



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Debt Cannot be Avoided by Self-Unfulfilled Condition

Brian Perrott and Colin Chen of global legal firm Holman Fenwick Willan have been exploring the issue of deemed fulfilment in the case of *King Crude Carriers SA v Ridgebury November LLC* [2024] EWCA Civ 719.

The United Kingdom Court of Appeal has held that a party seeking to avoid paying a debt cannot rely on the precedent of an unfulfilled condition, if the non-fulfilment was caused by that party's own breach.

In this case, involving contracts for the sale of second-hand tankers, the buyers (King Crude Carriers) were obliged to provide an escrow agent (HFW Greece) with documents to enable the opening of escrow accounts. The buyers were to then pay 10% deposits into those accounts but breached the contracts by failing to provide the necessary documents without delay.

The sellers terminated the contracts and sought to recover the deposits as a debt.

The court considered whether the sellers were entitled to be placed in the position they would have been in if the condition precedent had been fulfilled or dispensed with.

The court held that a principle does exist under English law whereby an obligor (the entity which is legally or contractually obliged to provide a benefit or payment to another) cannot rely on the non-fulfilment of a condition precedent to its debt obligation if its breach of contract caused the non-fulfilment.

For this principle to apply, such that a condition precedent will be deemed to be fulfilled or dispensed with, there must be:

1. an agreement capable of giving rise to a debt rather than damages;
2. an agreement that the debt will accrue or be payable subject to fulfilment of a condition precedent; and
3. an express or implied agreement that the obligor will not do something that prevents the condition precedent from being fulfilled, such that the debt does not accrue or become payable.

There are some exceptions to this principle, however, including that:

1. the condition precedent is the performance of a principal obligation; and
2. it is possible to expressly or implicitly contract out of the principle.

This case demonstrates that a party should not be allowed to take advantage of its own wrongdoing. The principle reflects parties' presumed contractual intentions.

What the parties surely intended in this case is that opening the escrow accounts was to be preliminary to paying into them, and not to allow the buyers a choice as to whether to pay and to leave the sellers to claim for damages (as opposed to debt).

September 2024

