

“The Lord Hassan” [2024] EWHC 3305 (Comm): James Watthey obtains order for sale over lien third-party cargo

When can a shipowner sell lien cargo?

In “The Lord Hassan”, the Commercial Court confirmed that shipowners can sell cargo over which it has had a lien for unpaid freight, even where that cargo belongs to a third party consignee. The Judge, Mr Justice Bryan, also clarified the position where “freight pre-paid” bills of lading are issued but not released to shippers or consignees.

The key facts

The Vessel was chartered under a voyage charter on amended Synacomex form dated 12 April 2024. The Charterparty contained the usual provision that Owners would have a lien on cargo for freight. The cargo, being 11,000MT of Ukrainian corn in bulk, was loaded at Chornomorsk for carriage to Turkey and a bill of lading was issued and marked “freight pre-paid”. As freight was not in fact paid, Owners did not release the bill of lading and they commenced arbitration against Charterers.

The cargo was discharged ashore at Iskenderun into a warehouse to Owners’ order and it was found to be deteriorating rapidly with self-heating, mould growth, caking and insect infestation. Clearly it had to be sold quickly before it (and thus Owners’ lien) was rendered entirely worthless. An urgent application was therefore issued in the Commercial Court and heard within a matter of days.

The Court’s power to order sale of cargo in general

It has long been understood that shipowners can obtain an order for sale of lien cargo, albeit this was only expressly recognised by the English Courts in “The Moscow Stars” [2017] EWHC 2150 (Comm). In that case, Mr Justice Males found that the Court had the power to order the sale of lien cargo under Section 44(2)(d) of the Arbitration Act 1996.

44 Court powers exercisable in support of arbitral proceedings.

(1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.

(2) Those matters are—

... (d) the sale of any goods the subject of the proceedings ...

Approving an earlier decision of the High Court of Singapore in “The Corinna”, *Five Ocean Corporation v Cingler Ship Pte Ltd (PT Commodities & Energy Resources, intervener)* [2015] SGHC 311, Mr Justice Males held that a cargo is “the subject of the proceedings” where a lien is being exercised over that cargo as security for a claim which is being advanced in arbitration. Thus the Court has the same power as it would have in relation to legal proceedings (under CPR Part 25.1)

which gives a very broad discretion to order sale of property “which is of a perishable nature or which for any other good reason it is desirable to sell quickly”.

Third party cargo: “the Moscow Stars gap”

But there was something of a gap left in the law. Mr Justice Males noted that the cargo was owned by the charterer in that case and expressly left open the position where the cargo was owned by a third party who is not a party to the arbitration. It will be well-known (as has been noted judicially by Mr Justice Mustill in “The Miramar” [1983] 2 Lloyd’s Rep 319) that only in a minority of cases will the cargo be owned by the charterer.

In the Lord Hassan, the cargo appeared to be owned by third party Receivers, and not Charterers. Thus Owners had to argue for the expansion of Mr Justice Males’s reasoning, so as to fill the Moscow Stars gap. Mr Justice Bryan accepted Owners’ arguments that (1) there was nothing in the reasoning in The Moscow Stars that indicated ownership would make any difference (2) it was well-established that the lien was binding on third parties (3) the lien would be worthless if it could not be enforced by an order for sale (4) given the likelihood of third party ownership of the cargo, this would mean liens were worthless in the majority of cases and (5) in The Corinna, which Mr Justice Males had approved, the cargo was owned by a third party.

The ruling

For those reasons, the Judge said this was a “paradigm case” in which a sale should be ordered. Thus he made an order that the cargo be sold and the proceeds held in escrow pending resolution of the arbitration.

Owners must exercise caution, though. Although there was no apparent appetite by Charterers, Shippers or Receivers to challenge the exercise of the lien despite being notified of the hearing, there remained the possibility of a claim in conversion or its equivalent under Turkish law. Given the likelihood of a distressed sale at reduced value, it was easy to imagine Receivers alleging sale at an undervalue too. In order to protect cargo interests, Judge required that Owners’ cross-undertaking in damages be fortified by payment into escrow or a Club LOU; but this was limited to £75,000.

Freight pre-paid bills of lading

The fact that the bill of lading was stamped “freight pre-paid” could potentially have presented a problem for Owners: as Carver at 13-038 and Voyage Charters at 18.213 note, there will be no lien for freight on the cargo of a third party who holds a “freight pre-paid” bill of lading. If the freight has actually been paid, there is no freight on which the lien can operate; and where the freight has not been paid, a consignee or endorsee who has relied on the bill being marked freight prepaid may still be able to rely on estoppel as against the shipowner.

Fortunately, Owners had held onto the bill of lading as security due to non-payment of freight. For that reason, the Judge distinguished this situation from the scenarios discussed in Carver and Voyage Charters that would potentially give rise to an estoppel. Because neither Charterers, nor Receivers nor anyone else became a holder of the bill of lading and relied upon it being marked “freight pre-paid”, Owners had maintained and were able to enforce their lien.

Written by [James Watthey](#) and Tristan Harwood (Barrister, Shearwater Law) who acted for the successful Owners, who are insured by Thomas Miller Speciality.

To read the full judgment, please see [here](#).