

Time-bar for claims in unjust enrichment - when does the cause of action accrue?

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When does time start to run for limitation purposes in a claim for the recovery of sums transferred on a basis that subsequently fails?

The Commercial Court has decided that it is not necessary for the underlying contract to be terminated before any claim in unjust enrichment can be brought and that the cause of action accrues – and time starts to run – when the state of affairs contemplated as the basis or reason for the payments fails to materialise.

In an interesting judgment handed down on Tuesday, 14th February 2023 (*Anron Bunkering DMCC v Glencore Energy UK Ltd* [2023] EWHC 295 (Comm), Simon Colton KC (sitting as a Judge of the High Court) summarily dismissed a claim for restitution of unjust enrichment on the basis that it was time-barred.

Benjamin Coffe appeared for the successful Defendant, instructed by Eleanor Coates, Anna Fomina and Iman Anjarwalla at Clyde & Co.

The underlying claim arose out of two contracts for the sale of unleaded gasoline. The Claimant sought to recover various advance payments it had made under the two sale contracts on the basis that the Defendant had failed to deliver the correct amount of gasoline. The Claimant contended that the alleged failure to deliver the full amount of gasoline meant that the consideration for which the advance payments were made had failed and that it was therefore entitled to restitution of unjust enrichment.

The Defendant applied to have the claim summarily dismissed on the basis that it was time-barred, the alleged non-delivery having occurred more than six years before the claim was issued.

The Judge reiterated that claims for unjust enrichment are “founded on simple contract” within the meaning of section 5 of the Limitation Act 1980 and that the limitation period is accordingly six years from the date on which the cause of action accrues. The Judge confirmed that in claims for restitution of sums transferred on a basis that subsequently fails, the cause of action accrues when the failure of basis occurs. The question was then when, on the Claimant’s pleaded case, did the failure of basis occur?

The Defendant argued that the basis failed at the moment of the alleged non-delivery or, at the latest, when the balance was sold to a third party. Both events occurred more than six years before the claim was issued. These submissions gave rise to the interesting question of whether, in a claim in unjust enrichment on the ground of failure basis, it is necessary that the underlying contract has been terminated. If termination is an essential element of the cause of action, it would mean that had the sales contracts been terminated less than six years before the claim was brought, the claim for unjust enrichment would have been brought in time.

The Judge held that “*it is not a requirement that the contract in question be terminated in a sale of goods case before a claim in unjust enrichment can be brought.*” He went on to state that the test is whether the “*state of affairs contemplated as the basis or reason for the payments has failed to materialise and said that that test may, in appropriate circumstances, be met without termination of the contract*” [45].

Applying that test to the present case, the Judge held that the state of affairs contemplated as the basis for the advance payments failed to materialise at the latest when the Defendant sold the balance of the undelivered gasoline to a third party. As this was more than six years before the claim form was issued, the claim was time-barred and was therefore summarily dismissed.

The Judge went on to consider that, if it is necessary for the contract in question to have been terminated, then the claim for restitution would have failed in any event because the Claimant had failed to plead any allegation that the sale contracts had ever been terminated.

The judgment also includes an interesting discussion of whether a statement of account that acknowledges a debt but asserts a set-off extinguishing that debt constitutes a statutory acknowledgement within the meaning of sections 29(5) and (30) of the Limitation Act 1980. Having considered the authorities, the Judge reiterated the orthodox view that such a document does not constitute an acknowledgement.

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Ben was named Shipping Junior of the Year 2019 at the Chambers & Partners Bar Awards. He was shortlisted for Shipping Junior of the Year for the Legal 500 UK Awards 2020 and shortlisted for Shipping Junior of the Year for Chambers & Partners UK Bar Awards in 2022.

Ben's broad international commercial practice has a particular emphasis on shipping, insurance / reinsurance and commodities. He appears regularly as sole and junior counsel in the Commercial Court and before arbitral tribunals.

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