

SHIPPING & INTERNATIONAL TRADE

UK Supreme Court Rejects Debt Claim – No Principle of Deemed Fulfilment Under English Law

Introduction

Can a seller claim against a buyer in debt if the buyer refuses to take the requisite steps to pay the deposit and complete the transaction? This question was addressed by the UK Supreme Court ("UKSC") in the recent decision of *King Crude Carriers SA v Ridgebury November LLC* [2025] UKSC 39.

Brief Facts

Under three Memoranda of Agreement ("MOAs") for the sale and purchase of three vessels on Norwegian Saleform 2012 terms, the buyers were to pay a 10% deposit upon signing of the MOAs and the opening of deposit accounts. However, the buyers failed to provide the documents needed to open those accounts, and the deposit was thus not lodged. The sellers terminated the MOAs and claimed the deposits as a debt rather than damages, as the vessels had risen in value and no loss appeared to have been suffered.

Key Issues

There were three main issues before the UKSC in considering whether the sellers could claim the 10% deposit as a debt despite the non-fulfilment of the condition precedent for the lodgement of the deposit:

1. Whether the buyers' prevention of the condition precedent engaged any principle of "deemed fulfilment" under English law, in that the pre-conditions to payment should be deemed fulfilled because the buyers' own breach prevented their fulfilment;
2. Whether the "deemed fulfilment" principle could alternatively be sustained through contractual interpretation or an implied term; and
3. Whether, on the proper construction of the MOAs, the condition precedent concerned only the timing of payment or the existence of the debt itself.

Decision of the Court

On Issue 1, the UKSC considered the existence of the alleged principle of "deemed fulfilment" under English law, which originated from the House of Lords' decision in *Mackay v Dick* (1881) 6 App Cas 251. The sellers contended that the principle provides that, where a party has an obligation to make a payment when a pre-condition is fulfilled, and has an obligation to fulfil the pre-condition but fails in breach of contract to do so, the pre-condition is deemed to be fulfilled so that the other party can claim the payment as a debt.

Upon analysis of the case law, the UKSC ruled that there was no authority for the principle of "deemed fulfilment". In any event, the law already addressed the situation through damages. Further, recognising the principle could have unacceptable proprietary consequences, including the passing of title without payment. The better approach was to construe the contract according to its terms and hold the parties to their bargain and, as the MOAs made the opening of the deposit accounts a condition precedent, no debt ever accrued.

On Issue 2, the UKSC rejected the sellers' submissions, on grounds of contractual interpretation or implied terms, that the condition precedent need not be fulfilled upon the buyers' default. The UKSC held that the sellers could not recast their debt claim as one of contractual construction or implied terms.

1. On the issue of contractual interpretation, the maxim that "a party cannot take advantage of its own wrong" did not apply to justify treating the deposit as due despite the non-fulfilment of the condition precedent.
2. On the issue of implied terms, the implied terms advanced by the sellers would impermissibly rewrite the bargain or render the relevant provision unworkable.

On issue 3, the UKSC accepted that a contract could potentially distinguish between the accrual of a debt and the time for its payment. But no such distinction arose here as, on the proper construction of the MOAs, the opening of the deposit accounts was a condition precedent to the buyers' liability to pay the deposits, so no debt accrued at all.

Practical Takeaways

No doctrine of deemed fulfilment: Under English law, it has been clarified that a party cannot recover a contractual sum as a debt where a condition precedent remains unsatisfied, even if the counterparty caused that result. The proper remedy lies in damages.

Draft payment machinery with care: If payment is intended to arise irrespective of the fulfilment of a condition precedent, the contract must say so expressly.

Damages remain the orthodox remedy: Where a breach prevents satisfaction of a condition precedent, the court will ordinarily address the consequence through damages rather than by converting the claim into one in debt.

Risk allocation must be deliberate: Parties should expressly address the consequences of non-fulfilment of conditions, particularly where market movements may leave the innocent party with little or no recoverable loss.

The contractual terms are paramount: The court will seek to give effect to the parties' bargain as recorded, and will be slow to invoke broad notions of fairness to depart from the contractual scheme.

Conclusion

The decision is a clear reaffirmation of orthodoxy. English law does not permit an unsatisfied condition precedent to be treated as fulfilled merely because the other party caused its non-fulfilment. If the condition is not met, no debt accrues; the remedy, if any, lies in damages. The case therefore underscores the primacy of contractual wording and the need to draft payment provisions with precision, especially where parties intend payment obligations to arise notwithstanding the non-fulfilment of a condition precedent.

If you have any queries on the above, please feel free to contact our team members set out on this page. For regional Shipping & International Trade matters, please see Rajah & Tann Asia's [Regional Shipping Practice](#) for more information.

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