



## ERGO

*Analysing developments impacting business*

### HOTELS CANNOT EXCLUDE VALET PARKING LIABILITY

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#### 1. Background

A recent landmark decision of the Supreme Court reinforces the duty of care and liability of a Hotel for property entrusted to it by guests, customers and visitors.

On 14 November 2019, the Supreme Court passed its decision in *Taj Mahal Hotel v United India Insurance Company* (Civil Appeal No 8611 of 2019) holding, *inter alia*, that a Hotel, has a duty of care and cannot exclude its legal liability for breach of that duty to persons who entrust vehicles to the Hotel for parking by their valets. The Supreme Court confirmed earlier decisions stating that upscale hotels have a higher standard of care than others.

#### 2. Facts of Case

On the night of 1 August 1998, the Complainant No 2 (Hotel Patron) visited the Taj Mahal Hotel (Hotel) at 11 pm.

The Hotel Patron handed over his car to the Hotel for the purposes of valet parking. The valet handed over a parking tag which contained a provision stating that:

- parking is at the owner's risk and may be inside or outside the Hotel premises; and
- the Hotel will not be liable for loss, theft or damage to the car.

When the Hotel Patron returned at 1 am to retrieve his car, the Hotel informed him that another guest had driven off with his car. On making further inquiries, it emerged that three young boys had entered the Hotel premises in a separate car which was also given to the Hotel valet for parking. When they were leaving, the boys asked the valet to bring their car around. While the valet was preoccupied, one of the boys took the keys to the Hotel Patron's car from the valet desk and drove off with the Hotel Patron's car. Though the Hotel security guard tried to stop the thief, his efforts were unsuccessful and the thief sped off in the stolen car.

The Hotel Patron was fully insured and received the full value of the car from the insurance company. The insurance company then filed a consumer complaint against

the Hotel, as a subrogee, before the State Consumer Disputes Redressal Commission (State Commission).

### 3. Initial Proceedings & First Appeal

At the initial stage, a defence was taken that an insurance company does not qualify as a 'consumer'. However, that argument was not accepted. The State Commission went on to hold that the laws of bailment applied and directed the Hotel to pay the value of the car plus interest and litigation costs to the insurance company.

On appeal to the National Consumer Disputes Redressal Commission (National Commission), the National Commission applied the principle of '*infra hospitium*' (Latin for 'within the hotel') and observed that the common law had historically imposed strict liability on a hotel for the loss of a guest's property if the guest and the property were within the hotel premises. The National Commission also applied the principle of bailment and held that liability could not be precluded by a printed notice on the parking tag. Consequently, the National Commission dismissed the appeal.

The Order of the National Commission was challenged by way of a special leave petition before the Supreme Court.

### 4. Supreme Court Appeal

#### 4.1 Key Issues

After hearing arguments advanced by both parties, the Supreme Court formulated the following key issues in the case:

- Locus Standi - Whether the insurer has locus standi to file a consumer complaint as a subrogee?
- Hotel Liability - Whether the Hotel can be liable for theft of the car taken from valet parking, under the laws of bailment or otherwise?
- Hotel's Standard of Care- If the second question is answered in the affirmative, what is the degree of care required to be taken by the Hotel?
- Hotel Liability Exclusion - Whether the Hotel can be absolved of liability by contract?

#### 4.2 Locus Standi

Relying on the Constitution Bench judgment of the Supreme Court in the case of *Economic Transport Organisation v Charan Spinning Mills Pvt Ltd* ((2010) 4 SCC 114), the Supreme Court held that the insurer did have locus standi in the matter.

#### 4.3 Hotel's Liability

The Supreme Court discussed, at some length, the origin of the strict liability of an innkeeper or hotel at common law and precedent under which the rule has been applied in foreign jurisdictions. The Court observed that the principle of *infra hospitium* had been applied for the first time in an Indian court in the impugned order of the National Commission. Finally, keeping in mind changes in society since many of the original strict liability cases were decided and the socio-economic conditions in India, the Supreme Court observed that applying the common law rule of strict liability would be

unnecessarily burdensome on the hotel industry in India but did not absolve hotels from a duty of care.

