



Misdelivery: Bills, receipts and causation of loss

In a judgment likely to be of interest to all parties to a bill of lading, the Court of Appeal has held that (1) when a bill is no longer held by a charterer it ceases to be a 'mere receipt', but becomes a contractual document, but (2) that in a claim for misdelivery, a claimant will need to show that the decision on the part of an owner to release cargo without presentation of a bill caused the loss claimed. CJC Associate, [Keeley Edmondson](#), explains.

The Background

BP Oil International Limited (“**BP**”) voyage chartered the MV Sienna (the “**Vessel**”) from Euronav N.V (“**Euronav**”) on BPVOY5 terms (the “**Charterparty**”). At clause 30.7, the Charterparty required Euronav to discharge the cargo without production of the bill of lading (in return for an LOI), at the request of BP. Gulf Petrochem FZC (“**Gulf**”) purchased 80,000mt of VLSFO (the “**Cargo**”) from BP, which was financed by Unicredit Bank A.G (“**Unicredit**”).

A bill of lading was issued by Euronav whereby BP were named as the shipper (the “**Bill**”).

Unicredit requested Gulf ask BP to endorse the Bill and send it to Unicredit. Unfortunately, due to COVID restrictions at the time of discharge this had not been possible and BP remained in possession of the Bill.

Euronav, BP and Gulf subsequently entered into a novation agreement which substituted Gulf as the voyage charterer.

Euronav was then instructed to discharge the cargo by STS transfer to two vessels in Oman. Euronav complied but did not require production of the Bill.

Gulf did not repay Unicredit for the financing of the cargo. When the Bill was eventually endorsed to Unicredit, it claimed for misdelivery of the cargo without production of the Bill in breach of the contract contained in or evidenced by the Bill.

High Court decision

The case was heard by Moulder J in the first instance who decided that Unicredit’s claim should fail, on two grounds.

First, Unicredit had claimed that Euronav was in breach of the contract contained in or evidenced by the Bill in delivering the Cargo without production of the Bill.

The Court held that when the bill was first issued it was a mere receipt (and not therefore a contract) because the shipper and the voyage charterer were the same party, BP. The judge rejected the argument that a contract came into existence when Gulf became the voyage charterer as a result of the novation agreement. Therefore at the time of discharge, the Charterparty alone dictated Euronav’s contractual

obligations. Thus, Euronav was bound by the obligation under the Charterparty to discharge the Cargo without production of the bill if ordered to do so by the voyage charterer.

Secondly, on the issue of causation the Judge also held that even if the above were incorrect, Euronav discharging the Cargo did not cause any loss to Unicredit. Unicredit would have suffered that same loss in any event as, if asked, Unicredit would have ordered discharge of the Cargo without production of the Bill in any event.

Unicredit's Appeal

An appeal was brought by Unicredit on each of the two points above. Although it succeeded on the first, it failed on the second; therefore Unicredit's claim failed overall.

As to the first issue, Justice Popplewell (giving the Court's judgment) held that the bill was only a mere receipt only for as long as the holder is a charterer and the contractual relationship with the carrier remaining governed by the charterparty. Otherwise, it will contain or evidence the contract of carriage, which reflects the presumed intention of the parties.

As there was nothing in the novation agreement to displace this presumption, the Charterparty had ceased to function as the contract of carriage between Euronav and BP upon the novation of the Charterparty to Gulf. At this time, the Bill (which BP then held) acquired contractual status. and at the time of *discharge* the Bill evidenced the contract, Euronav breached this contract by discharging the cargo without production of the Bill.

Furthermore, even if the above were incorrect, after discharge the Bill had been endorsed to Unicredit. Once this occurred s2(1) of the Carriage of Goods by Sea Act 1992 applied, and a contract would 'spring up'. The Bill therefore would have applied retrospectively as a contract, which was breached by the discharge of the Cargo.

However, the appeal on the second issue was rejected. The Court agreed that the Judge had asked the correct question in assessing what would have happened to Unicredit's interest if Euronav had refused to discharge the Cargo without production of the Bill. In its assessment the Court found that Euronav would have sought instructions from Unicredit and that Unicredit would have ordered the Cargo to be discharged without production of the Bill in any event. This would not have resulted in a breach of the bill of lading contract and there would have been no loss. The appeal was therefore dismissed.

Commentary

This judgement offers some discussion as to the function of a bill of lading and how that can change throughout the voyage.

Owners will gain some comfort from the Court's recognition of a causation defence. Practically speaking, a party bringing a claim for misdelivery of the cargo may well need to show that it would have enforced its security over the cargo if owners refused to deliver the cargo without production of the bill of lading, rather than ordering that delivery should proceed. However, the flip side is that the same issue will likely cause concern to trade financing parties, who may feel the value of a bill as security has been weakened.

However, this decision is restricted to the facts of the case and caution should still be exercised by owners in circumstances where cargo is to be delivered without production of the bill of lading.

Rather, this may result in financing banks taking a more hands on approach to trades and require additional due diligence to ensure that the bill of lading provides the required security over the cargo.

It is noteworthy that the Court clearly held that a contract evidenced by the bill of lading would have come into existence upon indorsement of the bill to Unicredit, even though this occurred after discharge. The bill was not therefore 'spent', but rights could be obtained under it retrospectively.

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