SUN MOBILITY
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To: Transport Industry Operators

Uncollected Cargo & Conversion

The English High Court issued a Judgment on 31/7/2015 dismissing a cargo owner's conversion claim US $565,891.58 against a shipowner in an uncollected cargo case. [(2015) EWHC 2288 (Comm), (2015) 2 C.L.C. 415]

Introduction

This was a claim for the conversion of a cargo of iron ore carried from Bandar Abbas in Iran to Tianjin in China on board the vessel "Bao Yue" in February and March 2012 and a counterclaim for storage charges incurred on the cargo. No bill of lading was presented at the discharge port so the cargo was discharged into storage at Tianjin. The storage charges due as a result eventually exceeded the value of the cargo which had been there ever since. The warehouse company wanted to be paid before it would release the cargo. The bill of lading holder ("the claimant") contended that the shipowner converted the cargo. The claimant accepted that the shipowner was entitled to discharge the cargo into storage, but contended that the shipowner nevertheless converted it because (a) without the claimant's express or implied authority, a lien for storage charges was created in favour of the warehouse company, and (b) statements were made by the warehouse company and the vessel's agent which amounted to denying the claimant access to the cargo regardless of whether it presented the bill of lading. The shipowner denied having converted the cargo and contended that the claimant was responsible for the storage charges.

The facts

The claimant, an Iranian company, was the shipper of the cargo, 35,376.611 metric tons of iron ore. The shipowner was the contractual carrier and issued a bill of lading dated 4 February 2012 to the claimant as the shipper. The bill was issued "to order", with no named consignee or notify party, on the Congenbill 1994 form. It incorporated "all terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf", although no such charterparty was identified on the face of the bill. It was common ground, nevertheless, that this was effective to incorporate the terms of the applicable voyage charter.
The charterparty chain was as follows:

a. The shipowner time-chartered the vessel to Shanghai Hengxin under a time charter dated 18 March 2011.
b. Shanghai Hengxin voyage-chartered the vessel to a company called Ocean Mine by a fixture dated 7 December 2011.
c. Ocean Mine further voyage-chartered the vessel, on back-to-back terms, to Qisheng Resources also by a fixture dated 7 December 2011. Qisheng Resources was part of a group of companies known as the Qisheng Group.

As the two voyage charters were on back-to-back terms, it was unnecessary to consider which of them was incorporated into the bill of lading. They each contained the following clause 12:

> "Congen bill 94 to be used. In case original Bs/L would not be ready upon vessel's arrival at discharge port, Owners allow to discharge cargo upon arrival to custom bonded warehouse area against Charterer's single LOI with Owners P&I Club wording signed by Chrs.

> Release cgo agnst original bill of lading. In the event cargo being kept in the warehouse in lieu of waiting for OBL to arrive at the discharge port, the expense of warehouse and all relevant costs to be for Chrtrs' account. …"

The cargo was sold on FOB terms under an agreement between the claimant as seller and a Chinese company, Teda, another company in the Qisheng Group, as buyer. The bill of lading was not available at the discharge port on the vessel's arrival. Arrangements were therefore made for the discharge of the cargo pursuant to letters of indemnity in standard form given by each charterer in the chartering chain. The letter of indemnity requested the shipowner to discharge (not deliver) the cargo to the agent at Tianjin, Star Ship, who was to deliver/release the cargo against presentation of the original bill of lading. Accordingly Star Ship arranged for discharge of the cargo into a warehouse operated by Tianjin QS Storage & Transportation Co Ltd ("TQST").

The contract between TQST and Star Ship dated 3 March 2012 referred to the parties as "Party A" and "Party B" respectively. It provided that if payment was not made when requested:

> "… Party A is entitled to refuse cargo releasing and to liquidate or otherwise dispose of such goods freight, by which it may offset any overdue charges owe to Party A under this Agreement."

Star Ship concluded this contract with TQST under the shipowner's direction and as its agent, so that the shipowner had a contractual responsibility to TQST for the storage charges payable by Party B.

