

Circular Ref: 2020/0007**Date: 30 June 2020**

Named Parties in Bill of Lading – An important case

In a new case, *MVV Environment Devonport Ltd v NTO Shipping GmbH & Co KG MS “Nortrader” (The “Nortrader”) – QBD (Comm Ct) (HHJ Pelling QC sitting as a Judge of the High Court) [2020] EWHC 1371 (Comm) – 4 June 2020*, an explosion occurred on board the defendant’s vessel Nortrader as a result of which the defendant suffered losses of €676,561.46, €45,000 and US\$840.

The defendant shipowner brought arbitration proceedings against the claimant Shipper (named on the bill of lading) relying on a London arbitration clause incorporated into the relevant bill of lading, which related to a cargo of waste product carried on the vessel from Plymouth to the Netherlands, and which named the claimant as the shipper in the bill.

The claimant accepted that it was named as the shipper in the bill of lading but denied that it was a party to the contract of carriage, and therefore to the arbitration agreement contained in the bill. Shipper’s business was to convert waste product into energy and final waste product was transferred to receiver in Netherlands from the Plymouth plant. It’s the receiver that arranges to take the waste product from Plymouth to Netherlands by chartering vessel and arranging an agent at the load port. Receiver (‘RS’) collect the cargo at the shipper’s plant.

The bill of lading relating to the present dispute named the claimant as shipper, and RS as consignee. It incorporated by reference the terms and conditions of a “charterparty dated 10.01.2017 including arbitration”, which was a reference to the voyage charterparty between RS and the disponent owners of the vessel. The voyage charterparty named RS as charterer, the loadport as Victoria Wharf in Plymouth, the loading agent as SS and the cargo as UIBA.

The dispute was referred to arbitration, and the arbitration tribunal held that it did have jurisdiction over the dispute between the shipper and the ship owners. The claimant (shipper) challenged the tribunal’s determination in the High Court under section 67 of the Arbitration Act 1996.

The Court held that starting point was that the parties to a contract of carriage evidenced by a bill of lading were the persons named in the bill of lading as respectively shipper and carrier. However, it was open to one who was ostensibly a party to a contract of carriage evidenced by a bill of lading to show that it had been wrongly identified as a party to the contract of carriage.

The questions that arose were whether the receiver or their agent at the Plymouth was actually expressly or impliedly authorised by the claimant or had ostensible authority to enter into a contract of carriage with the defendant on named shipper’s behalf and in its name. It was found that only RS was authorised to

enter into the contract of carriage and they had appointed the agent without the involvement of the named shipper.

FDD department of ALCO advice to Andrew Liu's clients is that:

- a) The name of the parties on the bill of lading should be put carefully.
- b) If there is a doubt about any documentation, FDD department should be contacted 24 x 7

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk