



5 August 2020

PRESS SUMMARY

Shagang Shipping Company Ltd (in liquidation) (Appellant) v HNA Group Company Ltd (Respondent)

[2020] UKSC 34

On appeal from [2018] EWCA Civ 1732

JUSTICES: Lord Hodge (Deputy President), Lord Briggs, Lord Hamblen, Lord Leggatt, Lord Burrows

BACKGROUND TO THE APPEAL

This appeal arises out of a claim by the appellant under a guarantee of a contract, to charter a vessel which was met with a defence from the respondent that the contract was procured by bribery and that the guarantee was therefore unenforceable. The bribery allegation was based on evidence of confessions that the appellant alleged were obtained by torture and therefore inadmissible.

A contract for the charter of a ship was agreed in August 2008 between the appellant, a Hong Kong company now in liquidation, and the respondent's subsidiary, a Hong Kong company also now in liquidation. A guarantee was agreed between the respondent, a Chinese company, and the appellant by which the respondent guaranteed its subsidiary's performance under the contract. The guarantee is governed by English law and confers jurisdiction on the English courts.

The vessel was delivered in April 2010, but from September 2010 the subsidiary defaulted on its payments. The appellant brought arbitration proceedings and ultimately terminated the contract for the subsidiary's repudiatory breach. The appellant pursued its claim in arbitration for damages for the subsidiary's breach, achieving a partial final award in November 2012.

In September 2012, the appellant commenced proceedings against the respondent under the guarantee in the Commercial Court. In its amended defence, the respondent alleged that the contract had been procured by bribes paid by or on behalf of the appellant to senior employees of the subsidiary. The respondent relied on confessions made by three individuals during an investigation undertaken by the Chinese Public Security Bureau. In an amended reply the appellant alleged that those confessions had been obtained by torture and consequently were inadmissible as evidence in the proceedings.

At trial, Knowles J gave judgment in favour of the appellant, finding that there was no bribery and that he could not rule out torture. On appeal, the Court of Appeal held that the judge's decision was unsustainable and sent the case back for reconsideration by a different judge. The appellant appealed to the Supreme Court seeking restoration of the judge's judgment.

JUDGMENT

The Supreme Court unanimously allows the appeal and restores the judgment in favour of the appellant. Lord Hamblen and Lord Leggatt give the judgment, with which all members of the Court agree.

REASONS FOR THE JUDGMENT

The issue on the appeal is whether the Court of Appeal's criticisms were justified and warranted remitting the case for fresh determination. The four main criticisms were that the judge: (i) failed to follow the

logical steps necessary to reach a proper evaluation of the admissible evidence; (ii) failed to ask and answer the correct legal question as to what weight should be accorded to the confession evidence; (iii) fell into legal error in failing to take all the appropriate matters into account in deciding the bribery issue; and (iv) fell into legal error in failing to exclude irrelevant matters, including what the Court of Appeal described as his “lingering doubt” as to whether the confessions were procured by torture, in considering whether the alleged bribe was paid [51]-[52].

On the first criticism, the judge had considered the bribery issue before the torture allegations [41]-[44]. The Court of Appeal took the view that the judge should have decided the torture allegations first and, having concluded the confession evidence was admissible, proceeded to determine the weight to be given to that evidence, then subsequently have considered whether bribery had taken place [55]-[56]. The Supreme Court accepts that the Court of Appeal’s approach is logical, but it is not mandatory. The manner and order of the consideration of admissibility and weight of evidence are matters for the trial judge and there will usually be more than one legitimate approach [57]-[58]. The judge took the confession evidence into account on the assumption, without deciding, that the evidence was admissible. That was a permissible approach [59]. Having done so, the judge considered it unnecessary to make a finding on the torture issues because he was in any event satisfied there was no bribery. The approach taken was both legitimate and consistent with the way the case was put before him [62], [65].

On the second criticism, the Court of Appeal considered that the judge had not adequately addressed the weight to be given to the confession evidence [66]. Though not separately set out, the Supreme Court considers that the judge did address the weight of the evidence in the factors relied upon in his conclusion on bribery. In circumstances where that evidence was the only evidence of bribery, in finding that there was no bribery the judge was necessarily finding that the confession evidence was of little or no weight. It cannot be said that his conclusion on bribery was unreasonable or unsustainable and there were ample grounds to support it [67]-[84].

On the third criticism, the Court of Appeal considered that the judge failed to take into account the details of the confessions made and should have addressed each confession made by each individual rather than dealing with them compendiously [85]. Though the Supreme Court agrees that it would have been more satisfactory for the judge to have addressed the confession evidence in greater detail, it is clear that he did consider the confession evidence of all three individuals. The failure to consider it systematically is not an error of law [85]-[87].

On the fourth criticism, the Court of Appeal considered that, as the judge did not find the allegation of torture proved on a balance of probabilities, he should have disregarded it entirely [93]. However, the judge did not need to and did not reach any conclusion that torture had or had not been proved [94]. Even if the judge had reached a definite conclusion that torture had not been proved on a balance of probabilities, there would have been no inconsistency between such a conclusion and the finding that torture was a real possibility that affected the reliance that should be placed on the confessions [95]. The facts that the court can take into account in assessing the weight to be given to hearsay evidence in civil proceedings are not limited to facts proved to the civil standard of proof [96]. While it is settled law that evidence proved on a balance of probabilities to have been obtained by torture is inadmissible, there is no rule that – if an allegation that torture was used is not proved to that standard – a possibility that evidence was obtained by torture must be ignored when deciding the facts in issue [106]-[108].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>