The claimant's first contact with the master was by an email of 6 March 2012, by which time it must have known that the vessel had already arrived. The email stated:

> "… Please kindly be notified that the buyer have not settled the proceed of this shipment to us as yet and hence the whole set of OB/L are resting with us waiting for buyer to pay us against the exchange of this document. Trust you will take appropriate measures to prevent any inconvenience in future."

The claimant understood perfectly well that if the cargo was discharged into storage, charges would be incurred which would have to be paid by the person who claimed the cargo. The claimant understood also that the warehouse would insist on payment of its charges before the cargo could be removed. The master did not reply to the claimant's email.

Teda's reaction to this situation was to ask once again on 8 March 2012 for the original bill of lading to be sent to it. It added that if the claimant was planning to sell the cargo to someone else, the payments which it had made for the cargo and the freight cost should first be refunded to it. The claimant responded that it was holding the bill of lading against payment of the outstanding US $565,891.58 and that if this was not paid it would have no choice but to sell the cargo to another buyer.

The claimant tried to sell the cargo to another buyer, but without success. The claimant had no further contact with Teda. It never made contact with TQST, either to ask for delivery of the cargo or even to inspect it. The bill of lading remained in its safe. Meanwhile the cargo had remained at TQST. Teda also had not attempted to remove the cargo from storage at TQST, despite the fact that it had paid some US $1.5 million to bring the cargo from Iran to China which the claimant evidently had no intention of refunding.

Nor did the claimant have any further contact with the shipowner or with Star Ship. It did not protest that the cargo should not have been discharged to storage at TQST. It did not inquire about the storage terms. It did not even ask to be told anything about the location of the cargo. It remained silent until 19 January 2013 when, without prior warning, it arrested the vessel in India in support of a claim for misdelivery of the cargo to Teda without production of the bill of lading. The vessel's manager, HTM Shipping, pointed out that the cargo was still at the warehouse and asked the claimant to advise what it wanted to do with it. The claimant did not respond to this request. Security for the claim was provided in order to obtain the release of the vessel and it was agreed that the English court would have jurisdiction over the claim.

On 30 August 2013 the shipowner wrote to the claimant to say that the cargo was still in storage at Tianjin and invited it to take delivery by surrendering the bill of lading to Star Ship. On 2 September 2013 Star

Ship wrote in similar terms, pointing out that outstanding charges in connection with the cargo would need to be resolved. However, the claimant still made no attempt to take delivery of the cargo.

The claim for conversion

The claimant advanced its claim on two bases.

First, the claimant submitted that the shipowner discharged the cargo into storage in circumstances where storage charges would accrue, for which the warehouse owner would have a lien, and that the creation of this lien constituted a conversion of the cargo. The claimant made clear in the course of argument that (a) the shipowner was entitled and authorised to discharge the cargo into storage in circumstances where no bill of lading was available at the discharge port, (b) the bill of lading holder would be liable to reimburse the shipowner for reasonable storage charges in such a case, and (c) it was not suggested that TQST's charges were unreasonable or that any more favourable charges could have been obtained by storing the cargo elsewhere. The claimant's narrow submission was that the shipowner was not entitled without the express or implied authority of the bill of lading holder to arrange for storage of the cargo in a way which gave rise to a lien in favour of the warehouse owner for its charges and that no such authority existed in the case in question.

A second way of putting the case was developed in the claimant's skeleton argument. The case advanced was that TQST and Star Ship, to whom the shipowner had delegated the care of the cargo and for whose conduct it was responsible, denied the claimant access to or possession of the cargo, and that this constituted a conversion by the shipowner. The conduct relied upon as constituting a denial of access consisted of: (a) the statement made by Teda as reported on 12 March 2012 that "if you would sell the B/L, he would be definitely capable to keep the buyer of the B/L from acquiring the cargo", (b) Star Ship's failure to provide information as to the whereabouts of the cargo in the telephone conversation of 18 March 2012 with the claimant, and (c) Teda's statement to the claimant, also on 18 March 2012, that "the cargo is ours and we have already cleared it from customs".

