IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1991] SGHC 69

Suit 2084/1990

Between

Cascade Shipping Inc

… Plaintiff

And

Eka Jaya Agencies (S) Pte Ltd

… Defendant

GROUNDS OF DECISION

Admiralty and Shipping — Bills of lading — Incorporation of charterparty terms; Agency; Civil Procedure — Summary judgment

Version No 1: 11 Sep 2026 (01:05 hrs)

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Cascade Shipping Inc v Eka Jaya Agencies (S) Pte Ltd

[1991] SGHC 69

Suit 2084/1990
Chao Hick Tin J
23 May 1991

1 Cur Adv Vult

2 This is an appeal against a summary judgment granted by the learned assistant registrar ordering the defendants to pay the plaintiffs a sum of $287,315.46 together with $2,928.26 being interest thereon.

3 The plaintiffs were and are at all material times the owners of the vessel Grace Liberty II. At the relevant time the vessel was on time-charter to an Indonesian company, PT Samudera Internusa (`Samudera`). The defendants were appointed by Samudera as the latter`s agents in Singapore. This appointment was by way of a written agreement. As agents the defendants had collected freight in respect of the cargoes loaded onto the vessel here.

4 Some of the relevant provisions of the charterparty are these:

> 9 Master
>
> *... The master to be under the orders of the charterers as regards employment, agency, or other arrangements. The charterers to indemnify the owners against all consequences or liabilities arising from the master, officers or agents signing bills of lading*

> *or other documents or otherwise complying with such orders, as well as from any irregularity in the vessel`s papers or for overcarrying goods. ...*
>
> (18) Lien
>
> *The owners to have a lien upon all cargoes and subfreight belonging to the time-charterers and any bill of lading freight for all claims under this charter, and the charterers to have a lien on the vessel for all moneys paid in advance and not earned.*
>
> (43) Vessel to use charterers B/L or B/L approved by charterers and/or sub-charterers which includes New Both to Blame Collision Clause, New Jason Clause, Clause Paramount and Chamber of Shipping War Risk Clause 1 and 2 during the period of this charterparty. Owners/master authorize charterers or their appointed agent to sign B/L on behalf of the master as per mate`s and/or tally clerk`s receipt without prejudice to the charterparty.
>
> (54) Charterers port agent to do normal agency work for vessel, as usually included in agency work, without payment.

5 The bills of lading, in respect of which freight had been collected by the defendants, were issued by the defendants as agents of Samudera. This was entirely in line with cl 43 of the charterparty as quoted above.

6 For the purposes of the present action, the relevant provision in the bills of lading is contained in cl 4:

> *Agency clause.*
>
> *If the vessel is not owned by or chartered by demise to PT Samudera Internusa by whom this bill of lading is issued (as may be the case notwithstanding anything that appears to the contrary) this bill of lading shall take effect only as a contract with the owner or demise charterer as the case may be as principal made through the agency of the said PT Samudera Internusa who act solely as agents and shall be under no personal liability whatsoever in respect thereof.*

7 It is not in dispute that in the present case the vessel was not demise chartered to Samudera. Neither was it owned by Samudera.

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8 Because of certain outstanding hire charges due from Samudera, the time-charterers, the plaintiffs on 21 September 1990, through its managers, Norse Management (UK) Ltd, gave notice to the defendants under cl 18 of the charterparty that they were exercising the lien and required the defendants to pay over to the plaintiffs all freight moneys which the defendants were holding or were due to collect on behalf of the charterers. This notice appears to have been received by the defendants on or about 25 September 1990.

9 On 20 October 1990, the defendants` solicitors informed the plaintiffs` solicitors that as on 25 September 1990 the defendants had collected freight amounting to $287,315.46, which sum was utilized to set off a debt of $341,092.10 due and owing by Samudera to the defendants on that date. The defendants agreed that freight collected on and after 26 September 1990 would be paid over to the plaintiffs.

