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To: Transport Industry Operators

**B/L indorsement**

In its Judgment dated 30/10/2002, the Singapore Court of Appeal explained the importance of B/L indorsement.

A cargo of 508 tonnes of crude palm oil was shipped by Shweta on board the vessel Victoria Cob at Belawan, Indonesia for delivery at Kandla, India. Two bills of lading (B/L), dated 13/4/2000, were issued by the shipowner for that shipment. Shweta had sold the cargo to RPH and shipped them on board Victoria Cob. Shweta indorsed the B/Ls in blank and delivered them to RPH who, in turn, had on-sold the cargo to Lanyard. Thereafter, RPH delivered the two B/Ls to Keppel TL for purchase/negotiation, without filling in any name onto the indorsement made in blank by Shweta. On 25/5/2000, Keppel TL filled in the name "the State Bank of Saurashtra in India" (State Bank) onto the blank endorsement made by Shweta and forwarded the two B/Ls to the State Bank to hold the same for collection by Lanyard. However, Lanyard never came forward to pay for the cargo and collect the two B/Ls, which were duly returned by the State Bank to Keppel TL in November, 2000. No indorsement was made by the State Bank on the B/Ls either in blank or specially in favour of Keppel TL. The vessel arrived at Kandla and discharged the cargo to Lanyard, without the production of the B/Ls. Keppel TL obtained the two B/Ls by purchase from RPH. Keppel TL was holding the B/Ls and yet the shipowner delivered the cargo to Lanyard who never presented the B/Ls.

There was in substance only one issue for the Court to decide: Had Keppel TL the rights of suit under the contracts of carriage as evidenced by the two B/Ls.

Under s. 2(1) of the Singapore Bills of Lading Act (B/L Act), which was adopted from the English Carriage of Goods by Sea Act, 1924 (COGSA, 1924), a person who has become the lawful holder of a B/L shall have and "transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract".

Under s. 5(2)(b) of the B/L Act, a person "with possession of the bill as a result of the completion, by delivery of the bill, of any indorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill" and who "has become the holder of the same in good faith", shall be regarded as the lawful holder of the bill. In short, an indorsee who is in possession of the B/L in good faith would be the lawful holder.

Under s. 2(5) of the B/L Act, where rights are transferred by virtue of the operation of subsection (1) in relation to any document, the transfer for which that subsection provides shall extinguish any entitlement to those rights which derives,

- (a) where that document is a bill of lading, from a person's having been an original party to the contract of carriage;
- (b) in the case of any document to which this Act applies, from the previous operation of that subsection in relation to that document,

The effect of s. 2(5) is explained in Carver on Bills of Lading as follows (at par. 5-066):

The situation here to be considered is that in which goods are shipped by A under a bill of lading which he transfers to B who then transfers it to C. If each of these transfers is made in circumstances vesting rights in the transferee, by virtue of section 2(1) of the 1924 Act, then section 2(5) (which extinguishes the

contractual rights of the transferor) operates in relation to the second transfer no less than in relation to the first. In other words, the first transfer extinguishes A's rights under the bill of lading as an original party to the contract of carriage, and the second transfer extinguishes the rights under the contract which had been vested in B by virtue of section 2(1). The latter consequence follows from section 2(5)(b) which extinguishes B's "entitlement to those rights which derives . . . from the previous operation of . . . [section 2(1)] . . . in relation to the bill".

At common law an "order" bill is a document of title and may be transferred by indorsement. The provisions of s. 5(2)(b) of the B/L Act reflect that position. There are two types of indorsements: blank indorsement and special indorsement (also known as "endorsement in full"). According to Scrutton on Charterparties and Bills of Lading (20th ed.) at p. 184:

Indorsement is effected either by the shipper or consignee writing his name on the back of the bill of lading, which is called an "indorsement in blank", or by the writing "Deliver to I, (or order), F", which is called an "indorsement in full".

So long as the goods are deliverable to a name left blank, or to bearer, or the indorsement is in blank, the bill of lading may pass from hand to hand by mere delivery, or may be redelivered without any indorsement to the original holder, so as to affect the property in the goods.

