



FREIGHT FORWARDERS BEWARE WHEN ISSUING HOUSE BILLS OF LADING

In Australian Capital Financial Management Pty Ltd v Freight Solutions (Vic) Pty Ltd [2017] NSWDC 279, a New South Wales court found that a freight forwarder engaged in misleading and deceptive conduct for issuing house bills that appeared to be the original negotiable bills. By issuing the bills, the freight forwarder had, in effect, 'put into the world two sets of documents of title' as the ocean carrier had also issued negotiable bills for the same shipment.

“By signing the house bills as agent for the carrier, the freight forwarder purported to contract with the shipper on behalf of the ocean carrier. However, as the freight forwarder did not have authority from any of the ocean carriers to do so, the freight forwarder was in breach of an implied warranty of authority.”

The freight forwarder was also found to be in breach of a warranty of authority for signing the house bills as agent for various ocean carriers, when, in fact, it had no authority to do so.

Background

The decision involved the export of sheep skins from Australia to China. At the request of the shipper, who was not a party to the proceeding, the freight forwarder issued house bills that named the consignee as “TO ORDER”, were stamped “ORIGINAL” and were signed by the freight forwarder, “as agent” for the carrier.

The shipper gave the house bills to the plaintiff, a third-party finance company, to secure a loan to enable the shipper to purchase the sheep skins. The finance company extended the loan to the shipper, on the basis that the house bills gave the shipper title to the goods. When the shipper defaulted on the loan, the finance company was unable to obtain possession of the cargo, as the goods had already been released in China using the original bills.

The judgment in detail

Misleading and deceptive conduct

The Court found that, by issuing the house bills, the freight forwarder represented that the house bills were negotiable instruments, entitling each successive lawful holder to take delivery of the goods.

The Court also found that a false meaning was conveyed by the house bills issued by the freight forwarder, namely:

- That they were issued by the freight forwarder as authorised agent for the ocean carriers.
- By being endorsed “ORIGINAL” and consigned “TO ORDER” the house bills appeared to be ocean bills, which would entitle the lawful holder to possession of the goods.

Breach of warranty of authority

By signing the house bills as agent for the carrier, the freight forwarder purported to contract with the shipper on behalf of the ocean carrier.

However, as the freight forwarder did not have authority from any of the ocean carriers to do so, the freight forwarder was in breach of an implied warranty of authority.

It should be noted that the claim for breach of warranty of authority was available to the finance company even though they entered into a transaction with the shipper, rather than the freight forwarder.

Points of significance

The decision highlights the need for freight forwarders to review their practices to ensure that house bills are not represented as original bills. In particular, when issuing house bills, consideration should be given to the following:

- Freight forwarders should not be stated as agents for carriers – house bills are issued by the freight forwarder and this should be made clear. By stating that bills are issued on behalf of the carrier, it suggests that they are original bills.



- Correct use of the words “ORIGINAL” and “TO ORDER” – although not prohibited from use in house bills, it is important to consider how these words may be interpreted, even to third parties without technical or legal knowledge of bills of lading.
- The need to make clear the intention of the bill of lading – if it is a house bill, then describe it this way or make reference to the original bill.

The case is also an important reminder to carriers, freight forwarders and shippers that cargo interests, including shippers, should not be provided with both the house bill and the original bill. Usually, if a freight forwarder is a party to the carriage of cargo, cargo interests would receive only the house bill. The freight forwarder’s agent will release the goods to the cargo interests on presentation of the house bill of lading.

It remains to be seen whether the decision will be the subject of an appeal.

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