

TIME BAR CLAUSES

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WHAT IS AND IS NOT ON OUR AGENDA

In = General approach
Trigger event
Notices
Jurisdictional nuances

Not In = Condition precedent?

VOTE

If a Party was at all times fully aware of the facts and circumstances giving rise to a claim, should it nevertheless be allowed to rely on a failure to give timely notice by the other Party?

Yes

No

IF I HAD TO SUMMARISE



RTI LTD V. MUR SHIPPING BV [2024] UKSC 18

“[41] The principle of freedom of contract is fundamental to the English law of contract. One aspect of that principle is that ... parties are generally free to contract on whatever terms they choose.”

STARTING POINT

- ***Triple Point Technology Inc. v. PTT Public Company Limited*** [2021] UKSC 29 at [108] – [110]:
- ***Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd*** [2023] UKSC 2, [2023] 1 WLR 575 at paragraph 29
- ***Herculito Maritime Ltd v. Gunvor International BV*** [2024] UKSC 2

SARA

“It is well established that in interpreting a contract one starts with the presumption that neither party intends to abandon any remedies which arise by operation of law and that clear words are necessary to do so”

E.G. RECENT CASES ON TIME BARS

- ***Arab Lawyers Network Co Ltd v. Thomson Reuters (Professional) UK Ltd***
[2021] EWHC 1728 (Comm)
- ***Tonzip Maritime Ltd v. 2Rivers Pte Ltd***
[2025] EWHC 2036 (Comm) Andrew Hochhauser KC as a deputy High Court Judge

GENERAL



- Pick your battles: Contract construction principles are well-established.
- Be clear: court's approach, parties do not forego valuable rights without it being made clear that was their intention.

TRIGGER EVENT (1): RTI LTD V. MUR SHIPPING BV

Clause 36.3 (a)

“36.3. A Force Majeure Event is an event or state of affairs which meets all of the following criteria:

(a) It is outside the immediate control of the Party giving the Force Majeure Notice;”

TRIGGER EVENT (2): RTI LTD V. MUR SHIPPING BV

Clause 36.3 (b)

“It prevents or delays the loading of the cargo at the loading port and/or the discharge of the cargo at the discharging port;”

TRIGGER EVENT (3): RTI LTD V. MUR SHIPPING BV

Clause 36 (c) *“It is caused by one or more of acts of God, extreme weather conditions, war, lockout, strikes or other labour disturbances, explosions, fire, invasion, insurrection, blockade, embargo, riot, flood, earthquake, including all accidents to piers, shiploaders, and/or mills, factories, barges, or machinery, railway and canal stoppage by ice or frost, any rules or regulations of governments or any interference or acts or directions of governments, the restraint of princes, restrictions on monetary transfers and exchanges:*

TRIGGER EVENT (4): RTI LTD V. MUR SHIPPING BV

Clause 36.3 (d)

“36.3. A Force Majeure Event is an event or state of affairs which meets all of the following criteria:

(d) It cannot be overcome by reasonable endeavors from the Party affected.”

TRIGGER



- Does the contract fit the real-world risks the business faces?
- Does everyone understand the trigger?

NOTICES (1)

- Time period
- Form
- Content
- Delivery

NOTICES (2): RTI LTD V. MUR SHIPPING BV

*“36.4. A Party wishing to claim force majeure in respect of a Force Majeure Event must give the other Party a Force Majeure Notice **within 48 hours (Saturdays, Sundays and holidays excepted) of becoming aware of the Force Majeure Event. ...”***

NOTICES (2): RTI LTD V. MUR SHIPPING BV

“36.4. A Party wishing to claim force majeure in respect of a Force Majeure Event must give the other Party a Force Majeure Notice ... Such Force Majeure Notice shall be a notice in writing which:

(a) sets out or attaches details of the Force Majeure Event, and”

NOTICES (3): RTI LTD V. MUR SHIPPING BV

Clause 36.4. (b)

“states that the Party giving the Force Majeure Notice wishes to claim force majeure in respect of such Force Majeure Event.”

NOTICES (4): RTI LTD V. MUR SHIPPING BV

Clause 36.4 (c)

“ give [sic] reasonable estimated duration of the Force Majeure Event to the extend [sic] it is reasonably possible to do so at the time of giving the Force Majeure Notice.”

NOTICES (6): FIDIC DEFINITION

- Clause 1.1.56

“written communication identified as a Notice and issued in accordance with Sub-Clause 1.3”

- Clause 1.2

““Written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.”

NOTICES (7): FIDIC FORM AND DELIVERY

- Sub-Clause 1.3
- In writing
- Signed paper-original and/or electronic original
- Identified as a Notice
- Delivered or sent or transmitted in accordance with contract requirements to specified address

NOTICES (8): FIDIC CASE LAW

Obrascon Huarte Lain SA v. Her Majesty's Attorney General for Gibraltar [2014] EWHC 1028 (TCC) per Akenhead J at paragraph 313

“[i]t must be recognisable as a “claim””

NOTICES (9): FIDIC CASE LAW

Panther Real Estate Development LLC v Modern Executive Systems Contracting LLC [2022] DIFC CA 016 at [39].

“... notice that a claim ... will or may be made and to identify the event or circumstances giving rise to the claim. It can be short and to the point. ... It gives notice to the Employer (through the Engineer) that there will be or may be a claim, with a reference to the relevant circumstances so that it can be investigated.”

EXAMPLE 1 : OBRASCON

- 14 July 2010 letter to the Engineer. Related to rock encountered in May at one end of the site and talked about all rock to be encountered:
- *"In our opinion the excavation of all rock will entitle us to an extension of time..."*
- Valid notice? Yes or No?

EXAMPLE 2 : OBRASCON

December 2010 progress reports stated:

"[t]he adverse weather condition (rain) have [sic] affected the works".

Valid notice? Yes or No?

NOTICES



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Check and apply

- Time period
- Form
- Content
- Delivery

BARRISTERS . ARBITRATORS . MEDIATORS

LONDON . MANCHESTER . SINGAPORE . KUALA LUMPUR

 Essex
CHAMBERS

DOCTRINAL ROUTES TO AVOID?

- Many in principle – fact dependent
- Common law – inconsistent conduct
 - Estoppel
 - Waiver
- Civil law
 - Good faith?
 - Undue exercise of rights?

LAW



Choice of law is important
when considering time bars
– make sure you have
appropriate advice

QUESTIONS?

