



*Beyond Moscow Stars:
liens, court-ordered sales
and third party cargoes.*

Chirag Karia QC[©]

- ❖ At Common Law for freight (if payable at the time of delivery) and GA only.
- ❖ Contractual Lien in B/L – e.g. *“lien for any amount due under this contract and costs of recovering same”* (Conlinebill cl. 12 & Combiconbill cl. 21).
- ❖ More commonly incorporated from C/P terms. E.g. *“lien on the cargo for freight, dead-freight, demurrage and damages for detention”* (Gencon cl. 8).
- ❖ *“absolute lien on the cargo for all freight, deadfreight, demurrage and costs, including attorney fees, of recovering the same”* (Asbatankvoy cl. 21).

- ❖ Must demand payment – specified sum or sufficient information to enable calculation.
- ❖ Only exercisable for sums due at time of demand.
- ❖ Must retain possession.
- ❖ Owner entitled to take all reasonable steps to maintain possession including:
 - ✧ Warehousing at nearby port in a different country: *The Lehmann Timber* (2013)(CA).
 - ✧ Standing off port: *The Chrysovalandou Dyo* (1980).

- ❖ Passive right to retain possession - no right to sell cargo unless otherwise agreed.
- ❖ How to break an impasse?
- ❖ Tribunal has no power to order sale as an *interim* remedy: § 38 *Arbitration Act 1996*.
- ❖ Court ordered sale under § 44(2)(d)? See, *The Stelios B* (2006) & *The Moscow Stars* (2017).
- ❖ Cargo must be “of a perishable nature or which for any other good reason it is desirable to sell quickly”: CPR 25.1(1)(c)(v).

- ❖ US\$7.7 million of overdue hire; hire continuing to accrue at US\$29,000 per day. Hull becoming fouled and Vessel required to dry-dock for SOLAS and Class inspections.
- ❖ Owners exercised contractual lien over cargo of 50,000 mts of crude for over 9 months. Vessel drifting off Curaçao.
- ❖ Owners applied for order for sale of cargo under §44(2)(d).
- ❖ Two main issues:
 - ✦ Was cargo “*goods the subject of the proceedings*”?
 - ✦ Was there “*any other good reason*” to “*sell [the cargo] quickly*”?

- ❖ §44(2)(d) allows sale of “*goods the subject of the proceedings*”. What does that mean?
- ❖ Proceedings merely relate to the goods? No – “*a closer nexus*” between cargo and the proceedings required.
- ❖ Proceedings be *about* the goods – i.e. who has title to the goods? No – paradigm, but not only, case.
- ❖ “*Sufficient nexus between the cargo and the arbitral proceedings*” required.
- ❖ Sufficient nexus between the cargo and the arbitral proceedings “*where a contractual lien is being exercised over a defendant’s goods as security for a claim which is being advanced in arbitration.*”

The Moscow Stars – Third party's cargo?

- ❖ But what if the cargo belongs to a third party (e.g. supplier or receiver), and not the charterer?
- ❖ “*There is no need to say anything about what the position would be if the cargo were owned by a third party not a party to the arbitration.*” (Per Males J).
- ❖ Contractual lien exercisable against party not personally liable: *The Miramar* (1983) (Mustill, J).
- ❖ But only if lien clause incorporated into the B/L contract between the Owners and the third party: *Fidelitas Shipping v. V/O Exportchleb* (1963) (CA).
- ❖ Join B/L holder or §44 application vs. B/L holder?

- ❖ “*Good reason*” – a jurisdictional requirement and a discretionary factor.
- ❖ No limit on what can constitute “*Good reason*” : *Bank of Scotland v Neath Port Talbot* (2006).
- ❖ No urgency – tribunal’s permission or parties’ written consent required: § 44(4).
- ❖ Urgency – Order only “*for the purpose of preserving evidence or assets*”: § 44(3).
- ❖ “*Assets*” has broad meaning and includes choses in action and the claimant/owner’s assets: *Cetelem v Roust* (2005)(CA).



Thank you for listening

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