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Perils Of International Trade – Use of Bill of Lading For Sale of Goods

In this article, the authors Mr Krrishan Singhania, Founder and Managing Partner and Mr Omair Khan, Trainee Associate, K Singhania & Co., Advocates & Legal Advisors have discussed the facts and circumstances in English and Indian Law on the significance of bills of lading.






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Introduction

on shipping transportation. Therefore, it is very important to take note of and understand the various elements involved in shipping transactions. In maritime trade, several documents facilitate the trade from the seller to the shipping agent or carrier who in turn transports the goods to the buyer. On receipt of goods for transportation by ship, the Shipping master issues a Bill of lading in triplicate - one for the seller, one for the buyer and one for the shipping company for their records.

The buyer will receive a copy of the Bill of Lading from the seller, which the buyer has to submit to the shipping line to take delivery of the goods. Sometimes, Bill of Lading is routed through a Bank and when the buyer pays the money to the seller through the Bank, only then the goods are delivered to the buyer.

The purpose of this document is threefold. First, it evidences a contract between the shipper and carrier. Second, it acts as a receipt that goods have been boarded. Third, it is a document of title to the goods in question. The buyer will receive the goods on submitting the original Bill of Lading.

Ship owners may be held legally liable when the buyer produces a forged bill of lading or goods are delivered without production of original bill of lading. In this article, the authors will discuss these legal issues and provide a practical solution to the same.

Forgery of Bill of Lading

There is an interesting case on the subject, *Motis Exports Ltd. V Dampskibsselskabet* ([2001] EWHC 499 (Admlty)) decided by the England and Wales High Court. The carrier took the defence that since they had no way of knowing that the bill of lading produced to them was a forgery, it could not be alleged that they had mis-delivered the goods and were liable for the same.

The courts rejecting this argument, found the ship owners liable. They contended that the fact that the carrier was unaware of the fraud, i.e., the forged bills of lading, was no defence to escape liability. Public policy would dictate that in spite of both parties being apparently innocent of the fraud, a responsibility would be cast on the ship owners for ensuring the integrity of the bills of lading and proper delivery of the goods. The judge also found the ship owners liable for conversion of the goods. Conversion is a recognized tort under English law. Delivery of goods against a forged bill of lading, was held to be 'an intentional act inconsistent with the rights of the true owner.' Thus, it is important for ship owners to ensure that they do not deliver the goods to the buyer unless they are sure that the bill of lading is a genuine one.

Delivery of goods not allowed without production of an original bill of lading

Regarding the delivery of goods without the production of an original bill of lading, an interesting case that came before the Calcutta High Court was *Jaytee Exports v Natvaar Parikh Industries Ltd.* (MANU/WB/0244/2018). The Court held that as the plaintiff had not received payment for his goods, he was entitled to compensation from the defendant (ship owner) in view of the defendant having acted in breach of his contractual obligation by delivering the goods without production of the original bill of lading.

The Court also found the defendant guilty of conversion. The thought process followed by the Court was that a bill of lading is essentially a document of title and with the bill of lading having been returned to the plaintiff who was at that moment in possession of it, the ownership of the goods would lie with the plaintiff.

The Calcutta High Court quoted Clerk & Lindsell on Torts, 21st Edition, which succinctly summarizes the main ways in which conversion can take place under the following headings: -

- (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.

deliver them to anyone else is prima facie conversion.

Another important case relating to this issue was delivered by Justice Shriram in 2017 - *Assobhai Bhanji and Sons v Great Circle Shipping Pvt. Ltd.* (MANU/MH/1726/2017). The facts of this case are similar where the goods were delivered without the production of an original bill of lading. Despite the contract not containing a specific clause requiring the production of an original bill of lading for delivery of goods, the defendant was not permitted, either in law or contract to give such delivery. Once the defendant committed a breach of contract, he could not take up the defense that the plaintiff should have adequately warned him. Mr. Narichiana, the Amicus in this case submitted that the established principle of law in the mercantile world is that if a ship owner delivers goods without the production or surrendering of the bill of lading, he does so at his own risk.

The two main characteristics of a bill of lading are –

1. It is negotiable, i.e., transferrable
2. It is a document of title, requiring its presentation to obtain delivery.

The Judge held that even in respect of a straight bill of lading (a bill of lading in which a consignee is named) or whenever a contract of carriage is issued in the bill of lading format, the carrier must deliver the goods only against the presentation of the original bill of lading.

Letters of indemnity

There is one scenario, contemplated by English law, where delivery of cargo without production of an original bill of lading would be possible and permissible. This scenario arises where cargo receivers give letters of indemnity for this exact purpose. It is well accepted that delivery against original bills of lading is not always possible. A few instances of this include if the bill of lading is lost or has not worked its way through the banking system, especially where the voyage is short or multiples trades are involved in the same transaction. To remedy this situation, letters of indemnity allow the receiver to take delivery of goods, either at a discharge port not named in the bill of lading, or without the production of the original bill of lading, or both.

It is important to note that letters of indemnity are treated with a great degree of caution by courts, shippers, carriers and insurers. Courts will not enforce a letter of indemnity that has been issued with the specific goal of defrauding a third party. An interesting English case along these lines is *Songa Chemicals ApS v Navig8 Chemicals Pool Inc* (QBD (Comm Ct) [2018] EWHC 397). The letters of indemnity provided for the discharge of cargo of sunflower oil to a party without production of the original bill of lading. The wording of the letter of indemnity was in the standard form. It stipulated that the owners should deliver the cargo to a named receiver or 'such party as you believe to be or to represent the named receiver or to be acting on behalf of the named receiver.' Hence, the request extended beyond merely asking for the goods to be delivered to the receiver named in the letter of indemnity.

The court contended that if delivery was made to the named receiver, the letter of indemnity would be acceptable. In this case, the question was whether delivery to Ruchi Soya instead of Aavanti Industries, who was the named receiver in the letter of indemnity, would trigger liability. The court's finding was that the central issue must be determined by referring to the carrier's understanding of the relationship between Ruchi Soya and Aavanti and whether the carrier believed that Ruchi Soya was acting on behalf of or representing Aavanti.

Based on earlier correspondence received by the carrier from Aavanti and prior practice, the courts believed that the Letters of Indemnity were enforceable and delivery to Ruchi Soya was covered by their terms.

Conclusion

As it happens, sometimes a clever buyer or shipping company is not vigilant and gives delivery of goods on production of a forged bill of lading or without production of the original bill of lading. In such cases, the liability would be fixed on the shipping company. Therefore, sellers of goods under the bill of lading must be vigilant and in continuous communication with the shipping company and their Bank so that the transaction as contemplated by them with regard to payment through Bill of lading is fulfilled as per the contract.

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