10 On 31 October 1990, the plaintiffs were sent a copy of Samudera`s bill of lading. It was only then that the plantiffs noted for the first time the provisions of cl 4 therein. Consequently, on 2 November 1990, the plaintiffs` solicitors wrote to the defendants` solicitors demanding payment of the freight collected as on 25 September 1990 amounting to $287,315.46. They contended that under the terms of the bill of lading the contract of carriage as evidenced by the bill of lading was between the cargo owners and the plaintiffs, the shipowners. Therefore, all freight collected under such bills of lading were due to the plaintiffs and not to the charterers and consequently the defendants had no right to set off the freight against debts owing by Samudera to the defendants. The defendants disputed that. This action is accordingly instituted by the plaintiffs to recover the sum of $287,315.46.

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11 As I see it, the first question which I must address is, with whom had the shippers entered into a contract of carriage. Was it with the time-charterers or the shipowners? Crucial for this purpose is cl 4 of the bill of lading. The effect of a provision like cl 4 has been decided in a number of English cases. This provision is known as the demise clause. In **`The Berkshire`** [1974] 1 Lloyd`s Rep 185 at p 188, Brandon J (as he then was) in interpreting the demise clause held that:

> *Despite arguments to the contrary put forward for the shipowners, I see no reason not to give effect to the demise clause in accordance with its terms. The company or line by whom the bill of lading was issued, within the meaning of that clause, is clearly in this case Ocean Wide. It is not in dispute that the ship was not owned or chartered by demise to that company, but was on the contrary owned by the shipowners. It follows that the bill of lading is, by its express terms, intended to take effect as a contract between the shippers and the shipowners made on behalf of the shipowners by Ocean Wide as agents only. The circumstance that Ayers signed the bill of lading as sub-agents for Ocean Wide does not affect the position, which is the same as if Ocean Wide had signed it themselves.*

12 On the first point, therefore, I hold that the contract contained in or evidenced by the bill of lading purports to be a contract between the shippers and the shipowners and not one between the shippers and the charterers.

13 This view was followed by Webster J in **`The Henrik Sif`** [1982] 1 Lloyd`s Rep 457 where he said that the bills of lading were `owners` bills as opposed to time characters` bills, evidencing a contract of carriage in the first instance between the owners of the cargo on the one hand and the shipowners, not the time charterers or any other kind of charterers except a demised charterer on the other`. **`The Berkshire`** [1974] 1 Lloyd`s Rep 185 was also cited with approval by the Court of Appeal in **`The Vikfrost`** [1980] 1 Lloyd`s Rep 560

14 It is true that in the above three cases what was basically in issue was the question of liability between the shippers and the shipowners; they did not touch on the question of who was entitled to the freight collected by an agent where the bill of lading contained the demise clause. But it seems to me that the true construction of such a clause cannot vary according to who are the parties to the dispute; it obviously cannot have one meaning in a dispute between a shipper and the shipowners and another meaning in a dispute between the charterers and the shipowners.

15 This very point was also decided much earlier in the case **Wehner v Dene Steam Shipping Co** [1905] 2 KB 92 In ***Wehne*** **r** [1905] 2 KB 92 the defendants were the owners of a vessel called Ferndene, which was time-chartered to B, an American firm. B sub-chartered the vessel to the plaintiffs for one Trans-Atlantic trip. On this trip the vessel carried a cargo of phosphate from New York to Hamburg under a bill of lading signed by the captain in the ordinary way. When the vessel arrived at Hamburg on 13 December 1902, B, the original time-charterers, had become practically insolvent. Vogemann were appointed by the plaintiffs, the sub-charterers, to collect the freight payable on the bill of lading, which was paid by the shipper to Vogemann on 15 December 1902. On 16 December 1902, the defendants gave notice to Vogemann that they claimed to exercise their lien for hire which was then due. Accordingly, a sum of o800 was paid by Vogemann to the defendants. The plaintiffs sought to recover the sum from the defendants as money had and received by the defendants to the plaintiffs` use. The charterparty which the defendants concluded with B contained, inter alia, these clauses (and the sub-charterparty also contained similar clauses):

> 9 The captain (although appointed by the owners) shall be under the order and direction of the charterers as regards

> employment, agency, or other arrangements; and the charterers hereby agree to indemnify the owners from all consequences or liabilities that may arise from the captain signing bills of lading or otherwise complying with the same.
>
> (19) The owners shall have a lien upon all cargoes and all sub-freight for any amounts due under this charter, and the charterers to have a lien on the ship for all moneys paid in advance and not earned.

