

Neutral citation: [2016] CAT 16

Case No: 1244/5/7/15

IN THE COMPETITION
APPEAL TRIBUNAL

Victoria House
Bloomsbury Place
London WC1A 2EB
22 September 2016

Before:

THE HON. MR JUSTICE ROTH
(President)
THE HON. LORD DOHERTY
MARGOT DALY

Sitting as a Tribunal in England and Wales

B E T W E E N:

PEUGEOT CITROEN AUTOMOBILES UK LTD AND OTHERS

Claimants

-and-

(1) PILKINGTON GROUP LIMITED
(2) PILKINGTON AUTOMOTIVE LIMITED

Defendants

-and-

ASAHI GLASS CO., LTD. AND OTHERS

Rule 39 Defendants

RULING: PERMISSION TO APPEAL

1. The Tribunal handed down judgment on a preliminary issue in this action (“Pilkington”) along with an application raising the same issue in another action (“MasterCard”) on 27 July 2016 (“the Judgment”). The 1st to 8th Claimants in Pilkington have applied for permission to appeal the determination of the preliminary issue to the Court of Appeal (“the Application”). The 9th Claimant has withdrawn its claim by consent, and no parallel application is made by the Claimants in MasterCard.
2. We have read the grounds of the Application along with the brief responses submitted by the Defendants and, separately, the Rule 39 Defendants, both dated 5 September 2016.
3. We do not consider that any of the grounds set out in para. 3 (a) – (j) of the Application has a real prospect of success. As regards the grounds at para. 3 (a) – (d) and (f) – (i), they essentially rehearse arguments canvassed in the hearing which were considered and rejected for reasons set out in the Judgment.
4. As regards the ground at para. 3 (e) of the Application, the judgment of the Supreme Court in *Cox v Ergo Versicherung AG* was referred to by us as authority for the general considerations to be applied in determining whether any provision in a statute should have implied extra-territorial effect. As we made clear (particularly in the final sentence of paragraph 63) we were not persuaded that limitation rules applicable by reason of the governing law were a matter which the legislation was intended to address; and we are not satisfied that the argument to the contrary has a real prospect of success.
5. As regards the ground set out in para. 3 (j) of the Application, contrary to what is there suggested, the Tribunal expressly recognised that the Rome II Regulation has no application in Pilkington: see at [69]. The Rome II Regulation was referred to only by way of additional support (see at [67]) in showing that the conclusion which we had reached was in accordance with the general approach of the current conflict of law rules governing all EU Member States.
6. In ground 4 of the Application, it is stated that: “[t]his case raises an important issue about the scope of the Tribunal’s powers to decide foreign law cases....” That is not correct. As the observations of the Defendants point out, the question

whether the Tribunal has power to decide foreign law cases was not at issue in the Judgment. The Judgment addressed the distinct question whether in a case governed by foreign law, the Tribunal should apply the foreign law limitation period. While we recognise in the Judgment that the latter question is of considerable significance (see at [2]), we do not regard that in itself as a compelling reason why permission to appeal should be granted in this case because we do not consider that the appeal has a real prospect of success.

7. Accordingly, permission to appeal is refused.

The Hon. Mr Justice Roth

The Hon. Lord Doherty

Margot Daly

Charles Dhanowa OBE, QC (Hon)
Registrar

Date: 22 September 2016