

Clarification of the conditions of admissibility of the liability action brought by the shipper against the sea carrier (ruling 19-16.466)

23/03/2022



Ruling No. 219 FS - B+R
Appeal No. R 19-16.466

Quashing

Public hearing of 23 March 2022

Quashing

Ms MOUILLARD, President

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FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE COMMERCIAL, FINANCIAL AND ECONOMIC CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 23 MARCH 2022

The company Frutas y Hortalizas Orgánicas de Michoacan Mexico, (FRHOMIMEX), whose registered office is [Address 3] (Mexico), filed appeal No. R 19-16.466 against the ruling delivered on 7 March 2019 by the *cour d'appel* (Court of Appeal) of Aix-en-Provence (Chamber 3-1) in the dispute between said company and CMA CGM, a public limited liability company, whose registered office is [Address 1], respondent before the *Cour de cassation* (Court of Cassation).

The applicant bases his appeal on the single ground for quashing attached to this ruling.

The case file has been sent to the Prosecutor-General.

Concerning Ms Kass-Danno's report, judge referee, the comments made by SCP Thouvenin, Coudray and

Grévy, lawyers of the company Frutas y Hortalizas Orgánicas de Michoacan Mexico (FRHOMIMEX), the SARL Le Prado Gilbert, lawyers of the company CMA CGM, and the advisory opinion by Ms Henry, advocate-general, following debate in the public hearing of 1 February 2022, in the presence of Ms Mouillard, President, Mr Rémy, elder judge, Ms Kass-Danno, reporting judge referee, Ms Vaissette, Ms Bélaval, Ms Fontaine, Mr Riffaud, Ms Guillou, judges, Ms Barbot Brahic-Lambrey, Messrs Maigret, Régis, judge referees, Ms Henry, advocate-general, and Ms Mamou, Chamber Registrar, the Commercial, Financial and Economic Chamber of the *Cour de cassation* (Court of Cassation), composed, pursuant to Article R. 431-5 of the Judicial Code, of the above-mentioned President and judges, after deliberation thereof in accordance with law, delivered this ruling.

Facts and procedure

1. According to the ruling under appeal (Aix-en-Provence, 7 March 2019), the Mexican company Frutas y Hortalizas Orgánicas de Michoacan Mexico (the company FRHOMIMEX), having sold fresh avocados to the Dutch company OTC (Organic Trade Company) - Holland (the company OTC), commissioned the company CMA CGM with sea carriage between the ports of [Locality 2] (Mexico) and [Locality 4] (Netherlands). As the goods were damaged, FRHOMIMEX sued said company for damages.

Reviewing plea

On the first part of the plea

Statement of plea

2. FRHOMIMEX objects to the ruling that it considers inadmissible the liability action brought by a shipper against the sea carrier, when "*in the case of carriage without bill of lading, the shipper has, in his sole capacity as party to the*

contract, an interest in filing an action against the carrier in the event of damage to the goods that by making the shipper's right of action subject to the demonstration of a loss, whilst acknowledging that the contract had given rise to the issuance of three waybills and not bills of lading, the cour d'appel (Cour of Appeal) violated former Article 1147 of the Civil Code."

Court's response

In view of Article 31 of the Civil Procedure Code:

3. Consequently, the shipper, as party to the contract of carriage, is entitled to initiate a liability action against the sea carrier, asserting the loss suffered because of damage in transit, the evidence of the existence of said loss being the only condition for the success of his action for damages. Moreover, since the shipper's right of action for contractual liability derives from the contract of carriage and not from the document by which it is established, it is not necessary to distinguish, for the purpose of assessing whether or not said right applies, whether the carriage gave rise to the issuance of a bill of lading or a sea waybill, or whether or not the shipper is identified on said documents.
4. In order to declare the action filed by the company FRHOMIMEX inadmissible, the ruling states that said company, acting as shipper vis-à-vis the three waybills, can sue the sea carrier (the company CMA CGM) for the damage to the avocados, but on the condition that it has suffered a loss and can justify the determination of said loss, even if it was not the only victim. Then, it observes that the three sales invoices issued by FRHOMIMEX to OTC and the three sales accounts drawn up by the latter with regard to the former do not by any means establish that the damage to the goods was assumed, even partially, by FRHOMIMEX as said company failed to provide documents relating to the financial transactions with OTC.
5. In so ruling, the *cour d'appel* (Court of Appeal) violated the above-mentioned text.

ON THESE GROUNDS, and without the need for ruling on the other plea, the Court:

QUASHES AND SETS ASIDE, in all its provisions, the ruling delivered on 7 March 2019, between the parties, by the *cour d'appel* (Court of Appeal) of Aix-en-Provence;

Returns the case and the parties to the status existing prior to the said ruling and refers them to the Montpellier *Cour d'appel* (Court of Appeal);

Orders the company CMA CGM to pay the costs;

pursuant to Article 700 of the Civil Procedure Code, dismisses CMA CGM's claim and orders it to pay the Mexican company Frutas y Hortalizas Orgánicas de Michoacan Mexico the sum of EUR 3,000;

at the request of the Prosecutor-General of the *Cour de cassation* (Court of Cassation), orders that this ruling be transcribed in the margin or following the quashed ruling.

Thus decided by the Commercial, Financial and Economic Chamber of the *Cour de cassation* (Court of cassation), and pronounced by the President at the public hearing of the twenty-third day of the month of March of the year two thousand and twenty-two.

President : Ms Mouillard

Reporting Judge referee : Ms Kass-Danno

Advocate-general : Ms Henry

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