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To: Transport Industry Operators

Misdelivery against B/L w/o endorsement

On 1/12/2009, the Hong Kong High Court issued a Judgment (HCCL8/2009) and held a forwarder liable for US\$130,892.57 for cargo misdelivery against Bills of Lading without endorsement.

The seller as owner and shipper of goods sought summary judgment against the forwarder for misdelivery of the goods.

The seller sold the goods to two buyers in the UK. The buyers were related companies.

The seller delivered the goods to the forwarder in Hong Kong for carriage by sea (in respect of some of the goods) and air (in respect of the rest) to England. The seller received 4 Bills of Lading and 4 Air Waybills from the forwarder for the goods. The Bills of Lading were all consigned to HSBC or its order. The Air Waybills were all consigned to HSBC. The Bills of Lading and Air Waybills named the buyers as Notify Parties.

The buyers still owed the seller a balance of US\$130,892.57 for the goods.

The forwarder delivered the goods against presentation by the buyers of original copies of the 4 Bills of Lading. But none of the 4 Bills of Lading presented had been endorsed to the buyers or anyone else by HSBC. The forwarder released the goods to parties who were not identified as consignees or endorsees on the faces of the 4 Bills of Lading.

The forwarder issued 4 Bills of Ladings (each comprising a set of 3 original copies) when the seller consigned the goods for carriage. The seller sent an original copy of each of the 4 Bills of Lading to the buyers. According to the seller, this was done "in exchange for the Inspection Certificates for the goods". However, upon receipt of those copies, the buyers used them to claim the underlying goods from the forwarder's UK agent, even though the buyers had not fully paid for the goods.

The forwarder said that it had a valid defence to the seller's claim. It argued that there was no misdelivery of the goods. The forwarder said that it was entitled to release the goods upon presentation by the buyers of original copies of the 4 Bills of Lading.

The Judge was unable to agree with the forwarder.

In *Carewins Development (China) Ltd. v. Bright Fortune Shipping Ltd.* [2009] 3 HKLRD 409, the Court of Final Appeal (CFA) (at para. 21) echoed Lord Denning's famous dictum in *Sze Hai Tong Bank Ltd. v. Rambler Cycle Co. Ltd.* [1959] AC 576 (at 586). The CFA stressed that, under a bill of lading, "[t]he contract is to deliver, on production of the bill of lading, to the person entitled under the bill of lading". The presentation of a bill of lading may not by itself justify release of goods to a stranger. Delivery can only be made to such party if he or she is the person entitled to receive the goods in accordance with the terms of the bill of lading.

The 4 Bills of Lading required the goods to be released to HSBC or its order. The 4 Bills of Lading not having been generally or specially endorsed by HSBC, the buyers were not entitled to the delivery of the goods. The forwarder accordingly had no authority to release the goods to the buyers.

As for the goods covered by the Air Waybills, the forwarder raised no defence. The forwarder released those goods to the buyers without presentation of any document. The forwarder admitted the claim in relation to these goods.

It followed that there was judgment in the seller's favour against the forwarder for the outstanding purchase price of the goods (US\$130,892.57). Interest ran on that amount at 1% over US\$ prime from 20/4/2009 (the date of Writ) to the Judgement date. Thereafter, interest would accrue at the judgment rate until payment.

Please feel free to contact us if you have any questions or you would like to have a copy of the Judgment.

Simon Chan
Director
E-mail: simonchan@smicsl.com

Richard Chan
Director
E-mail: richardchan@smicsl.com

10/F., United Centre, Admiralty, Hong Kong. Tel: 2299 5566 Fax: 2866 7096

E-mail: gm@smicsl.com Website: www.sun-mobility.com

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As 2009 goes into the fourth quarter, there seems to be economic improvement worldwide in the wake of unprecedented size of injections by worldwide governments.

As we predicted in the beginning of the year, we see rising number of E&O, uncollected cargo and completion of carriage claims. The global credit crunch has created chain effects leading to, forced or otherwise, found or unfounded, breach of contracts and obligations along the logistics chain. Our claims team are on full gear recently in dealing with those claims.

If you need a cost effective professional service to defend claims against you, SMIC is just a phone call away.