Conversion in general

It was not disputed that the shipowner, as a bailee of the cargo, was under a duty not to convert it.

Lord Nicholls described the basic features of the tort of conversion in Kuwait Airways Corpn v Iraqi Airways Co (Nos 4 and 5) [2002] UKHL 19, [2002] 2 AC 883 , at [38] to [41]:

> "38. … Denial of title is not of itself conversion: see section 11(3) of the Torts (Interference with Goods) Act 1977 . To constitute conversion there must be a concomitant deprivation of use and possession. In support of this submission Mr Donaldson fastened upon a statement in Clerk & Lindsell on Torts , 17th ed (1995), p 636, paragraph 13-12:
>
> > 'conversion is an act of deliberate dealing with a chattel in a manner inconsistent with another's right whereby that other is deprived of the use and possession of it .'
>
> A similar passage appears in Salmond and Heuston on the Law of Torts , 21st ed (1996), pages 97–98. In the present case, it was said, none of the acts of IAC deprived KAC of use or possession of the aircraft. Some of IAC's acts were entirely abstract, such as applying for certificates of airworthiness. Even the physical acts, such as repainting or flying the aircraft, had no impact on KAC's possession.
>
> In my view this line of argument was misconceived. I need not repeat the journey through the textbooks and authorities on which your Lordships were taken. Conversion of goods can occur in so many different circumstances that framing a precise definition of universal application is well nigh impossible. In general, the basic features of the tort are threefold. First, the defendant's conduct was inconsistent with the rights of the owner (or other person entitled to possession). Second, the conduct was deliberate, not accidental. Third, the conduct was so extensive an encroachment on the rights of the owner as to exclude him from use and possession of the goods. The contrast is with lesser acts of interference. If these cause damage they may give rise to claims for trespass or in negligence, but they do not constitute conversion.

> The judicially approved description of the tort in Clerk and Lindsell encapsulates, in different language, these basic ingredients. The flaw in IAC's argument lies in its failure to appreciate what is meant in this context by 'depriving' the owner of possession. This is not to be understood as meaning that the wrongdoer must himself actually take the goods from the possession of the owner. This will often be the case, but not always. It is not so in a case of successive conversions. For the purposes of this tort an owner is equally deprived of possession when he is excluded from possession, or possession is withheld from him by the wrongdoer.
>
> Whether the owner is excluded from possession may sometimes depend upon whether the wrongdoer exercised dominion over the goods. Then the intention with which acts were done may be material. The ferryman who turned the plaintiff's horses off the Birkenhead to Liverpool ferry was guilty of conversion if he intended to exercise dominion over them, but not otherwise: see Fouldes v Willoughby (1841) 8 M & W 540."

The judicially approved description in Clerk & Lindsell to which Lord Nicholls referred, now contained in the 20th Edition at paragraph 17-07, is that "conversion is an act of deliberate dealing with a chattel in a manner inconsistent with another's right whereby that other is deprived of the use and possession of it". Paragraph 17-08 lists the principal ways in which a conversion may take place as follows:

> "It is not possible to categorise exhaustively all modes of conversion for while some acts are necessarily an absolute abrogation of the claimant's rights and deprive him of the whole value of his interest in the goods, there may be others where the courts retain a degree of discretion in deciding whether those acts amount to a sufficient deprivation. Nevertheless the principal ways in which a conversion may take place can be set out under the following headings, dealt with more fully below:
> (a) when property is wrongfully taken or received by someone not entitled to do so;
> (b) when it is wrongfully parted with;
> (c) when it is lost by a bailee in breach of his duty to the bailor;
> (d) when it is wrongfully sold, even without delivery, so as to pass good title to the buyer;
> (e) when it is wrongfully retained;
> (f) when it is wrongfully misused or destroyed; and
> (g) when the defendant, without physically interfering with it, wrongfully denies access to it to the claimant."