The Court held that the laws of bailment would apply in cases where a car has been handed over by a guest to a Hotel valet, as was the case here. The Court observed that in case of free parking services offered by 5-star hotels, such services could be said to be paid for through the consideration given for Hotel meals, drinks or other services consumed in the Hotel. In such cases, the Court considered that there was an implied consideration for the bailment contract.

#### **4.4 Hotel's Standard of Care**

The Court observed that the general rule under bailment law is that in case goods are lost or damaged in the possession of a bailee, the bailee will be liable and the burden of proof is on the bailee to show that he had exercised reasonable care in respect of the bailed goods.

The Court observed that the Hotel had not taken steps to ensure that the valet car keys were kept out of the reach of outsiders or that cars were parked in a safe location or that there were adequate systems to verify the car owner of a valet parked car. In fact, the Hotel failed to advance any arguments to support that it was not negligent in its duties towards the Hotel Patron. Consequently, the Court held that the theft of the Hotel Patron's car was as result of the Hotel's negligence.

#### **4.5 Hotel Liability Exclusion**

The Supreme Court referred to several cases which suggested that a bailee could limit its liability.

However, ultimately the Supreme Court decided that it was not possible to exclude or limit liability under Indian statute law. The Court relied on provisions of sections 151 and 152 of the Contract Act, 1872 (Contract Act) which specifically set out the degree of care required from a bailee in the absence of a contrary special contractual stipulation. Pertinently, the Court held that the words 'in the absence of a special contract' used in Section 152 of the Contract Act require that the degree of care which a bailee must exercise can be contracted to be higher but not lower than that provided for under the Contract Act.

The Supreme Court held that:

- The Hotel could not contract out of liability for its own negligence or that of its servants in respect of a vehicle entrusted to its care in any circumstance.
- There remains a prima facie burden of proof on the hotel to explain that any loss or damage caused to the vehicles parked was not on account of the Hotel's negligence or want of care per Sections 151 and 152 of the Contract Act.
- It is only after that burden of proof is discharged, that an exemption clause (limiting liability for third party acts outside the control of the Hotel) can be effective. The burden of proving that such loss or damage is covered by the exemption clause will also be on the Hotel.
- Liability for loss or damage by acts of god and third parties can be properly excluded by an exemption clause.

## 5. Conclusion

The words of the Supreme Court at paragraph 20.2 in the judgment provide some, but not all, indicia of what is required for a Hotel to discharge its duty of care in relation to vehicles which are valet parked by the Hotel:

*"This would mean that it is not sufficient for the hotel to merely appoint an attendant or security guard who takes the responsibility of parking the vehicle and keeping the car keys in his custody until the vehicle owner is inside the hotel premises. The hotel must take additional steps to guard against situations which may result in wrongful loss or damage to the car. This includes, for example, ensuring that the car keys are kept out of reach of outsiders, that the valet parks the car in a safe location, that parking spaces which are in the vicinity of the hotel are well-guarded that parking spaces inside the hotel (if any) are reasonably well-maintained and CCTV cameras are installed there for detecting any suspicious activity, that the car is handed over only to those who present the parking slip and so on. Needless to say this is only an illustrative, and not an exhaustive list."*

Hotel owners and operators should carefully re-evaluate whether the systems, processes and procedures which they have in place are adequate in order to discharge the Hotel's duty of care when the Hotel accepts cars for valet parking.

- Sudip Mullick (Partner) & Sneha Oak Joshi (Senior Associate)

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

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### Mumbai

One Indiabulls Centre, 13<sup>th</sup> Floor  
Tower 1 841, Senapati Bapat Marg  
Mumbai 400 013, India

T: +91 22 6636 5000  
E: [mumbai@khaitanco.com](mailto:mumbai@khaitanco.com)

### New Delhi

Ashoka Estate, 12th Floor  
24 Barakhamba Road  
New Delhi 110 001, India

T: +91 11 4151 5454  
E: [delhi@khaitanco.com](mailto:delhi@khaitanco.com)

### Bengaluru

Simal, 2nd Floor  
7/1, Ulsoor Road  
Bengaluru 560 042, India

T: +91 80 4339 7000  
E: [bengaluru@khaitanco.com](mailto:bengaluru@khaitanco.com)

### Kolkata

Emerald House  
1 B Old Post Office Street  
Kolkata 700 001, India

T: +91 33 2248 7000  
E: [kolkata@khaitanco.com](mailto:kolkata@khaitanco.com)