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DANGER DANGER - BEWARE - Discharging Cargo Against LOI

In a recent case in Singapore, *The "Yue You 902" – Singapore High Ct [2019]* SGHC 106 – 24 April 2019, on 11 March 2016, FGV Trading Sdn Bhd (FGV) entered into a voyage charterparty with the defendant owner of the vessel *Yue You 902 ("the vessel")* for the carriage of a cargo of palm oil. On 4 April 2016, Aavanti Industries Pte Ltd ("Aavanti") contracted to sell 10,000 mt palm oil to Ruchi Soya Industries Ltd ("Ruchi").

On 5 April 2016, Aavanti contracted with FGV to purchase 10,000 mt of palm oil from FGV, on "Incoterms CNF Mangalore, India".

On 12 April 2016, *Yue You 902* was instructed to transport 10,000 mt of palm oil from Indonesia to New Mangalore, India. On 15 April 2016 *Yue You 902* took on 9,999.964 mt of palm oil in Indonesia. *Fourteen bills of lading* were issued on behalf of the defendant. The bills of lading identified the shipper as PT Intibenua Perkasatama and the consignee as *"To Order"*. They also named New Mangalore, India as the port of delivery and Ruchi as the notify party. The bills of lading were released to FGV on 19 April 2016 following payment of freight to the defendant, ship owner.

Around 22 April , back to LOI was provided in a chain from Ruchi to Avanti, then Avanti to FGV and FGV to the defendant Ship owner to discharge the cargo without the production of bill of lading.

The vessel arrived at New Mangalore on 24 April 2016 and began discharging the cargo on 27 April 2016. The cargo was completely discharged on 29 April 2016.

Now a side story was going on. There was a loan arrangement of OCBC bank ("OCBC") with Avanti for the sum to be paid for this shipment. OCBC bank paid the sum to Maybank and in return received the FGV's blank endorsed 14 bill of lading on 26th April 2019. Avanti failed to pay the sum of sum which OCBC paid on 29th April to Maybank and cargo was also completely discharged on 29th April. <u>Readers are requested to observe the dates carefully in this case.</u>

OCBC then initiated proceedings against the defendant pursuant to the 14 bills of lading for *breach of contract of carriage, breach of contract of bailment, conversion and detinue*. On 11 September 2017, OCBC obtained summary judgment against the defendant. The defendant appealed on the following grounds –OCBC had not acquired any rights to sue as cargo was discharged on 29th April and they become the bill of lading holder after the cargo was discharged. Therefore, the bill of lading was *spent bill* *of lading* and in addition they took the possession for the purpose of initiating the suit and further OCBC seem to have consented to its discharge.

From many past cases, delivery against an LOI to a person who was *not* entitled to delivery under the bill of lading did not cause the bill to be spent. Moreover, FGV was not a person entitled to take delivery under the bill of lading in any event as it had no possession of the bill of lading as they had given it to the OCBC bank (so how can they give instructions!). So FGV's instructions to the defendant ship owner to discharge was not valid in any event. Therefore, the bill of lading was not spent bill of lading but FGV had no possession of bill of lading.

OCBC won the case against the ship for discharging the cargo incorrectly. This case is an indication of the big risks involved when ship owners agree to discharge the cargo against the LOI.

Source of Information: Andrew Liu & Co., Ltd