Conversion by creation of a lien

The Judge would accept in principle that goods may be converted by a person who creates a lien without the authority of the owner. As long ago as 1791, Buller J said that:

> "If a person take my horse to ride and leave him at an inn that is a conversion; for though I may have the horse on sending for him and paying for the keeping of him, yet it brings a charge on me."

That example is taken from the case of Syeds v Hay (1791) 4 Term Reports 260 , where the owner of goods on board a vessel had directed the master not to ground the goods on the wharf against which the vessel was moored and the master agreed not to do so. Contrary to that promise, however, the captain grounded the goods, delivering them to a wharfinger who was to have a lien over the goods for the wharfage fees. This was held to be a conversion. The master had allowed a lien to be created without the goods owner's authority and contrary to his express agreement not to do so.

The case is discussed in Clerk & Lindsell at paragraph 17-17. The discussion continues:

> "But in cases of long-term hire and hire-purchase, the owner impliedly authorises the hirer to deliver the subject matter to others for purposes, such as repair, which are reasonably incidental to the use contemplated even though they may give rise to a lien."

The Judge did not think this principle was confined to cases of long-term hire and hire-purchase. The Judge would hold that a goods owner who authorised a bailee to deliver goods into storage must be taken to authorise the creation of a lien where that was a reasonable and foreseeable incident of the storage contract which the bailee was authorised to conclude. It is an example of the principle of sub-

bailment on terms, established by cases such as Morris v C.W. Martin & Sons Ltd [1966] 1 QB 716 and The Pioneer Container [1994] 2 AC 324, whereby a head bailor is bound by the terms in a contract between his bailee and a sub-bailee if he has expressly or impliedly consented to those terms.

It has been established for many years that if the bill of lading holder does not claim delivery within a reasonable time, the master may land and warehouse the cargo; that in some circumstances it may be his duty to do so; and that as a correlative right, the shipowner is entitled to charge the cargo owner with expenses properly incurred in so doing: see Scrutton on Charterparties , 21st Edition (2008), Article 153.

Even more recently, in The Lehmann Timber [2013] EWCA Civ 650, [2013] 2 Lloyd's Rep 541 at [95] Sir Bernard Rix said:

> "In Gaudet v. Brown (Cargo ex "Argos") (1873) LR 5 PC 134 the authorities at Le Havre prevented the discharge of a cargo of petroleum. The shipowner found no nearer port where he could discharge the cargo and so took it back again to London. He was held entitled to his freight, backfreight and expenses, because the consignee was under a duty to discharge the cargo and the shipowner was under a duty to take care of the cargo in the circumstances which had arisen and he had acted reasonably. He could not throw the cargo into the sea, but he was not required to retain and preserve the cargo at his own expense. That was not a case where a lien was exercised, but the case illustrates the doctrine that a shipowner is entitled to be indemnified in contract and/or bailment for the reasonable expenses of dealing with a cargo where the consignee is unwilling or, as here, unable to perform his duty of discharging the cargo (at 161, 165)."

In the case in question it was the claimant's responsibility as the shipper to whom the bill of lading was issued, and therefore as a party to the bill of lading contract, to take delivery of the cargo at Tianjin. In breach of the contract it failed to do so, leaving the shipowner with no alternative but to land and store the cargo. That was, what the claimant wanted and expected the shipowner to do. It was not and could not have been suggested that it was unreasonable to agree to a term in the storage contract which conferred a lien on the warehouse company for its charges. The claimant knew that the warehouse company would insist on such payment before the cargo could be removed. That was not merely a matter of his subjective understanding, but of obvious commercial reality. No sensible warehouse company would agree to store a cargo on terms which did not include such a lien, with the consequence that it would be obliged to release the cargo without payment to a bill of lading holder which had already shown itself (by failing to take delivery from the vessel) ready to breach its obligations and would be left with an unsecured claim to recover those charges.

