

Exclusive Cause of Action under the Montreal Convention Applies also to the Carrier's Agent

**Adv. Peggy Sharon & Adv. Keren Marco
Levitan, Sharon & Co.**

Introduction:

In December 2021, the Petah Tikvah Magistrate Court dismissed a claim filed against DHL (Israel) Ltd., applying the principle of the exclusive cause of action set by the Montreal Convention, as the Letter of Protest was not sent within the timeframe of 21 days according to the Convention.¹

The Claim:

In March 2020, Plaintiff ordered a shipment of face masks (KN95) for distribution in Israel. Plaintiff undertook commitment towards a third party to supply 20,000 masks no later than 20th April 2020, hence it carried out the necessary arrangement for express transportation.

Plaintiff argued that he did not receive the goods on time and that the Defendant charged him high amounts, contrary to the agreement made between the parties.

Due to the urgency to meet the deadline for supplying the masks, Plaintiff had no alternative but to pay the above

amounts in order to release the goods. In addition, it is argued that, at the end of the day, not all the masks were released.

Plaintiff's Arguments

Plaintiff demanded the amount of ILS 339,295 which comprises of the amounts he paid to release the goods, in excess of the amounts allegedly agreed between the parties and the value of the masks which were not released.

The claim was based on the ***Contract Law***, the ***Bailees Law***, ***Unlawful Enrichment Law***, the ***Consumer Protection Law*** and the ***Tort Law***.

DHL's Arguments

The Defendant (DHL Israel) argued for lack of privity, as DHL Israel is not a party to the contract between Plaintiff and the goods' supplier, nor a party to the air carriage contract with the air carrier (DHL China). DHL Israel acted as the air carrier's agent and that its services were given to DHL China.

¹ C.F 23965-12-20 *Said Gara v. DHL Israel ltd.*

In addition, it was argued that the claim is subject to the Montreal Convention, according to which there is an exclusive cause of action and it is not possible to file a claim against the air carrier **nor against its agent**, based on other laws.

DHL argued that the claim should be dismissed since Plaintiff did not fulfil the requirement of Article 31 of the Convention to send a letter of Protest within 21 days which is a precondition to the right to claim damages.

As to the merit of the claim, DHL argued that Plaintiff's damage was caused by his own negligence, and by the negligence of the Chinese supplier who divided the shipment into 7 sub-shipments, and provided false value declaration which had led the authorities to impose additional taxes which were not paid.

The Judgement:

The Court accepted the plea of lack of privity as DHL Israel was not a party to an agreement with Plaintiff.

The court stated that the above conclusion could have still allowed Plaintiff to base his claim on the Tort law (negligence) however, this is not possible due to the principle of exclusive cause of action according to the Convention which solely governs any claim within its framework.

The court referred to Article 43 of the Convention according to which the

carrier's agent can rely on the provisions of the Convention hence, the claim against the carrier's agent is limited to the Convention.

According to Article 31 of the Convention, in case of cargo delay, Plaintiff must submit a written complaint within 21 days from the date he becomes aware of the damage.

The *Carriage by Air Law – 1980* applies in Israel the Warsaw and the Montreal Conventions. Clause 15 of the Law provides that the period during which one is entitled to claim damages is limited to the timeframe set by the Convention and cited several cases in which the claims were dismissed based on this argument²

To conclude, the Court ruled that the contractual causes of actions are dismissed due to lack of privity, the contractual and tortious causes of action are dismissed based on the exclusive cause of action and the claim based on the *Carriage by Air Law* is dismissed based on the breach of the provisions of the Convention re the Letter of Protest. Plaintiff was ordered to pay defendant's legal costs in the amount of ILS 10,000.

The time for filing an appeal to the District Court has not yet elapsed.

² C.F (Rishon Lezion) 3751/08 Shahram Mordian v. El Al Airlines, S.C (Haifa) 982-03-

14 Yosef Yativ v. UIA, S.C (Rishon Lezion) 37261-03-16 Yafit Raybach v. Ofir Tours Ltd.



Peggy Sharon:

(email: peggysh@levitansharon.co.il)



Keren Marco:

(email: kerenm@levitansharon.co.il)