In Benjamin's Sale of Goods (5th ed.) the difference between the two types of indorsements is described as follows (at p. 986):

. . .where the person to whom goods are deliverable under an order bill wishes to transfer the bill to another, the transfer must be effected by indorsement by the transferor and delivery of the bill to the transferee. The indorsement may be to the transferee by name or in blank, in which latter case no further indorsement, but only delivery, is as a matter of law required for subsequent transfers.

In other words, where a B/L has been indorsed in blank, it becomes like a bearer bill and can be transferred simply by delivering the bill to the intended transferee without any further indorsement. But where a B/L has been specially indorsed, the indorsee must, if he wishes to further transfer the B/L, indorse it either specially or in blank. And if this further indorsement is in blank, then the B/L will again function like a bearer B/L. This is the scheme of things under the B/L Act.

In a very recent decision, *East West Corporation v. DKBS 1912 and Another*, [2002] EWHC 83 (Comm), Mr. Justice Thomas of the English Commercial Court held that a valid indorsement, besides the physical possession of the bill, was critical to the claimants obtaining the rights to suit.

Shweta indorsed the B/Ls in blank and the bills eventually came into the hands of Keppel TL. The effect of such an indorsement was that each of the B/Ls had become a bearer bill, transferable with the mere passing of the bill. At that point, Keppel TL had become the holder of the two bills and could have sued on them if the shipowner were unable to deliver the cargo upon the presentation of the B/Ls. If Keppel TL had not inserted the name of the State Bank in forwarding the bills to the latter, and if the bills were later to be returned by the latter to Keppel TL without further ado, Keppel TL would again become the lawful holder of the bills.

However, by inserting the name of the State Bank onto the blank endorsement in each of the two B/Ls, the character of each bill changed from that of a bearer bill to that of a bill which had been transferred specifically to the State Bank. And upon each bill being physically conveyed over to the State Bank, the latter would become the lawful holder thereof and in turn acquire the rights of suit pursuant to s. 5(2)(b). Of course, the State Bank could further transfer the bill but to do so it must indorse the bill over, either to a specific transferee or in blank. In fact, Keppel TL had expected the State Bank to indorse the B/Ls over to Lanyard as and when the latter came forth to pay for the goods and collect the bills. However, Lanyard did not do so. Eventually, the State Bank returned the bills to Keppel TL without making any indorsement. This indorsement was crucial to enable Keppel TL to become the lawful holder again.

The State Bank was clearly authorized to indorse the B/Ls and deliver them over to Lanyard upon the latter paying for the goods. The precise instruction to the State Bank was to "deliver documents against payment". Reading this instruction together with the special indorsement made in favour of the State Bank, it was obvious that the intention was to vest the rights of suit in the State Bank with a view to enabling the latter to transfer the B/L, with the attendant rights of suit, to Lanyard.

If the rights of suit did vest in the State Bank for the purpose of indorsing the B/Ls over to Lanyard or its nominee, then there can be no question of any residual rights of suit remaining with Keppel TL. Any other approach to the matter would do violence to the scheme envisaged under the B/L Act (and COGSA, 1992). A simple indorsement by the State Bank in favour of Keppel TL or in blank would have transferred the rights of suit back to Keppel TL.

The Court does not look behind a B/L to determine who is entitled to delivery. A carrier is bound to make delivery against presentation of the B/L without inquiry as to the way in which the presenter of the B/L had acquired the property in the goods. If a person who transfers a B/L were to retain rights, it would enable him to undermine the security of the new holder and expose the carrier to inconsistent claims. Keppel TL's attempt to rely on its underlying arrangement with the State Bank pursuant to which the B/Ls were specially indorsed over to the State Bank was, therefore, without merit.

Accordingly, there was no basis for Keppel TL to claim that it had acquired any rights of suit in relation to the B/Ls, as the B/Ls were not indorsed specially in its favour or in blank. Physical possession of a B/L does not constitute the holder the lawful holder; there must be a valid indorsement.

The question of rights of suit is now governed by the B/L Act and under this statute an order B/L is transferred by indorsement, coupled with physical delivery of the bill.

It was plain and obvious that the claim could not succeed. It was hopeless and should be struck out. To allow the case to go further for trial would be to compel the shipowner to expend time and money in defending a case which obviously had no merit whatsoever. Accordingly, the Court struck out the action on the ground that it was an obviously unsustainable claim.

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

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