

Through Transport Mutual Insurance Association (Eurasia) Ltd v New India Assurance Co Ltd, The Hari Bhum

[2003] EWHC 3158 (Comm), [2004] 1 Lloyd's Rep 206, [2003] ArbLR 44, [2003] All ER (D) 360 (Dec)

Court: Comml Ct

Judgment Date: 18/12/2003

Catchwords & Digest

PRACTICE AND PROCEDURE - SERVICE OF PROCESS - INJUNCTION TO PREVENT FOREIGN PROCEEDINGS - RELIANCE ON ENGLISH LAW AND ARBITRATION CLAUSE - DISCRETION OF COURT

In October 1999, an Indian merchant shipped on board a vessel at Calcutta a container said to contain various types of garments for carriage to Moscow. The container was shipped under a through transport bill of lading issued by B Ltd which provided for the goods to be carried by sea to Kotka, Finland, and thence by road to Moscow. They were insured against loss or damage in transit by the defendant. The container arrived in November 1999. The following month an associated company of the carrier issued a CMR waybill for the carriage of the container by road from Kotka to Moscow. The container was however lost in transit. The claimant was a mutual insurance association. B Ltd was a member of the club. Following the loss of the container, the merchant made a claim against the defendant. In due course it was compromised and the benefit of any claim against the carrier was thereupon assigned to the defendant. The club rules contained a law and disputes clause providing for English law and arbitration in London. The defendant sued the club in Finland, relying on domestic Finnish law, which gave a right to pursue the defendant's insurer in certain circumstances. A challenge to the jurisdiction by the club was rejected, the court referring to art 10 of Council Regulation (EC) 44/2001. The club applied in England for an injunction restraining the defendant from pursuing the proceedings in Finland, and the defendant applied to set aside service of that application. The issue for the court's determination on both applications was whether, the eyes of English law, the defendant's claim against the club was subject to the arbitration clause in the club rules.

Held - The application would be allowed. The right course was to grant the relief which the club sought restraining the defendant from pursuing the claim in Finland. On the facts, the court had jurisdiction in the instant case to give permission to serve the claim form out of the jurisdiction and that it had jurisdiction to grant an injunction to prevent the continuation of proceedings contrary to the terms of the arbitration clause. It would in the circumstances exercise its discretion in the club's favour.

Case History

Annotations	Case Name	Citations	Court	Date	CaseSearch
--	Through Transport Mutual Insurance Association (Eurasia) Ltd v New India Assurance Co Ltd	[2004] EWCA Civ 1598, [2005] 1 All ER (Comm) 715, [2005] 1 Lloyd's Rep 67, 148 Sol Jo LB 1435, [2004] ArbLR 58, [2004] All ER (D) 25 (Dec)	CA	02/12/2004	CaseSearch Entry
Reversing in part	Through Transport Mutual Insurance Association (Eurasia) Ltd v New India Assurance Co Ltd, The Hari Bhum	[2003] EWHC 3158 (Comm), [2004] 1 Lloyd's Rep 206, [2003] ArbLR 44, [2003] All ER (D) 360 (Dec)	Comml Ct	18/12/2003	CaseSearch Entry

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