16 The first question which the court there had to consider was with whom was the contract for the carriage of the phosphate made - was it with the shipowners, the sub-charterers or the charterers? Channell J held that it was with the defendants, the shipowners. He said (at p 98):

> *In ordinary cases, where the charterparty does not amount to a demise of the ship, and where possession of the ship is not given up to the charterer, the rule is that the contract contained in the bill of lading is made, not with the charterer but with the owner.*

17 I note that in **Wehner** [1905] 2 KB 92 the bill of lading was signed by the captain whereas in our present case it was signed by the defendants, as agents for Samudera. However, having regard to cl 43 of the present charterparty quoted above, I do not think this difference matters: see also **Tillmanns & Co v SS Knutsford Ltd** [1908] 2 KB 385 I would only add that having signed the bill of lading for Samudera, the defendants cannot deny that they were aware of the provisions of cl 4. In fact the defendants have not in their affidavit denied that Samudera was not the owner or that the vessel was on time-charter to Samudera. In the circumstances and following the authorities cited above, I hold that the contracts for carriage in the instant case were made between the shippers and the plaintiffs, as owners of the vessel. I may add that this view is also in line with what was decided in **Molthes Rederi Aktieselskabet v Ellerman`s Wilson Line Ltd** [1927] 1 KB 710 a case which I will deal with a little more later.

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18 The second question which arises for consideration is: who is entitled to the freight under such a bill of lading? In ***Wehne*** **r** [1905] 2 KB 92 the court was of the view that as the contract was the shipowners` contract, the shipowners had the right to demand the bill of lading freight from the holder of the bill of lading. The court also went on to note that in the event that the shipper paid the freight to the shipowners the latter `would still have to account to the charterer or the sub-charterer, as the case might be, for the surplus remaining in his hands after deducting the amount due for hire of the ship under the charterparty`.

19 A significant fact in **Wehner** [1905] 2 KB 92 was that when the shipowners demanded for the freight, the freight had already been paid by the shipper to the agents, Vogemann. Nevertheless, Channell J held that since at the time when the demand for the freight was made of the agents, the agents had not `remitted the money to the plaintiffs or had in any way given (the plaintiffs) credit for it in account ... the defendants had the prior right to receive that freight from the agents, subject to this - that after satisfying the amount of their lien for any sum due for hire or otherwise under the charterparty with B, they would have to account to the plaintiffs for the balance, if any`.

20 Counsel for the plaintiffs relied primarily on **Wehner** [1905] 2 KB 92 . He said that like the situation in that case, though the defendants here had collected the freight prior to the notice, the defendants were accountable to the plaintiffs for the freight collected so long as the freight had not yet been remitted by the defendants, as agents, to the charterers, Samudera. He submitted that there is no question of a set off. He argued that the freight did not belong to Samudera in the first place; Samudera was never entitled to the freight; there was nothing belonging to Samudera which the defendants could use to set off against the debts owing by Samudera to the defendants; and the defendants,

though appointed by Samudera, were acting as agents for the plaintiffs for the limited purpose of collecting freight on behalf of the latter.

21 But the plaintiffs` counsel conceded that in order that the plaintiffs would be able to effectively intercept the freight in the hands of the defendants the notification of their entitlement to the freight must be given prior to payment of the freight to the charterers; and unless so instructed by the shipowners, the defendants would have the implied authority to deal with the freight in the usual course of business, ie to pass the freight over to the charterers.

