

## **Bills of Lading and Authority to Issue - QT TRADING, L.P. v. M/V SAGA MORUS et al**

### **The United States Fifth Circuit Court of Appeals**

#### **Introduction**

1. The decision of the U.S. Fifth Circuit Court of Appeals in QT Trading, L.P. v. M/V Saga Morus and others, and the facts of the case, is discussed in detail from the U.S. point of view by Michael Chalos and Ryan Gilsean of Chalos, O'Connor & Duffy, LLP, New York at: [www.simsl.com/SagaMorusChalos0811.pdf](http://www.simsl.com/SagaMorusChalos0811.pdf)
2. In brief, the holder of the bills of lading brought claims against the owners of a vessel. The bills of lading did not conform with the mate's receipts but were signed in any event by charterers' agents in excess of their actual authority to do so. The charterers later filed for bankruptcy.
3. The U.S. Court dismissed the holder's claims against the owners due to lack of privity of contract. The owners were simply not party to the bills of lading.
4. From an English law perspective, that decision is unsurprising. For the reasons set out in more detail in paragraphs 9-13 below, the manner in which the bills of lading were signed would likely mean they would be charterers' bills if they were subject to English law.
5. However, the U.S. Court went on to say that even if the bills of lading had been owners' bills, the holder's claims against the owners would have failed in any event because the charterers' agent exceeded its authority in signing non-conforming bills of lading.
6. The U.S. Court seemed to say that when the signing party exceeds its actual authority in signing bills of lading not in accordance with the master's instructions, the owners cannot be held liable as carrier under the bill of lading.
7. The view of the U.S. Court on this point is somewhat surprising from an English law perspective. For the reasons set out in more detail in paragraphs 14-23 below, if English law were applicable then the charterers and their agents would likely have apparent or ostensible authority to sign owners' bills on behalf of the owners, irrespective of their lack of actual authority.
8. As a result of such apparent or ostensible authority, under English law, even if the owners' bill is a non-conforming bill, the owners can be held liable as carrier under such bill to the holder who has no notice of the lack of actual authority of charterers or their agents who signed it.

English law perspective

*The holder's claims against owners would fail because the bills were charterers' bills*

9. If the above issues had been governed by English law, there is little doubt that an English Court would have come to the same decision to reject the holder's claims against owners under the bills of lading.
10. This is because the bills of lading in question would likely be considered charterers' bills under English law.
11. The case of *The Starsin* [2003] 1 Lloyd's Rep 571 made clear that, as a matter of English law, if there is a clear and unambiguous statement of the identity of the contracting carrier on the face of the bill of lading, then any pre printed terms to the contrary will be ignored. The manner of signature of the bill is the dominant consideration.
12. The manner in which charterers' agent signed the face of the bills of lading i.e. "*As Agent for the Carrier Daewoo Logistics Corp*" is a clear and unambiguous statement as to the identity of the carrier.
13. As such the bills of lading would likely be charterers' bills under English law, not owners' bills. The holder's claims against owners under the bills would accordingly fail.

*If the bills were owners' bills, then the holder's claims against owners might succeed*

14. The more interesting point is the U.S. Court's suggestion that even if the bills of lading were owners' bills, the holder's claims against owners would still fail because charterers' agent exceeded its authority in signing bills of lading which did not conform with the mate's receipts.
15. The U.S. Court seemed to say that owners could not be bound by an owners' bill of lading signed by charterers or charterers' agent in excess of their actual authority to do so. The U.S. Court cited with approval findings from other U.S. Courts that "*when the signing party exceeds its authority in signing bills of lading not in accordance with the Master's instructions, the owner cannot be held liable as a COGSA carrier*".<sup>1</sup>
16. If English law had been applicable, it is correct to say that charterers' agent did not have actual authority to sign the bills of lading. The terms of the charter clearly stated that charterers and their agents only have authority to sign bills which are in conformity with the mate's receipts. Further, as a matter of fact, these were non-conforming bills.

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<sup>1</sup> Strictly speaking the U.S. Court did not say that by the word "authority" they meant "actual authority". If the U.S. Court meant to say that the holder's claims under owners' bills would fail against owners if the charterers' agent exceeded its authority, whether actual, apparent or ostensible, then the U.S. Court's opinion would not be surprising from an English law perspective. However, the U.S. Court did not mention apparent or ostensible authority at all, and whilst not expressly stated, it does seem likely that the U.S. Court's comments were restricted to "actual authority".

17. However, as a matter of English law, charterers and their agents may have apparent or ostensible authority to bind owners to bills of lading, irrespective of any actual authority.<sup>2</sup>
18. This is because owners who time charter their vessels can be taken to be holding out that charterers and their agents have authority to make bill of lading contracts on owners' behalf.
19. The effect of the charterers' apparent or ostensible authority to make bill of lading contracts on owners' behalf is that if, as is usually the case, the holder has no notice of the lack of charterers' actual authority to sign the bill of lading on owners' behalf, then the bill may still bind the owners to the holder.<sup>3</sup>
20. From owners' point of view, this is a risk they run in allowing charterers to sign bills on their behalf rather than insisting that charterers present the bills to the master for signature.
21. Therefore if the bills of lading in this case had been owners' bills (e.g. if they had been clearly and unambiguously signed "*on behalf of Attic as carrier*"), then the holder's claims against owners under the bills may have succeeded if English law were applicable because charterers and their agents likely had apparent or ostensible authority to sign the bills on behalf of owners, even though the bills were non-conforming bills.
22. This is particularly so if the holder had no notice of the lack of actual authority of charterers and their agents to sign the non-conforming bills.
23. The U.S. Court's decision does not indicate whether the issue of apparent or ostensible authority of charterers' agent to sign was raised or, if it was, why it was not relevant.

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<sup>2</sup> This is expressly recognised in section 4 of the Carriage of Goods by Sea Act 1992 which provides that "*a bill of lading which (a) represents goods to have been shipped on board a vessel or to have been received for shipment on board a vessel; and (b) has been signed by the master of the vessel or by a person who was not the master but had the express, implied or apparent authority of the carrier to sign bills of lading, shall in favour of a person who has become the lawful holder of the bill, be conclusive evidence against the carrier of the shipments of the goods, or as the case may be, of their receipt for shipment.*"

<sup>3</sup> *The Nea Tyhi* [1982] 1 Lloyd's Rep 606 is an example of a case where charterers' agents had no actual authority to sign the bills of lading in question on behalf of owners, but were held to have ostensible authority to do so. Charterers' agents in that case had no actual authority to sign "*under deck*" bills for cargo which was in fact loaded on deck. Owners were nevertheless bound by the bills because charterers' agents had ostensible authority to sign them on owners' behalf.