In those circumstances the claim for conversion by reason of the creation of a lien must fail. The claimant did authorise the storage of the cargo. It did so expressly by virtue of clause 12 of the charterparty incorporated into the bill of lading, which permitted the discharge and storage of the cargo, and by its email of 6 March 2012 which was reasonably to have been understood in this way. It did so impliedly as an aspect of the well established general law of bailment applicable to the situation where a bill of lading holder fails to take delivery at the discharge port. In such circumstances the creation of a lien was a reasonable and foreseeable incident of the storage contract which the shipowner was authorised to conclude. In accordance with the principle of sub-bailment on terms the claimant must be taken to have authorised also the creation of that lien.

The claimant submitted that the shipowner's failure to give notice of what it was intending to do made all the difference. In fact, however, it made no difference at all. The shipowner was under no duty to the bill of lading holder to give notice of the vessel's arrival (Houlder v General Steam Navigation Co (1862) 3 F & F 170) but even if it had done so, the claimant would simply have requested that the cargo be discharged into storage, just as it did by its email of 6 March 2012 after this discharge had already taken place. There was never a possibility that the claimant would have taken delivery of the cargo without it first being discharged into storage. Even after it was discharged, the claimant never sought to take delivery by presenting the bill of lading.

The claimant did not submit that commencement of discharge only seven hours and 40 minutes after tender of notice of readiness was unreasonable or premature. The Judge found that it was reasonable. The claimant had ample opportunity to present the bill of lading if it had wished to do so.

Conversion by denial of access

As indicated by the citations from the Kuwait Airways case [2002] UKHL 19, [2002] 2 AC 883 and from Clerk & Lindsell set out above, in some circumstances a denial of access to goods may be such as to constitute the tort of conversion. This will generally depend on whether the conduct of the defendant or those for whom it is responsible amounts to a deliberate "encroachment on the rights of the owner [so] as to exclude him from use and possession of the goods".

In the case in question, however, the matters relied upon by the claimant as constituting such a denial of access fell well short of this, whether considered individually or together.

The first such matter, the statement said to have been made by Teda on 12 March 2012 that "if you would sell the B/L, he would be definitely capable to keep the buyer of the B/L from acquiring the cargo", was reported at second hand through an informal intermediary. There was no evidence from the informal intermediary. Precisely what was said or in what context was unknown. The claimant did not understand this as excluding the claimant from use and possession of the cargo. Instead the claimant continued to discuss a sale of the cargo to a potential new buyer, in the context that there was an existing dispute between the claimant and Teda in which Teda's position so far was that if the cargo was going to be sold to a third party, it would need to be reimbursed for the US $1.5 million which it had expended by way of advance payments and freight. In any event there was no reason to suppose that Teda was speaking on behalf of the warehouse company TQST, or that Teda was saying anything more than insisting that if the claimant did not reimburse it the US $1.5 million, Teda would take steps against the cargo to ensure that it got paid. The shipowner was not responsible for statements made by Teda as distinct from TQST.

The second matter relied upon by the claimant was Star Ship's failure to provide information as to the whereabouts of the cargo in the telephone conversation of 18 March 2012. Again, precisely what was said or in what context was unknown, although it was apparent that the conversation included an assurance that Teda could not obtain the release of the cargo without producing the original bill of lading. Far from amounting to a deliberate encroachment on the rights of the owner, that statement represented an assurance that the rights of the bill of lading holder would be respected. Moreover, within only 11 days of this conversation the claimant knew the location of the cargo.

Finally, the claimant relied on Teda's statement to the claimant on 18 March 2012 that "the cargo is ours and we have already cleared it from customs". It was clear that, this was said in the capacity of Teda, not on behalf of TQST. TQST never had any claim to ownership of the cargo. It never purported to "exercise dominion" over it save for the fact that it wanted, as it was entitled, to be paid its storage charges.

