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IN BRIEF

The meaning of the words "CLEAN ON BOARD" and "SHIPPED in apparent good order and condition" in a draft bill of lading

Noble Chartering Inc v Priminds Shipping Hong Kong Co Ltd 'TAI Prize'

A bill of lading will generally state that the cargo has been shipped in apparent good order and condition. That refers to the external appearance of the cargo so far as meets the eye on a reasonable examination. One of the questions raised by this appeal was, apparent to whom? An arbitrator found that pre-existing damage in a cargo of bulk soyabeans was not apparent to the master who authorised the signature of the bill of lading, but that the shippers who prepared the draft bill of lading and presented it to the master for signature on behalf of the charterers must be taken to have known of the damage. On that basis she held that the cargo was not in apparent good order and condition and that the charterers were in breach of an implied

The Court of Appeal upheld the decision of the court below that The words "CLEAN ON BOARD" and "SHIPPED in apparent good order and condition" in the draft bill of lading presented to the master did not amount to a representation or warranty by the shippers and/or Charterers as to the apparent condition of the cargo observable prior to loading; they were merely an invitation

warranty in the charterparty that the statement in the draft bill was accurate. As a result, she concluded that the charterers were obliged to indemnify the owners in respect of their liability for a cargo claim brought by the receivers under the bill of lading.

This decision gave rise to an appeal to the Commercial Court under section 69 of the Arbitration Act 1996 on the following three questions of law:

(1) Did the words "CLEAN ON BOARD" and "SHIPPED in apparent good order and condition" in the draft bill of lading presented to the Master amount to a representation or warranty by the shippers and/or charterers as to the apparent condition of the cargo observable prior to loading, or were they instead an invitation to the Master to make a representation of fact in accordance with his own assessment of the apparent condition of the cargo on shipment?

(2) In light of the answer to question 1, on the findings of fact made by the arbitrator, was any statement in the Bill of Lading inaccurate as a matter of law?

(3) If so, were charterers obliged to indemnify owners against any consequences of that statement being inaccurate, whether pursuant to an implied indemnity arising by operation of law or an implied contractual warranty or term?

In the Commercial Court a judge held that (1) by presenting the draft bill of lading to the master for signature, the shipper was doing no more than inviting the master to make a representation of fact in accordance with his own assessment of the apparent condition of the cargo, (2) the bill of lading was not inaccurate as a matter of law, and (3) there was no room for the implication of an obligation to indemnify the owners. Accordingly, he allowed the appeal and varied the award so that the owners' claim was dismissed.

Dismissing the owners' appeal, the Court of Appeal held that:

(1) The words "CLEAN ON BOARD" and "SHIPPED in apparent good order and condition" in the draft bill of lading presented to the master did not amount to a representation or warranty by the shippers and/or charterers as to the apparent condition of the cargo observable prior to loading; they were merely an invitation to the master to make a representation of fact in accordance with his own assessment of the apparent condition of the cargo on shipment.

(2) On the findings of fact made by the arbitrator, the statement in the bill of lading that the cargo was shipped in apparent good order and condition was accurate.

In these circumstances the third question, which assumed the existence of an inaccuracy in the bill of lading, did not arise. However, the judge was correct that the charterers were not obliged to indemnify the owners against liability for the cargo claim and that to impose liability on the charterers based on the tender of a draft bill of lading containing a statement that the cargo was shipped in apparent good order and condition would be contrary to the scheme of the Hague Rules

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