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To: Transport Industry Operators

Ref : Chans advice/18

## Forged B/L

If the goods are delivered upon production of a forged bill of lading (“B/L”), who is going to bear the loss? According to the Judgment dated 21/12/1999 given by Court of Appeal in U.K., the shipping company had to be liable to compensate the cargo interests’ losses.

This was a case concerning shipments from China and Hong Kong to Cotonou and Abidjan in West Africa under seven Bs/L in 1996 and 1997. After the goods arrived at the ports of discharge, persons ostensibly acting on behalf of the notify party presented to the shipping company’s agent what purported to be genuine but were in fact forged Bs/L. Upon such presentation, the goods were released. The shipping company and its agents were thereby deceived.

The Court held that it was the essence of a B/L contract that the shipping company was bound to deliver the goods against production of an original B/L providing it had no notice of any other claim or better title to the goods. Moreover, as between the shipping company and the true cargo owner, it was the shipping company which controlled the form, signature and issue of its Bs/L. If one of the two innocent parties had to suffer for the fraud of the third party, it was better that the loss fell on the shipping company rather than on the true cargo owner. The shipping company’s responsibility was to look to the integrity of its Bs/L and to care for the cargo in its possession and to deliver the cargo aright.

A forged B/L is in the eyes of the law a nullity. It is simply a piece of paper with writing on it, which has no effect whatever. That being so delivery of the goods was not in exchange for the original B/L but for a worthless piece of paper. The Court regarded such as misdelivery. The shipping company tried to rely on one B/L Clause stipulating that “the Carrier shall have no liability whatsoever for any loss or damage to the goods while in its actual or constructive possession before loading or after discharge...”. However, the Court held that this B/L Clause dealt with loss or damage caused to the goods but not misdelivery of the goods whether without any B/L or against a forged B/L. The Court held that delivery without negligence against forged B/L as a result of deception practiced on the shipping company afforded no defence against a claim by the holder of the Bs/L either on the contract or in conversion.

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

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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 defending a claim. For advice, please contact Simon Chan or Richard Chan.