Nevertheless the claimant never did present the bill although the cargo remained at TQST and was not misappropriated by Teda. Once its prospective sale to a new buyer fell through for whatever reason, the claimant had no use for the cargo. It had no other buyer, no use for the cargo itself and nowhere else to keep it. It was not prepared to pay the accumulating storage charges and it was unwilling to refund the advance payments (amounting to over 70% of the FOB price) or freight cost which Teda had incurred.

Moreover the evidence of TQST was that TQST operated as a bonded warehouse under the supervision of the port; that it was and was run independently of Teda, who would not be in a position to give instructions for the removal of the cargo without producing the bill of lading; that Teda had never asked TQST to remove the cargo; and that in order for the cargo to be removed, it would have to be cleared through customs for which presentation of the bill of lading would be necessary.

In these circumstances it was simply not the case that the claimant had been deprived of the use and possession of its cargo. The Judge accepted the evidence of Star Ship that the cargo remained under the control and custody of Star Ship. It was always available to the claimant on presentation of the bill of lading and payment of the charges which had accrued.

Other defences

Accordingly the claimant's claim for damages for conversion must be dismissed. It was therefore unnecessary to consider at any length the shipowner's further defences based on exclusion clauses in the bill of lading and the charterparty.

The bill of lading included a term that:

> "The Carrier shall in no case be responsible for loss of or damage to cargo arisen prior to loading and after discharging."

Clause 2 of the Gencon charterparty provided:

> **"Owners' Responsibility Clause**
> The Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by personal want of due diligence on the part of the Owners or their manager to make the Vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the owners or their Manager.
> And the Owners are not responsible for loss, damage or delay arising from any other cause whatsoever, even from the neglect or default of the Master or crew or some other person employed by the owners on board or ashore for whose acts they would, but for this Clause, be responsible, or from unseaworthiness of the vessel on loading or commencement of the voyage or at any time whatsoever."

The shipowner submitted, relying on the decision of the Privy Council in Chartered Bank of India, Australia & China v British India Steam Navigation Co Ltd [1909] AC 369, that these clauses would have protected the shipowner from liability. If necessary, however, the Judge would have followed the approach of Clarke J in The Ines [1995] CLC 886 and of the Court of Appeal in Moris Exports Ltd v Dampskibsselskabet AF 1912 Aktieselskab [2000] CLC 515 and would have held that much clearer words would have been required to protect the shipowner against liability for conversion by refusing to deliver the cargo against production of the bill of lading.

The Judge also mentioned two further matters. The first was the shipowner's contention that the claimant failed to mitigate its loss by presenting the bill of lading and taking delivery of the cargo. On the facts which the Judge had found, the claimant could have done this, although if it had done so it would have had to pay at least some storage charges and to deal with Teda's claim for reimbursement. On those facts, however, there was no conversion and the question of mitigation did not arise.

The second matter was the quantum of the claim. Usually damages in conversion are assessed by reference to the value of the goods of which a claimant has been deprived, but that was not how the claimant had put its case. Its pleaded claim was said to be for the market value of the cargo, but the figure claimed was US $565,891.58. That was pleaded as being "the market value of the Cargo – as had been agreed between the Claimant and Teda – as at the date of conversion and/or expected delivery". In fact, however, it was no such thing. Rather it was the unpaid part of the FOB price of the cargo (US $332,051.58) plus a claim for a balance of US $233,840 alleged to be owing from Teda under a separate contract. As the claim had failed, it was unnecessary to consider further what the correct quantum ought to be in these circumstances, but even applying the claimant's mistaken approach, it was hard to see how judgment for more than US $332,051.58 could be justified.

