

To: Transport Industry Operators

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Ref : Chans advice/33

General Lien

Can a stevedore exercise a lien on the goods carried by a carrier for charges owed to the stevedore by the carrier? Judge Moore-Bick J of English High Court said yes in his Judgment dated 25/6/2003.

The claimants are Swedish companies which produce sawn timber. Between June and December 2001 the claimants shipped various parcels of timber from Sweden to Chatham on three vessels, all of which were operated by a shipping company which ran a liner service between ports in Sweden and the U.K. The goods were all shipped under the shipping company's standard form of bill of lading. The defendants carry on business as stevedores and wharfingers at Chatham and were employed by the shipping company to handle goods carried on board its vessels.

On 10/1/2002, the shipping company went into liquidation owing the defendants £118,732.61. The defendants immediately placed a lien on all goods in their possession that had been carried in the shipping company's vessels in an attempt to obtain payment of the amount remaining due to them. That included the various parcels of timber shipped by the claimants. The claimants sued the defendants seeking delivery up of the goods and damages for wrongful interference.

The shipping company's conditions of carriage provided "The Carrier shall be entitled to sub-contract on any terms the whole or any part of the carriage, loading, unloading, storing, warehousing, handling and any or all duties whatsoever undertaken by the Carrier in relation to the Goods. "

The defendants' contract terms with the shipping company provided "All goods the subject of the operations will be subject to a lien for all monies due to the Company whether in respect of storage expenses incurred in connection with such goods or charges or otherwise and subject also to a general lien for all monies due to the Company from the Customer upon any account whatsoever....".

The defendants were sub-bailees of the goods from the shipping company (the bailee) and were not in direct contractual relations with the claimants (the bailors). The question whether a sub-bailee can rely on the terms of the sub-bailment against the bailor was considered by the Privy Council in *The Pioneer Container* [1994] 2 A.C. 324. The Privy Council held that if the bailee sub-bails the goods with the authority of the owner to a person who voluntarily accepts delivery of them knowing that they belong to someone other than the bailee, a relationship of bailment arises between the owner and the sub-bailee. To the extent that the terms of the sub-bailment are consented to by the owner, it can properly be said that the owner has authorised the bailee so to regulate the duties of the sub-bailee in respect of the goods, not only towards the bailee but also towards the owner.

The critical question in the present case, therefore, is whether the claimants consented to the terms on which the shipping company sub-bailed the goods to the defendants.

The defendants submitted that since the shipping company's standard conditions allowed it to sub-contract the performance of any of its duties under the contract of carriage on any terms, the claimants had consented to the sub-bailment of the goods to the defendants on terms which included the general lien clause.

The claimants submitted, however, that the provisions allowing the defendants to exercise a general lien for their charges on all goods delivered to them by the shipping company was so unreasonable or so onerous in its effect that the claimants could not be taken to have consented to it. The claimants said that they were unfamiliar with the concept of a general lien and would never have thought that a wharfinger might be able to exercise a lien on their goods for charges owed to him by the carrier in respect of goods belonging to other people.

The Judge do not think that a term entitling a wharfinger to exercise a general lien is so unusual that it could not reasonably be understood to fall within the scope of the shipper's consent. The fact is that it is by no means uncommon for those whose business involves the handling and storage of goods, such as carriers, wharfingers, warehouse keepers and freight forwarders, to include in their terms of business a right to exercise a general lien for their charges on goods delivered into their possession. It cannot possibly be said that a general lien is inherently so unreasonable that a bailor could not be taken to have consented to it. Businessmen contract on such terms every day. However, when the goods are sub-bailed on terms that give the sub-bailee a general lien over the goods of his customer, the fact that his customer is himself a bailee rather than the owner of the goods means that if the clause is effective the sub-bailee obtains a lien over goods owned by one person in respect of debts owed by another. Those debts may have nothing at all to do with the goods over which the lien is exercised.

In the present case, the claimants expressly agreed that the shipping company could sub-contract the performance of the contract on any terms, an expression which is apt to cover any terms of a kind not unusual in the trade concerned. The question is whether the terms is one whose effects are likely to be such that no shipper could reasonably be taken to have consented to them. Since the "Subcontracting" clause was part of the shipping company's standard conditions of carriage it is obvious that, if it did sub-contract any of its obligations, goods belonging to several different shippers would be likely to come into the hands of the same sub-contractor, such as a stevedore or wharfinger. Once it is recognised that many sub-contractors of that kind do business on terms which include a general lien the risk that they may be entitled to exercise a lien on one person's goods to obtain payment of a debt due from another is one that must be accepted as arising in the ordinary course of business. The Judge is unable, therefore, to accept that the inclusion of a general lien in the defendants' terms was so onerous or unreasonable that it cannot be understood as falling within the scope of the claimants' consent.

Insofar as the defendants were entitled to exercise a lien they were entitled to do so in support of their claim for all the charges due to them from the shipping company. It was agreed that after allowing for sums received from other parties the principal sum stands at £70,041.21. Accordingly, the Judge held that the defendants were entitled to such sum paid by the claimants in order to release the goods.

If you have any questions or want to have a copy of the Judgment, please feel free to contact us.

Simon Chan and Richard Chan

Coming from a strong shipping and air transport background, Richard and Simon have ample experience in designing liability and property insurance for forwarders, logistic service providers, shipping companies, feeder operators, air cargo terminals, container terminals, and container lessors in Asia Pacific. Richard and Simon are independent risk management advisors able to offer full array of risk management services, including full-scale professional claims handling, loss prevention advice and prudent sourcing of insurance for your ease of mind. Their blended transport and insurance expertise are unique in the market. They are eager to answer whatever claims handling and insurance needs you may have as a transport operator.