International Law Office

SHIPPING & TRANSPORT - NETHERLANDS

Theft of luxury watches from storage raises questions over carrier liability

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Introduction

An armed robbery at a warehouse provided the basis for an unfortunate – but legally interesting – recent case in the Amsterdam Court of Appeal (3 November 2020, ECLI: NL:GHAMS:2020:2933). The case concerned the theft of several expensive Audemars Piguet watches from a warehouse while in the carrier's custody.

The case raised the question of whether the carrier could be held liable for the loss of the goods and, if so, whether it could invoke the limitations of liability applicable to carriers. In this regard, the court also examined whether storage formed an independent part of the contract or whether it was absorbed into carriage.

Facts

Audemars Piguet is a wholesale manufacturer of high-value watches sold under the Audemars Piguet brand. Logistics Solutions (whose legal predecessor was involved in this case) specialises in the domestic and international transport of valuable parcels. Since 2013 Logistics Solutions has transported Audemars Piguet watches at the instruction of another Audemars Piguet entity.

On 15 November 2016 Logistics Solutions collected 11 packages from Audemars Piguet in Hoofddorp and transported the packages to its warehouse in Utrecht. The following day, the parcels were to be transported to their final destinations both in the Netherlands and abroad.

On 16 November 2016 an armed robbery took place at the warehouse. Seven parcels of watches with a total value of €993,309 were stolen: five parcels intended for Dutch consignees and two parcels intended for foreign consignees. It appeared that one of the employees of Logistics Solutions was involved in the robbery and rendered assistance to the thieves.

Audemars Piguet and its insurer initiated legal proceedings, claiming full compensation for their loss of €993,309.

Decision

The Court of Appeal held Logistics Solutions liable on the basis of a tort committed by its employee (Articles 6:170 and 6:162 of the Civil Code). The question then arose of whether Logistics Solutions was able to limit its liability. The company would be unable to do so in the event that the watches were stolen during storage rather than carriage.

Storage is governed by the Civil Code. However, contrary to carriage provisions, it contains no limitation of liability. In principle, the warehouse operator has unlimited liability.

The Court of Appeal found that no storage agreement had been established by Logistics Solutions and Audemars Piguet. Instead, the activities in the warehouse (storage, scanning and sorting) were ancillary to the transport in question and the storage element was absorbed into the transport. Thus, when the robbery had taken place, Logistics Solutions had had the parcels in its custody pursuant to a contract of carriage. Therefore, Logistics Solutions could invoke limitations of liability but not in respect of the parcels destined for the Netherlands.

This is because Dutch national law on road carriage differentiates from the Convention on the Contract for the

International Carriage of Goods by Road (CMR) when it comes to breaking limitations. Under the national law on road carriage, the wilful misconduct of an employee is not sufficient to break the limitations of liability. The wilful act or omission of the company itself (or its management) is required.

This approach differs from the CMR, which governs delivery abroad, where the wilful misconduct of the carrier's agents and servants – including employees – is sufficient to break the limitation (Articles 3 and 29,2 of the CMR). In this case, the wilful misconduct of the employee of Logistics Solutions could be quite easily established, but the wilful misconduct of Logistics Solutions itself could not.

As a result, Logistics Solutions was held liable for the five parcels intended for the Dutch consignees. This charge was calculated at €3.40 per kilogram of gross weight, equal to a total of €306. However, for the two parcels intended for foreign consignees, Logistics Solutions was found to have unlimited liability and was ordered to pay the full value of €315,869.

Comment

An interesting element of this case was that the reasoning used by the court in characterising storage as part of the carriage. Pursuant to Dutch law, when characterising a specific contract, the actions of the parties take precedence over their intentions and what has been agreed. What parties do – and not what they have agreed to do – is decisive. This approach to the characterisation of specific contracts was confirmed by the Supreme Court in 2019 (ECLI:NL:HR:2019:2034).

However, in this case, it appears that the Court of Appeal looked principally at the intentions of Logistics Solutions and Audemars Piguet, rather than the actual activities.

Nonetheless, based on the actual activities, the same outcome might also be possible on the basis that the carriage absorbed the minor element of storage or, alternatively, that there was a mixed agreement containing both storage and carriage.

In order to prevent this outcome, Audemars Piguet could have attempted to stipulate, for example in a bespoke contract, that Logistics Solutions was not allowed to store the watches or, perhaps more practical, that storing the goods after a certain number of hours would no longer be classified as carriage but as storage.

Finally, the decision clearly marks the difference between Dutch national law on road carriage and the CMR when it comes to limitation of liability. It is clear that Dutch national law is much more favourable to carriers in this respect.

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