



6 April 2011

PRESS SUMMARY

Farstad Supply A/S (Respondent) v Enviroco Limited (Appellant) [2011] UKSC 16

JUSTICES: Lord Hope (Deputy President), Lord Rodger, Lord Mance, Lord Collins and Lord Clarke

BACKGROUND TO THE APPEAL

Farstad Supply A/S owned a vessel called the “Far Service”. On 4 February 1994, Aberdeen Service Company (North Sea) Ltd (“Asco UK Ltd”) chartered the Far Service from Farstad. Asco UK Ltd is a wholly owned subsidiary of ASCO plc, a major oil and gas logistics company registered in Scotland. They wished to use the Far Service to supply and service offshore installations.

Enviroco Ltd cleans ships on an industrial scale among other things and is also registered in Scotland. Until 1999 it too, like Asco UK Ltd, was a wholly owned subsidiary of ASCO plc. In November 1999, in connection with a joint venture with Stoneyhill Waste Management Ltd, Enviroco’s shares were converted into equal numbers of A and B ordinary shares. ASCO plc held the A Shares whereas Stoneyhill held the B Shares.

By their 1994 contract, known as a “charterparty”, both Farstad and Asco UK Ltd agreed to indemnify and hold each other harmless in relation to certain liabilities. Importantly, Farstad further agreed to indemnify Asco UK Ltd’s “Affiliates”, who were defined by reference to the meaning of “subsidiary” in section 736 of the Companies Act 1985, including any amendments.

On 7 July 2002, Enviroco was employed to clean the oil tanks of the Far Service. While the tanks were being cleaned, a fire occurred causing the death of one of Enviroco’s employees and substantial damage to the Far Service.

Farstad, the owner of the Far Service, brought a claim in Scotland against Enviroco for losses it allegedly suffered as a consequence of the fire. Farstad claimed approximately £2.7 million. Enviroco sought to rely on the indemnity clauses in the 1994 charterparty on the basis that it was an “Affiliate” of Asco UK Ltd because each of them was a subsidiary of ASCO plc.

Prior to the fire, ASCO plc had entered into a “Deed of Pledge” with the Bank of Scotland in order to secure some of its obligations. By a Scottish share pledge, ASCO plc gave the Bank of Scotland security over the A ordinary shares held by it in Enviroco by re-registering the shares in the name of the bank’s nominee company.

Whether or not Enviroco could rely on the indemnity depended on whether the fact that the shares in Enviroco were registered in the nominee’s name meant that Enviroco was not a subsidiary of ASCO plc at the time of the fire and therefore not an “Affiliate” for the purposes of the 1994 charterparty. Whether or not Enviroco was a subsidiary of ASCO plc in turn depended on whether ASCO plc was “a member” of Enviroco at the relevant time.

The Court of Appeal decided that because the shares were registered in the name of the bank’s nominee company at the time of the fire, ASCO plc was not a member of Enviroco. Thus Enviroco was not a subsidiary of ASCO plc so it could not rely upon the indemnity clauses.

JUDGMENT

The Supreme Court unanimously dismisses Enviroco's appeal and holds that Enviroco was not a subsidiary because ASCO plc was not "a member" of Enviroco. Lord Collins gives the main judgment. Lord Hope and Lord Rodger give shorter judgments elucidating the position in Scots law.

REASONS FOR THE JUDGMENT

The legislation makes clear that "a member" of a company is the person on the register. Where it is necessary to apply the legislation to persons who are not on the register, special provisions are made [35]-[39].

This is an unusual case. ASCO plc turned Enviroco into a joint venture company and then charged the shares to a Scottish bank by following the necessary Scots law procedure. However, to find in Enviroco's favour would have required the Court to engage in an impermissible form of judicial legislation [49].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgements are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html