

The logo for MFB, consisting of the letters 'M', 'F', and 'B' in a white, sans-serif font, centered on a dark blue square background.

## Hapag-Lloyd AG v Skyros Maritime Corporation & Agios Minas Shipping Company

### Damages for time charter late redelivery & late delivery of goods under sale contracts

The High Court today gave judgment in *Hapag-Lloyd AG v Skyros Maritime Corporation* and *Hapag-Lloyd AG v Agios Minas Shipping Company*, two related arbitration appeals under section 69 of the *Arbitration Act*. Ingolf Kaiser and Ryan Hunter of MFB acted for Hapag-Lloyd, the successful appellants, together with Steven Berry KC and Adam Board of Essex Court Chambers.

The cases concern damages for late redelivery of two containerships which were time chartered by Hapag-Lloyd. Both vessels were to be redelivered at the end of May 2021. They were redelivered two days late (in the case of the *Skyros*), and seven days late (in the case of the *Agios Minas*). The owners claimed the – substantial – difference between the charterparty rate and the market rate for the overrun periods.

However, before redelivery, the owners had sold both vessels pursuant to contracts (MOAs) in which they agreed not to enter into any further charter fixtures after expiry of the charterparties. Owners were therefore precluded from chartering the vessels to anyone else.

Despite this, owners claimed substantive damages on several grounds. Hapag-Lloyd argued that because of the MOAs, owners had suffered no loss. The Tribunal was asked to determine a preliminary issue as to whether owners were in principle entitled to recover substantial, rather than merely nominal, damages. The Tribunal found that they were. Hapag-Lloyd appealed under s 69 of the *Arbitration Act 1996*.

Mr Justice Bright allowed the appeals and decided that owners were entitled to nominal damages only. In a detailed judgment addressing shipping and sale of goods cases concerning late and non-delivery, he held that in a case where the owners could not charter the ships out again because of the MOAs, they had not lost any opportunity to take advantage of a market rate during the period of overrun. In other words, the owners not only *would not*, but *could not* charter the ships out again before delivery to the buyers. He rejected the owners' argument that the MOAs should be disregarded as being *res inter alios acta*.

Owners relied on passages in *The Achilles*, in which the ship owner was held not to be entitled to rely on a subsequent fixture to *increase* its claim (because as such increased losses were not foreseeable). However unlike in the *Achilleas*, the subsequent contracts here *reduced* owners' losses from the breach (to nil in this case) and so the Court could have regard to them. This ensured that the usual measure of damages was preserved, that



owners should be put in the same position as if there had not been a breach of the charterparty.

Owners had also argued that they were entitled to substantive damages on additional bases, relying on concepts of user damages, quantum meruit and negotiation damages. Those arguments fell away given charterers' success on the *res inter alios acta* point and were described in the judgment as "makeweight".

We expect the decision will be received with interest in the shipping market and beyond, given that it is relevant not only to late redelivery under a time charterparty but also to late delivery under sale of goods contracts where the goods are on-sold.

The full judgment of Mr Justice Bright is available [here](#).



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