In fact, however, the claimant had failed to prove that it had suffered any loss. Assuming that it was deprived of the use and possession of the cargo, what it lost was the CIF market value in China, where it would have had to dispose of the cargo. There was no expert or other evidence to quantify that value. It

was, however, reasonable to infer that in view of the dispute with Teda for which the shipowner was not responsible, the cargo would probably have been seen as a distressed cargo. A potential buyer would therefore have been able to take advantage of the claimant's need to sell the cargo promptly to minimise storage charges. In any event the claimant would have had to pay at least some storage charges, which would have increased the longer it delayed. It would also have had to deal with Teda's claim for reimbursement of the US $1.5 million which it had expended. These factors, it seemed to the Judge, went a long way to explain why the claimant, having been paid all but some US $300,000 of the FOB price by Teda, did nothing to assert its right to possession by presenting the bill of lading. In any event the claimant had not attempted to prove that the price for which it could have sold the cargo to a buyer in China would have exceeded the storage charges and reimbursement to Teda which it would have had to pay out.

The shipowner's counterclaim for storage charges

The claimant accepted that if the claim for conversion failed, the claimant would be liable to reimburse the shipowner for reasonable storage charges paid to TQST subject to three points.

The first point was that in concluding the storage contract with TQST, Star Ship was acting as the agent of Shanghai Hengxin as the time charterer of the vessel and not of the shipowner, so that the latter had no liability to TQST. The Judge did not accept this. Star Ship was appointed by Shanghai Hengxin to act as the agent at Tianjin for both the charterer and the owner. In concluding the storage contract it was acting, as the Judge already found, as the agent of the shipowner so as to render the shipowner liable for TQST's storage charges.

The second point was that the shipowner was able to pass its liability down the charterparty chain by virtue of the provisions of the various letters of indemnity. Even if this was so, however, it did not provide the claimant with a defence. In any event the reason why such substantial storage charges had accumulated was that having received already most of its value, the claimant had chosen to leave the cargo in storage rather than to present the bill of lading and take delivery.

Finally, the claimant's case was that the shipowner failed to mitigate by selling the cargo. However, the Judge was not satisfied that this could have been done without the bill of lading. In order for the cargo to be sold it would have had to be cleared through customs and the evidence was that the bill of lading would have been needed for this to happen. In any event the claimant would certainly have objected to a sale of the cargo. If this was to be done, it was for the claimant as the bill of lading holder to take the lead.

The Judge held, therefore, that the claimant was liable to reimburse the shipowner for reasonable storage charges as and when paid to TQST. As yet those storage charges had not been paid. The Judge accepted the evidence of the fleet manager that it had successfully negotiated the amount due to TQST down to US $2,146,763.11 as at 21 July 2015, the first day of the trial, which represented substantial discount in the shipowner's favour. This represented the cost of storage for over three years and the Judge found that the figure was reasonable.

The bill of lading

The shipowner sought an order for delivery to it of the bill of lading to enable the cargo to be sold. In the Judge's judgment the shipowner was entitled to such an order. The claimant was in breach of its obligation to take delivery of the cargo. As a result the shipowner had no alternative but to discharge the cargo into storage. It thereby incurred a liability to TQST to pay storage charges for which the shipowner was liable to reimburse it. That liability would continue to increase indefinitely unless the cargo could be sold, but the bill of lading was needed in order to clear the cargo through customs so that a sale could take place. The claimant had demonstrated by its conduct over the last three years that it had no intention of taking delivery of the cargo. Unless ordered to do otherwise, it would be prepared to leave the cargo at TQST's warehouse until the crack of doom.

In those circumstances the Judge held that, just as a shipowner has a right to charge the cargo owner with expenses properly incurred in landing and storing the cargo so as to preserve it for the cargo owner, the cargo owner has a continuing duty to take delivery of the cargo once it is landed, and to do what is necessary to co-operate in minimising loss and expense if it is unwilling or unable to do so. On the facts here, that required delivery up of the bill of lading.

Conclusions

For the reasons given above:

a. the claimant's claim for damages for conversion failed;

b. there would be a declaration that the claimant was liable to reimburse the shipowner for reasonable storage charges as and when paid to TQST, and that the amount of the defendant's reasonable liability to TQST up to 21 July 2015 amounted to US $2,146,763.11; and

c. the claimant must deliver the original bill of lading to the shipowner to enable the cargo to be sold.

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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