

The Trouble with Liens over Sub-Freights: How to Gain an Edge in Disputes?©

Chirag Karia KC



What is a Lien on Sub-Freights?

- ❖ Not a true lien: not a right “*to retain that which is in his possession belonging to another*”: ***Hammonds v Barclay*** (1802), per Grosse J; ***The Ugland Trailer*** (1985), per Nourse J.
- ❖ On charterers’ default, gives owner a right “*to step in and claim payment of such sub-freights to himself, provided that they have not already been paid*”: ***The Spiros C*** [2000] (CA), per Rix LJ.
- ❖ A floating equitable charge/assignment on the sub-freights by way of security: ***The Ugland Trailer***; ***The Annangel Glory*** (1986), per Saville J; ***The Attika Hope*** (1987), per Steyn J.
- ❖ Only a *sui generis* and purely personal, non-possessory right akin to *stoppage in transitu*: ***Agnew v Commissioners of Inland Revenue*** (2001) (PC), per Lord Millett.
- ❖ Former the better view, but unsettled at appellate level: ***The Western Moscow*** (2012), per Christopher Clarke J.
- ❖ Void against charterers’ liquidator if not registered: ***The Ugland Trailer***; ***The Annangel Glory***.

How is that “Lien” Created?

NYPE 1946:

- ❖ “18. That the Owners shall have a lien upon all cargoes, and **all sub-freights** for any amount due under this Charter, including General Average contributions...”

NYPE 1993:

- ❖ “23. The Owners shall have a lien upon all cargoes and **all sub-freights and/or sub-hire** for any amounts due under this Charter Party, including general average contributions...”

BALTIME 1939:

- ❖ “17. The Owners shall have a lien upon all cargoes and **sub-freights** belonging to the Time-Charterers and any **Bill of Lading freight** for all claims under this Charter...”

Which Receivables does the Lien Cover?

- ❖ Covers freight due to charterers under sub-charters or charterers' bills of lading.
- ❖ Does a lien on “*sub-freights*” cover sub-hire?
 - ✧ Covers sub-hires: ***The Cebu (No. 1)*** (1982), per Lloyd J, following marine insurance case of ***Inman Steamship v Bischoff*** (1882) (HL).
 - ✧ Does not cover sub-hires: ***The Cebu (No. 2)*** (1990), per Steyn J; ***The Bulk Chile*** (2012), per Andrew Smith J.
- ❖ Latter better view, at least to first instance level.
- ❖ NYPE 93 expressly includes “*sub-hire*” in the lien clause.

Liens in Chain of Charters

- ❖ Can the owner “lien”/intercept sub-sub-freights – i.e. freights due to the sub-charterers or even to the sub-sub-charterers?
- ❖ Yes, provided that each charter in the chain contains a lien on sub-freights clause: ***The Cebu (No. 1)***; ***The Western Moscow***.
- ❖ C/P wording must reveal intention to assign sub-sub-freights as well as sub-freights. E.g. “*all sub-freights*” in the NYPE Form.
- ❖ What about “*sub-freights belonging to the Time-Charterers*” in Baltimore?
- ❖ Owner — t/c —> Charterer — v/c —> Sub-Charterer — v/c —> Sub-Sub-Charterer
- ❖ What happens when different sums are due under the different charters?

Exercise of “Lien”

- ❖ Notice to sub-charterer, sub-sub-charterer, shipper, etc. perfects/crystalises the equitable assignment.
- ❖ No particular form for notice provided “*the fact that assignment has taken place is brought to the notice of the debtor*”: ***The Attika Hope*** (1987), per Steyn J.
- ❖ Lien only exercisable if sums due to owner under head charter.
- ❖ Only freight not yet paid caught: sub-freights already paid to charterer or its agent are lost: ***Tagart, Beaton & Co v Fisher*** (1903) (CA); ***Samsun Logix v Oceantrade*** (2008), per Gross J.
- ❖ But notice will catch future sums not yet due.
- ❖ What sum is assigned: whole sub-freight or, if lower, only sum due from the charterer?

Owner's Bill & Interception by Owner

- ❖ An owner can only have a lien on freights or hires due to the charterer or some 3rd party.
- ❖ Freight under an *owner's bill* is owed to the owner; and it cannot have a lien over its own property: ***Molthes Rederi v. Ellerman's Wilson Line*** (1926), per Greer J.
- ❖ Where a vessel has been chartered, the bill of lading will often provide "*freight payable as per charterparty*".
- ❖ The owner thereby delegates the collection of freight to his charterer: ***The Spiros C***, per Rix LJ; ***The Bulk Chile*** (2013), per Tomlinson LJ.
- ❖ But it reserves the right to intervene to require payment to itself.

Key Issues in a Dispute

- ❖ Timing, timing, timing – timeous notice essential. Remedy is lost once the sub-freight has been paid to the charterer or its agent.
- ❖ But no notice can be issued until sums are outstanding under the head charter.
- ❖ Ensure that the notice clearly states that the right to receive the sub-freight has been assigned to the owner, and payment must only be made to the owner.
- ❖ Remember sub-sub-freights – will be assigned if the sub-charter/sub-sub-charter contains a lien on sub-freight clause.
- ❖ Difficulties caused by different sums being due under charters in the chain.

Thank you for listening

CHIRAG KARIA KC

chirag.karia@quadrantchambers.com

www.quadrantchambers.com

Quadrant House, 10 Fleet Street, London EC4Y 1AU T: +44 (0)20 7583 4444 F: +44 (0)20 7583 4455