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To: Transport Industry Operators

Cargo claims set off freight charges?

Can freight charges be set off by cargo claims? Judge Godfrey of Hong Kong High Court said no in his Judgment dated 9/6/1989.

It relates to a case that an air freight forwarder sued a shipper for the freight charges of about HK\$350,000. The shipper counterclaimed that the goods were lost or damaged in transit and claimed damages against the forwarder in excess of the freight charges.

The air waybills contained the following provisions: "No claim will be entertained by the forwarder until all transportation charges have been paid. The amount of a claim may not be deducted from the transportation charges." The Judge held that the provisions excluded the shipper's right to deduct the amount of any claim for loss or damage to the goods from the transportation charges.

The common law rule in relation to the carriage of goods by sea is that a claim in respect of cargo cannot be asserted by way of deduction from a claim for freight. That rule has also been applied to contracts of carriage by road. The Judge held that the appropriate rule to apply to a contract of freight by air should be the rule which has been applied to carriage of goods by sea and by road.

Accordingly, the Judge held that in an action for freight (whether over land, sea or air) the rule should be that the shipper should not be allowed to set up a defence or counterclaim in respect of cargo; that the carrier (if it could satisfy the requirement of Order 14) would be entitled to summary judgment; and that the shipper should not be entitled to a stay of execution (which would negate the effect of the rule).

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

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