22 I will at this juncture refer to **Molthes Rederi** [1927] 1 KB 710 which was also a case concerning time-charter, where the owners gave notice to the charterers` agent to collect freight on the owners` account. The freight was collected after the notice was received by the agent. The court there held that once such a notice was given, the agent must account to the shipowners for the freight received without deduction of any disbursements already laid out by the agent on the charterers` behalf. However, Greer J in the case left open the question (as it did not arise in the case) whether shipowners could claim the freight in the hands of an agent of the charterers after the freight had been received by such agent without notice of the claim by the owners; he thus refrained from endorsing that part of the decision of Channell J in **Wehner** [1905] 2 KB 92 .

23 It appears clear to me that if the plaintiffs had relied on their lien in cl 18 of the charterparty, the lien could only attach to all freight received by the defendants after notice was served on the defendants: see **Tagart Beaton & Co v James Fisher & Sons** [1903] 1 KB 391 and ***`The Nanfri*** `.8 But here the plaintiffs claim entitlement on the basis that the freight is automatically theirs as the contracts of carriage were between the shippers and the plaintiffs, as

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shipowners; they say that their entitlement does not depend on notice to the shippers or the agents.

24 Reliance is placed by the plaintiffs on a passage in Wilford on ***Time Charters*** at p 399 as follows:

> *If the owners are parties to the bill of lading contract, they will not have to rely upon rights of lien, for they, rather than the charterers, will be entitled to receive the freight although they will be bound to account for it to the charterers.*

25 But this passage must be read in conjunction with what is stated by the author in the next paragraph at pp 399-400 as follows:

> *Where a ship is under time charter, bill of lading freight will normally, in practice, be paid to the charterers` agents, even though the cargo is shipped under bill of lading contracts to which the owners are a party. If the owners notify the charterers` agents of their claim to the bill of lading freight before the agents receive the freight the agents* ***may*** *be obliged to collect it for the owners rather than for the charterers. The same is* ***probably true*** *where notice is given by the owners after freight has been received by the agents: this was decided in* ***Wehner v Dene****[1905] 2 KB 92, but was expressly left open in the subsequent case of* ***Molthes Rederi v Ellerman`s Wilson Line*** *(1926) 26 Ll L Rep 259: (Emphasis added.)*

26 The whole question therefore boils down to this: in the absence of notice, on whose behalf have the defendants collected the freight? It must be borne in mind that the defendants were appointed agents by Samudera. The defendants` duty was, among others, to collect freight. As between the shipowners (the plaintiffs) and the charterers (Samudera) their contractual arrangements, including the charter hire charges, were set out in the charterparty. The bill of lading was drawn up by the charterers. The critical cl 4 was inserted by the charterers. By virtue of this clause, the shipowners were brought into contractual relationship with the shipper. Consequently, the shipowners would be entitled, as was held in **Wehner** [1905] 2 KB 92 to demand the shippers to pay the freight

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over to them, or, I would add, even require the agents to collect the freight on their behalf (as was done in **Molthes Rederi** [1927] 1 KB 710). If the shipowners have in this way obtained such freight they must account, in respect of the excess freight over the hire due from the charterers, to the charterers. The plaintiffs conceded that, unless directed by the plaintiffs, the defendants were entitled to pay the freight collected to the charterers. Therefore, in the normal course, there is no reason for the shipowners to be concerned with the freight to be collected on such bills of lading. The shipowners are only entitled to the hire charges as provided in the charterparty. They will only be concerned when there are outstanding hire charges; in which event they will be entitled to intervene and demand payment from the shippers. In my judgment, this entire arrangement is more consistent with there being an implied understanding that notwithstanding the existence of cl 4 in the bill of lading, the freight due under such a bill of lading belongs to the charterers unless the shipowners intervene and demand that payment be made to them or demand that the charterers` agents receive the payment on their behalf. To say that all freight collected by the charterers` agents is automatically collected on behalf of the shipowners (even before any notice is given or demand made by the shipowners) does not appear to be in consonant with the factual position. The circumstances of this case do not warrant the suggestion that the defendants had collected the freight on behalf of the plaintiffs (as shipowners).

