English High Court rejects consignee's claim against the carrier for failure to uncover shipper's fraud

A judgment handed down in the English High Court on 7 October 2024 in the case of Stournaras Stylianos Monoprosopi EPE v. Maersk A/S (MV Maersk Klaipeda) serves as a valuable reminder of parties' rights and obligations under bills of lading. The case outlines the extent to which carriers are required to check information contained on bills of lading and explains when a carrier will be liable to a consignee when it is discovered that the carrier's bills contain incorrect information.

Published 22 January 2025

Background

The claimants purchased a copper cargo from sellers, for shipment from Dubai to Greece. As part of the sale, the sellers arranged for shipment and were shippers under a bill of lading entered into with carriers Maersk A/S (owners). The claimants were the consignees. The copper cargo was to be carried in containers and the sellers presented the containers to owners in Jebel Ali, already stuffed and sealed for carriage to Piraeus. On presentation of the containers to owners, sellers presented shipping instructions to owners which declared various weights of the copper cargo.

Upon arrival in Piraeus and on opening of the containers, it was discovered that the copper was in fact worthless concrete blocks. Whilst the claimants were able to obtain judgment against the sellers in the Dubai courts, the sellers had disappeared, and the claimants were not able to enforce the judgment.

The claimants sought to bring claims directly against the owners in the English Courts under the bills of lading, under which the claimants were consignees. Owners had weighed the containers before shipment and were in possession of information that the actual weight of the cargo was between 30-40% (across different bills) of the sellers' declared weights. The claimants claimed that owners were required to clause the bills or notify the claimants of the correct information regarding the weight, which would have enabled the claimants to discover the fraud. The claimants claimed therefore the purchase price for the cargo as damages from owners.

The claims

To understand the claims, a central issue is that under the SOLAS regulations, the weight of all containers carried on board need to be verified by the shipper. This weight is known as the "Verified Gross Mass" ("VGM"). In this case, the VGM of the containers were measured by the terminal operators in Dubai and notified to owners over 17-21 November 2019, days before the first and second bills were issued on 26 November 2019. The VGM showed that the total weight of the containers was around 140 tonnes. The information that had been presented to owners by the sellers claimed that the weight was around 350 tonnes. At the time in question, owners did not have a system whereby the data provided by the shippers would be validated before inclusion in the bills (but this has since changed).

Claimants made three key arguments. The first was that owners were in breach of their Hague-Visby obligation to record the apparent order and condition of the cargo. The weight discrepancy here was so large as to make it obvious that the order and condition was not as stated in the bills. Secondly, the incorrect weight stated on the bills were a negligent misstatement and the 'weight unknown' provision (contained on the face of the bills) could not excuse owners where they knew or ought to have known that the declared figures were incorrect. Lastly, claimants argued that owners owed the consignees a duty to take reasonable steps not to issue clean bills which included information that owners should know or suspect to be fraudulent.

High Court decision

In deciding these three points, the High Court ruled that the owners' obligation to record the apparent order and condition of the cargo would not automatically extend to confirming the weight of the cargo. Whilst owners were in possession of information through the provision of the VGM that the weights declared on the bills were incorrect, a reasonable check of the apparent order and condition of the goods did not require cross-checking of the VGM. The VGM was introduced for safety purposes in stowing the containers.

Regarding the 'weight unknown' clause and the allegation of owners' negligent misstatement, it was upheld that the owners had made no such representation on the weight of the cargo. Owners had merely recorded the cargo information provided by sellers and the 'weight unknown' provision did not require owners to cross-check the VGM information. The additional wording on the face of the bill that the cargo information was 'as declared by the Shipper without representation by the carrier' was helpful in this regard.

The third argument relating to owners' duty to take reasonable care to not issue a clean bill which owners had reason to suspect contained fraudulent information, was a novel argument. There was no direct legal authority to establish that duty of care, but the court accepted that such a duty could be fairly imposed on a carrier to ensure that bills of lading are not used as an instrument of fraud once they are on notice of a significant discrepancy between a declared weight and a VGM. However, in this case, there was no reason to suspect that the sellers would provide fraudulent data and therefore owners were not under a duty to check the sellers declared weights against the VGM weights.

Key take-aways

There are some obvious points about parties (the consignees in this case) doing their due diligence on counterparties when purchasing cargoes and understanding the limitations of terms contained on bills of lading and how this may affect their rights of recourse.

There is some helpful commentary on ‘apparent order and condition’ and what this will include and what it requires an owner to check.

The major point that arises in the case however is the potential duty of care that may be held to exist, where carriers are on notice of a shipper’s attempt to defraud. As summarised in paragraph 81 of the judgment:

… where a consignee under a straight bill of lading can establish that the carrier knew or ought to have known when issuing the bill that there was a substantial discrepancy between the shipper declared weights and the actual verified weights it has a strong case that the carrier ought not to issue an unclaused bill or ought not to have issued a bill at all … [as] such a discrepancy would give rise to an assumption on the part of the carrier that the proposed bill was being used as an instrument of fraud. In such circumstances, it would in my judgment be fair, just and reasonable to impose a duty of care upon the carrier, owed to the named consignee, to ensure that its bills are not used as an instrument of fraud, once they have been put on notice of that fraud.

If a "substantial discrepancy" in declared weight should put a carrier on notice that a fraud may be taking place then this raises several questions, for example, how much is a "substantial discrepancy"? Is it to be judged on a % basis, or a specific number of MT? Does the value of a cargo affect what is to be considered "substantial"? Whilst it was held on these particular facts that the Carriers did not owe that duty, with terminal equipment increasingly determining weights it may become more difficult for a container carrier to distance themselves from a weight stated in a shipped bill which is significantly different to that which they become aware of from a terminal.

Vessel owners may now be even more concerned to allow bills of lading to be issued with questionable contents. Weight discrepancies in the quantity of bulk cargo shipped are commonplace due to measurement differences but unlike for containerised cargo a buyer will be more confident that the cargo is that shipped because of surveys and sampling required under the sales contract and because the master is obliged to make his own assessment of the apparent good order and condition of the cargo for the bill of lading (Tai Prize). That is not possible for a cargo within a shipper sealed container, so the cargo is that declared by the shipper and the carrier’s statement as to good order and condition is limited to an outward inspection including the status of the seal. Where container carriers are increasingly cross referencing a shipper’s declared weight with those provided by the terminal, it may be read that a clean bill comes with the legal implication that the carriers are not aware of any substantial discrepancy between the two.

The author thanks colleagues Mark Russell, Are Solum, and Louis Shepherd for their assistance with this article.