Straight Bills Of Lading - Do The Hague-Visby Rules Apply? 

In the Court of Appeal decision in the “Happy Ranger”, Lord Justices Tuckey and Rix suggested that, contrary to popular wisdom, a straight bill of lading might be subject to the Hague-Visby Rules. The popular view was that negotiable bills of lading were subject to the Hague-Visby Rules, whereas straight bills (being non-negotiable documents) were not. Unfortunately, the Court of Appeal did not clarify their suggestion.

However, the case of the “Rafaela S” has given the Court of Appeal an opportunity to re-visit the point and for Lord Justice Rix to explain his view. Rix LJ produced in his judgement an extensive examination of the authorities on straight bills of lading. The key purpose of his investigation was the extent to which the authorities provide that negotiability/transferability is an essential element of a bill of lading. The judge further considered the 1966 Carriage of Goods by Sea Act. This Act provides that a straight bill of lading and a sea waybill (which is, quite plainly, a non-negotiable document) were essentially the same, and that straight bills should be categorised as sea waybills.

Lord Justice Rix also considered the extent to which a straight bill had to be produced to obtain delivery. The “Stettin” was the original authority for the proposition that a straight bill had to be produced. However, in two recent cases - Peer Voss v. A.B.P.L. Co. Pte. Ltd (Singapore Court of Appeal) and The Brij (Hong Kong) - the two Courts appeared to reach different conclusions. The Singapore Court held that a straight bill of lading had to be presented, whereas the Hong Kong Court held that it did not.

Following consideration of the statutes and the case law, Lord Justice Rix made the following six findings in his summing up:

1. The Rules are predominantly concerned with the content of a contract of carriage in circumstances where such a contract, as found in a bill of lading, might come to affect a third party into whose hands such a bill of lading was transferred. A consignee under a straight bill of lading is such a third party.

2. A straight bill of lading is just like a “classic bill” in that it is a document to be used to obtain payment. It can be transferred by delivery to a named consignee. The shipper, its bankers and insurers, need the same protection as they would have under a classic bill.

3. A straight bill of lading, unlike a sea waybill, is written in the form of an otherwise classic bill and requires production of the bill of lading on delivery.

4. A straight bill of lading is, in principle, function and form much closer to a classic bill, than to a non-negotiable receipt.

5. The Travaux Preparatoire of the Hague Rules (the studies produced in preparing the Rules) appear to support these arguments.

6. It was suggested that the words used in the 1971 and 1992 Carriage of Goods by Sea Act affected the position. Rix LJ did not feel that the words in these Acts were relevant as they were enacted for a different purpose and had, in fact, been introduced after the earlier set of the Hague Rules.

It can be seen that Rix LJ’s decision is firmly based on the premise that the straight bill is transferable and had value as a transferable document. These findings could, therefore, only be valid if he found that a straight bill of lading had to be presented by the consignee in order to obtain delivery. In this respect, he was assisted by the wording of the attestation clause of the particular bill, which read:

"...One of the bills of lading must be surrendered duly endorsed in exchange for the goods or delivery order." thus validating his third finding that the particular bill had to be presented to obtain delivery of the goods.

The final question for him was whether a straight bill of lading, which did not have a similar clause expressly requiring surrender of the bill, needed to be produced. In an obiter statement Rix LJ considered that it did.

Despite the extensive examination of the law and the reconciliation of his conclusions to the authorities, many will see Rix LJ’s decision as ultimately a pragmatic decision on policy grounds. Essentially, he seeks to make the law simpler. If it “looks and smelt” like a classic bill of lading, then it is a bill of lading.

On the other hand, it must be noted that a classic bill exists, not by statute but by mercantile custom as assimilated into the common law. Bills have never been defined in a statute and, indeed, legislators have refrained from doing so. The definition of a bill of lading for the purposes of the 1971 Act is different from that under the 1992 Act. Although a straight bill might be a “document of title” under the 1971 Act (and, therefore, is treated as a classic bill), is it also a document of title under the Sale of the Goods Act 1979 (respect of contracts of sale) or under the general law of pledge/Factors Act 1887?

It would be ironic if Rix LJ’s intention to clarify the status of the bills of lading, merely served to confuse it. The law on straight bills of lading becomes ever more interesting.

Leave to appeal this decision to the House of Lords has recently been given.

With thanks to Charles Williams of Thomas Cooper & Stibbard for preparing this article.

Update

Click here to view Steamship website article on the House of Lords decision in the “Rafaela S” which was given in February 2005.

1.[2002] 2 Lloyd’s Rep. 357

2.April 2003

3.(1889) 14 PD 142


6. 1(4) COGSA 1971 provides that (subject to s 1(6)), the Hague-Visby Rules apply to contracts of carriage evidenced by a "bill of lading or a similar document of title".