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To: Transport Industry Operators

Ref : Chans advice/17

Document of title

Bill of Lading ("B/L") usually has three functions. It is a receipt of goods by carrier, the best evidence of contract of carriage and sometimes a document of title to goods. It is the last function which is often not easy to understand.

In his Judgment dated 3/11/1999 holding the Carrier's agent not liable to the Shipper in a case concerning release of 6 containers of Chinese white garlic without production of the original B/L, Deputy Judge Li in the High Court of Hong Kong SAR addressed the question of B/L as a document of title as follows:

- document of title to goods does not mean document of ownership of goods;
- a document of title to goods symbolises or represents an obligation of carrier that the carrier promises to deliver the goods to the holder of the document (the B/L) and to no-one else;
- possession of the B/L will provide sufficient control over the goods and the holder of the B/L will obtain constructive possession of the goods;
- possession of the B/L will be treated for many purposes as equivalent to possession of the goods;
- constructive possession of the goods can be transferred from one party to another by a simple transfer of the B/L which will give constructive delivery of the goods;
- a B/L can be a document of title only if it is transferable. Its purpose after all is to transfer the right to constructive delivery of the goods;
- a B/L made out to e.g. "Order" "holder", "bearer" or "or order or assigns" is transferable or negotiable;
- B/L is transferred by delivery with any necessary indorsement;
- a non-transferable or non-negotiable B/L (i.e. made out for delivery to a specific named consignee) is not a document of title.

Because the holder of a negotiable B/L has constructive possession of the goods, the carrier should fulfil its obligation by delivering the goods only to the B/L holder. Otherwise, the carrier will be liable to the B/L holder for misdelivery.

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

Simon Chan and Richard Chan

The legal web is often either too complicated or too time-consuming for one to understand. This is particular so when handling transport claims. The ability to understand the subtle differences among specific terms would have bearing on the success or failure of a claim. For advice, please contact Simon Chan or Richard Chan.