

### **3. Natixis -v- Marex and Access World Logistics (Singapore) Pte Ltd. [2019] EWHC 2549**

#### **Facts**

Natixis bought nickel from Marex in a series of repo transactions. Marex delivered what later transpired to be forged warehouse receipts, which had been mistakenly authenticated by the warehouse, Access World. Natixis claimed against Marex for breach of contract, which Marex defended on the basis that (1) the repos were void for common mistake as to the authenticity of the warehouse receipts or (2) Marex had delivered good title to Natixis as it was required, because the receipts were contractual promises by the warehouse to deliver the nickel. Marex also brought claims against Access World for breach of contract and negligent misstatement for the mis-authentication of the receipts.

#### **Not void for common mistake**

Natixis' claim against Marex succeeded. The Court held that the repo contracts between Natixis and Marex allocated the risk of fraud to Marex, so the repos were not void for common mistake (as risk allocation means common mistake cannot apply). Marex had to provide Natixis with genuine warehouse receipts, which it had not done.

#### **Contractual claims**

Marex's claims that Access World had made contractual promises to deliver the nickel to Marex or Natixis, so that Marex was not in breach of its own contractual obligations to Natixis, also failed:

#### **Warehouse receipts: unilateral contracts?**

Marex's first argument was that the authenticated warehouse receipts were unilateral contracts containing promises of delivery by the warehouse. The Court followed established principles in confirming that a warehouse receipt is not a document of title under English law. The relationship between a warehouse storing goods and the party that deposited them is a contract of bailment, on the terms of the warehouse receipt. The mere transfer of a warehouse receipt from the seller to the buyer (endorsed or not) does not create a legal relationship between the warehouse and the buyer. This only arises when the warehouse "attorns" to the buyer i.e. acknowledges that it holds the goods on behalf of the buyer. As no attornment to Marex or Natixis had occurred, the Court held that the mis-authenticated warehouse receipts did not create a contractual relationship between either party and the warehouse.

#### **Collateral contracts to the repos**

Marex's second argument was that Access World's statements of authenticity amounted to contracts collateral to the Marex/Natixis repos. This failed for absence of the necessary ingredients for a contract

(including lack of consideration and intention to create legal relations). The estoppel claims Marex made also failed. They were contingent on finding contractual rights and the estoppel argued could not create the necessary the proprietary rights against third parties.

### **Negligent mis-authentication and limited liability**

The Court held that Access World did not owe a duty of care to Natixis in negligence, as it had not "assumed responsibility" to Natixis for the authentication (statements communicated directly to Natixis contained disclaimers and Natixis could not reasonably rely on certain other documents it had obtained indirectly). Access World did owe such a duty to Marex for certain receipts, which had been breached by the negligent authentication. However, a clause in Access World's standard terms and conditions, limited Access World's liability, which the Court upheld as reasonably notified to Marex and the limitation reasonable in the circumstances.