A Shipowner’s Lien – Is It An Illusory Right?

Introduction

It has been said that a shipowner looks primarily to his lien in case of disputes. Is the lien an effective tool, or is it just an illusion? The usual claims are for unpaid load port demurrage or detention, and for charter hire due from a time charterer, operating the ship in the spot market. To a consignee, receiver or holder of a bill of lading, they will probably have no notice of these claims from the shipowner and will resist the shipowner’s attempts to lien their cargo.

Generally, a shipowner cannot exercise a lien over cargo belonging to a bill of lading holder who is not the charterer unless the lien clause has been incorporated into the bill of lading. Therefore, the words of the incorporation are crucial.

Wording

In this context, it is usual to find the phrase “freight payable as per charterparty” in the bill of lading. If there are multiple charters, one must first determine which charterparty has been incorporated. Generally, a reference to a charterparty is construed as a reference to the head charter. However, where the head charter is a time charter and the sub-charter is a voyage charter, the voyage charter will probably be incorporated.

If the voyage charter is incorporated, the shipowner must check whether freight has in fact been paid. The reason is that payment in accordance with the sub-charter may preclude the shipowner’s claim for freight against the bill of lading holder even though the shipowner has not been paid his dues. This was the situation in The Indian Reliance. In that case, the bill of lading provided that

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1 Many thanks to Dedi Affandi bin Ahmad for his contributions to this article.
2 The Miramar [1983] 2 Lloyd’s Rep 319, 324 per Mustill J.
7 The SLS Everest [1981] 2 Lloyd’s Rep 389, 393 (English Court of Appeal).
freight was payable as per charter party. The relevant charterparty directed that payment be made to the charterers’ nominated account. The charterers having gone insolvent, the shipowners looked to the bill of lading holders for freight. Unfortunately for the shipowners, the bill of lading holders had already paid the charterers. Accordingly, the shipowner’s claim failed.9

In a properly worded lien clause which extends to sub-freights, a shipowner may intercept freight or sub-charter hire due from shippers or sub-charterers down the chain, but only if these have not been paid.

Where the bill of lading is marked “freight prepaid”, the shipowner will probably be estopped from claiming freight from a consignee who has taken the bill of lading on the faith of that representation.10

**Domestic Law & Choice of Venue**

Assuming these difficulties are surmounted, there is still the effect of domestic law of the dispar on the lien clause.11 The shipowner may not be able to exercise his lien if the domestic law at the dispar does not recognise his right to exercise the lien, or if he has not satisfied local formalities.12 Accordingly, the shipowner may need to instruct lawyers at the dispar to determine the effectiveness of his lien under domestic law.13

Further, the shipowner must also decide where to exercise his lien. A shipowner cannot exercise his lien by simply pulling up at a bunkering port mid-voyage.14 On the other hand, the vessel may incur unnecessary expenses in port, or there may be a risk that the vessel will be forced by legal process to discharge upon arrival at the discharge port. In such cases, it may be open to the shipowner to exercise his lien by (1) keeping off the discharge port, or (2) proceeding to another port.

Option (1) was endorsed by the English court in *The Chrysovalandou Dyo*.15 In that case, the shipowner ordered the vessel to stay at the anchorage off the dispar in exercise of their lien. The court held that the vessel did not have to be at a discharging spot in a port as a pre-requisite to the exercise of a lien. The court reasoned that to do so might involve unnecessary expense and may cause port congestion.16

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9 *The Indian Reliance*, 57-58.
11 *Thomas, Legal Issues Relating to Time Charterparties* (2008), [16.27].
12 See for example *The Sinoe* [1972] 1 Lloyd’s Rep 201.
16 *The Chrysovalandou Dyo*, 165.
Option (2) was accepted by the arbitral tribunal in *London Arbitration No 13/87*. ¹⁷ In that case, the vessel was chartered for the carriage of coal to Iskenderun, Turkey. Due to the charterers’ failure to pay freight, the shipowners exercised their lien by remaining off Port Said, Egypt. This was based upon their Turkish correspondents’ advice that it was impractical and commercially inadvisable to lien the cargo at Iskenderun. The arbitral tribunal held that the shipowners were entitled to stay off Port Said. This was because they reasonably believed that their vessel would be forced to discharge if the vessel entered the port of Iskenderun.

In certain jurisdictions, the shipowner may also procure a court-ordered sale of the cargo and claim the sale proceeds to satisfy his lien. ¹⁸ Such a situation arose in *Faith Maritime Co Ltd v Feoso (Singapore) Pte Ltd*. ¹⁹ In that case, the vessel carried a cargo of crude oil slops destined for Huangpu, China. During the voyage, the shipowners became aware of the unauthorised issuance of switch bills of lading. These switch bills described the cargo as fuel oil. The conflicting bills created suspicions of oil smuggling and a risk of indefinite detention by the Chinese authorities. In response, and after a stalemate in the negotiations, the shipowners ordered the vessel to Singapore instead. There, they exercised a lien over the cargo for demurrage and procured a court-ordered sale. The High Court held that a lien over cargo did not automatically entitle the shipowners to satisfy their lien out of the sale proceeds. Nevertheless, it allowed the shipowners to claim the sale proceeds of the cargo, noting that there was no argument to the contrary. ²⁰ Unfortunately for the shipowners in that case, the sale proceeds were insufficient to cover their demurrage claim.

**Concluding Words**

Therefore, with the appropriate advice, a lien clause may become a useful and effective tool to aid the shipowner’s efforts to recover sums due to him. Given the complexity of the issues involved, it is therefore important for shipowners to be properly advised. Even so, the shipowner must be prepared for the possibility that the lien clause may be a futile remedy and he will not obtain any satisfaction. Nonetheless, it is hoped that the foregoing discussion has shed some light on the options available to the shipowner who seeks to rely on this self-help remedy of a shipowner’s lien.

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¹⁷ LMLN 205.
¹⁸ See for example in Singapore, Merchant Shipping Act (Cap 179), s 130.
¹⁹ [2002] 2 SLR(R) 1088; appeal dismissed in [2003] 3 SLR(R) 556.
²⁰ *Faith Maritime Co Ltd v Feoso (Singapore) Pte Ltd*, [134] - [138].
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