Rainy Sky SA and others v Kookmin Bank [2011] UKSC 50 - The case deals with the construction of conflicting provisions in a contract as a whole

Facts

Rainy Sky was one of five ship-owning firms that ordered vessels from Jinse Shipbuilding Co, a South Korean shipbuilder, at a cost of US$33,300,000 per ship. The payment was to be made in five equal instalments. The contract between Rainy Sky and Jinse permitted Rainy Sky to rescind the contract if various events occurred (such as late delivery or inadequate performance of the vessel, or loss of the vessel before delivery). It also obliged Jinse to refund the payments if it became insolvent, although, in this case, the contract would not automatically be rescinded. Jinse were required to provide the buyers with a performance bond, guaranteeing the repayment of the buyer's money. Jinse obtained such a bond from Kookmin Bank - however, the terms of the bond did not match exactly the terms of the contract, and the central issue in the court case was the interpretation of the bond.

The bond stated (inter alia):

"[2] Pursuant to the terms of the Contract, you [Rainy Sky] are entitled, upon your rejection of the Vessel in accordance with the terms of the Contract, your termination, cancellation or rescission of the Contract or upon a Total Loss of the Vessel, to repayment of the pre-delivery instalments..."

"[3] ...we hereby ... undertake to pay to you ... all such sums due to you under the Contract..."

Rainy Sky had made two of the required payments when Jinse encountered financial difficulties and entered into an insolvency process. This triggered the requirement for it to repay the money, and, as it could not do this, Rainy Sky called on Kookmin Bank to honour the guarantee. Kookmin, however, claimed that it was under no obligation to make the payment, as the bond only covered "rejection of the vessel" and "termination, cancellation or rescission of the contract", not the insolvency of Jinse.

Lord Clarke delivered the judgement. Citing the case of Co-operative Wholesale Society Ltd v National Westminster Bank plc [1995] 1 EGLR 97, he accepted the principle that "where the parties have used unambiguous language, the court must apply it", no matter how commercially unreasonable the result. However, in cases of ambiguity, the court should choose the interpretation that is "most consistent with business common sense" - there is no obligation on the party contesting the interpretation to prove that it is so extreme that the parties could not have intended it in any circumstances, as Patten LJ's test would imply.