damages for breach of contract are assessed so as to put the innocent party in the position as if the contract had been properly performed. Natixis could therefore claim from Marex the losses arising from the close out of the futures contracts. Marex contended that the purchase contracts were voidable for common mistake – the mistake being that both parties had made a fundamental mistake as to the authenticity of the warehouse receipts. Where a contract is voidable, the parties are put in the position as if the contract had never been entered into – the innocent party in these circumstances would be entitled to the return of the purchase price but no more.

The Marex Claims

Marex claimed against Access World on the basis that it had breached its contract with Marex, and/or that Access World had been negligent and/or that Access World had negligently stated that two of the warehouse receipts were genuine. Marex claimed that Access World had a contractual obligation to deliver up the nickel and had breached that obligation. One of the difficulties which Marex faced was

that the warehouse receipts had been endorsed to it by a third party, and not issued directly to it by Access World. It was therefore difficult for Marex to establish that it had a contractual relationship with Access World.

The Natixis Judgment

The Court rejected Marex's argument that the parties were both mistaken as to the genuine nature of the warehouse receipts. It found that Marex had a contractual obligation to deliver genuine receipts to Natixis and had breached that obligation. Importantly, it found that Marex bore the risk of the warehouse receipts being forged. Natixis therefore succeeded in its contractual claims, including the hedging losses in the full amount of US\$32 million.

The Marex Judgment

The Court took the opportunity to consider the nature and status of warehouse receipts, and confirmed the well-known position that warehouse receipts are not documents of title and the relationship between the holder of goods and the person who has the right to possession of those goods is one of bailment. The relationship which is created by the warehouse operator and the original depositor of the goods is one of contractual bailment and is evidenced by the terms of the warehouse receipt. There is no relationship between the warehouse operator and the endorsee of a warehouse receipt unless and until the warehouse operator acknowledges to the endorsee that he holds the goods on his behalf – in other words there is an "attornment" from the warehouse operator to the buyer of goods in storage – as required by s.29 of the Sale of Goods Act 1979.

The Court rejected Marex's other attempts to create a unilateral or collateral contract with Access World, but did find that Access World owed Marex a duty of care for the limited purposes of authenticating the two receipts which its employee had

confirmed were genuine. Interestingly, the Court went on to find that, notwithstanding that these claims arose in tort and not contract, Access World was entitled to rely on the limitation of liability contained in its standard terms and conditions, because Marex had had adequate notice of those provisions. The terms are standard in the warehousing world and Access World had issued thousands of warrants to Marex over a long period, all of which were subject to the terms and conditions. The Court found that Marex should have realised that those terms and conditions applied to all services provided by Access World, even non-contractual services.

HFW Comment

It will come as no surprise to those familiar with such transactions to learn that a buyer of metal in warehouse must ensure that the warehouse acknowledges in writing the buyer's right to receive delivery of the metal represented by the warehouse receipts. However, it is of interest to note that a party may rely on its standard terms and conditions where adequate notice has been given to the other party, even in circumstances where the claim arises in negligence and not in contract.

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