27 Without **Wehner** [1905] 2 KB 92 I would have less hesitation in holding that the freight already collected by the defendants was collected on behalf of the charterers, Samudera. It seems to me that the court in **Wehner** [1905] 2 KB 92 held that the shipowners were entitled to the freight collected by the agents of the sub-charterers because it also held that the agents were also the agents of the shipowners; and the only reason for the latter determination was that the

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court felt that, as the bill of lading was a contract of carriage between the shipowners and the shipper, the agents of the sub-charterers were automatically the agents of the shipowners. Granted that by the very nature of a time-charter, it is understood between the shipowners and the charterers that the charterers could issue a bill of lading with the demise clause. It is also understood that the charterers` agents could pay over the freight they have collected to the charterers. Surely it must also be understood between the parties to the time-charter that the freight due under such a bill of lading would go to the charterers and that the shipowners would have no direct interest in it until and unless the shipowners wish to exercise their rights and give notice. Therefore, must it necessarily follow that the agents of the charterers are ipso facto also the agents of the shipowners to collect freight? I entertain considerable doubts whether I should follow this part of the decision in **Wehner** [1905] 2 KB 92 However, for the reasons set out in the next two paragraphs I do not think I need make a definite ruling on this point in order to dispose of this action.

28 I will now proceed to consider the other aspect of the plaintiffs` argument that while the defendants had the implied authority to deal with freight collected in the normal course of business, including paying over the same to the charterers, nevertheless there is no implied authority for agents like the defendants to set off the freight collected against debts owing by the charterers to the agents.

29 As I see it there is this difficulty in the plaintiffs` instant argument. If the agents have the implied authority to pay over the freight collected to the charterers, I do not see any reason why they could not do a set-off. What the plaintiffs are saying amounts to this: it would be alright if there should be a simultaneous or near simultaneous remittance of money by the agents and the charterers to each other, but it would not be in order if it were done by way of a

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set-off. In my view if the set-off was bona fide (and it has not been suggested by the plaintiffs that the set-off effected by the defendants was not bona fide), I think that it is as good as if payment had in fact been made to the charterers and the charterers had in turn immediately remitted the sum to reduce or satisfy their debt with the agents. Such a set-off is equivalent to payment having been made. I do not think that the law should require a person to do something as futile as this and visit it with such grave consequences if this meaningless circuitous route was not adopted. In my opinion, the plaintiffs` argument is overly technical and without merit. I am unable to accept it. This court is not prepared to shut its eyes to the practical reality of business or introduce technicalities which would impede efficient business dealings. I think this is in accordance with what Channell J said at p 100:

> *With regard to the defendants` (ie shipowners`) claim to the freight in the hands of the ship`s agents, that claim was put forward before the agents had in fact remitted the money to the plaintiffs (ie sub-charterers) in New York,* ***or had in any way given them credit for it in account*** *... (Emphasis added.)*

30 For the above reasons I hold that the plaintiffs` claim to the sum of $287,315.46 is too late and has to be dismissed with costs.

31 Finally, there is a point of procedure which I ought to allude to. This matter comes before me by way of an appeal against a summary judgment granted by the assistant registrar in favour of the plaintiffs. Quite obviously, a clear-cut point of law or points of law have been shown to arise in regard to the claim. There is really no dispute on facts. Rather than granting leave to defend, I felt I ought, following the approach adopted in **European Asian Bank AG v Punjab & Sind Bank (No 2)** [1983] 1 WLR 642[1983] 2 All ER 508 and **Jaya Kumar v Subramaniam Mohana Krishnan & Anor** [1987] 2 MLJ 432 to proceed to hear full arguments on the points of law. Both counsel had no

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objection to this course. The case was accordingly restored before me for further arguments following a short adjournment.

32 **Outcome:**

33 Appeal allowed.

Chao Hick Tin J

Steven Chong (Drew & Napier) for the plaintif
Lai Siu Chiu (Allen & Gledhill) for the defendants

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