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## Carriage of goods by sea: principles of agency and functions of bills of lading



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The Supreme Court's recent decision in *Associated Agencies Limited v Roha Premicum [sic] Potato Limited* considered the principles of agency and functions of bills of lading and provided a useful summary of this area of law. **(1)**

### Facts

The claim arose from a dispute regarding the rights and obligations of the appellant company, which had arranged the carriage of a cargo of potatoes from Limassol, Cyprus to Felixstowe, United Kingdom on the basis of the terms of a bill of lading and a fees invoice.

The appellant company's claim was based on the fees invoice that it had issued to the respondent, which it contended confirmed its standpoint that it had, in reply to the respondent's application for shipment, arranged for the carriage of the cargo by a Hamburg Sud vessel and incurred expenses for its services. The appellant argued that it had issued the fees invoice in its own right, not as an agent of Hamburg Sud. The respondent took the opposite view – namely, that the appellant had acted as an agent of Hamburg Sud at all times.

Section 142 of the Contract Law provides that "an "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal". **(2)**

As regards whether the bill of lading had been signed by the appellant as an agent, the first-instance court decided that the appellant was acting as an agent in all matters and noted that, based on Sections 186 and 190 of the Contract Law, an agent cannot personally enforce a contract, nor is it bound by one. Section 186 provides that contracts entered into through an agent and obligations arising from acts performed by an agent may be enforced in the same manner and will have the same legal consequences as if the contracts had been entered into and the acts performed by the principal. Section 190(1) provides that in the absence of any contract to that effect, an agent cannot personally enforce contracts that it entered into on behalf of its principal and is not bound by them.

### Decision

In the appeal proceedings, the Supreme Court reversed the finding of the first-instance court and held that, having regard to the facts of the case, the appeal must succeed. The appellant company had offered its services on the basis of an application for shipment addressed to it by the respondents requesting the carriage of cargo. The respondents were named as the shippers and a company called Medfresh Ltd as the consignee. The appellant with prepaid freight had issued a bill of lading which it had expressly signed as "agents of the Carrier" – namely, Hamburg Sud – in accordance with the definition in Clause 1 of the terms and conditions of the bill of lading. The bill of lading governed the terms of the carriage of goods between the shippers (the respondents), the carriers (Hamburg Sud) and the consignee (Medfresh Ltd). The appellant was not a party to the bill of lading and there was no contractual relationship between the appellant and the respondent arising from the bill of lading.

The Supreme Court remarked that bills of lading have been a feature of commerce since the 16th century in order to:

- formally acknowledge that cargo with the specified characteristics has been placed on board a particular ship to be transported to a specified destination;
- evidence the contract of carriage by repeating in detail the terms of the contract (which in reality had been concluded prior to the signing of the bill of lading); and
- act as the document of title to the cargo.

As regards a bill of lading as evidence of a contract of carriage, in *Archangelos Domain Limited v Adriatica Societa Per Azione Di Navigazione*, **(3)** the following extract from Lord Goddard's judgment in the leading English case of *S S Ardennes (Cargo Owners) v S S Ardennes (Owners)* **(4)** was adopted:

*It is, I think, well settled that a bill of lading is not in itself the contract between the shipowner and the shipper of goods, though it has been said to be excellent evidence of its terms: Sewell v. Burdick per Lord Bramwell and Crooks v. Allan. The contract has come into existence before the bill of lading is signed; the latter is signed by one party only, and handed by him to the shipper usually after the goods have been put on board. No doubt if the shipper finds that the bill contains terms with which he is not content, or does not contain some term for which he has stipulated, he might, if there were time, demand his goods back; but he is not, in my opinion, for that reason prevented from giving evidence that there was in fact a contract entered into before the bill of lading was signed different from that which is found in the bill of lading or containing some additional term. He is no party to the preparation of the bill of lading; nor does he sign it. It is unnecessary to cite authority further than the two cases already mentioned for the proposition that the bill of lading is not itself the contract; therefore in my opinion evidence as to the true contract is admissible.*

However, as established in *Leduc & Co v Ward*,<sup>(5)</sup> once the bill of lading is endorsed, its terms become conclusive evidence of the terms of the contract of carriage as between the shipowner and the endorsee.

In *Sanders Brothers v Maclean & Co*,<sup>(6)</sup> the court stated as follows:

*The law as to the indorsement of bills of lading is as clear as in my opinion the practice of all European merchants is thoroughly understood. A cargo at sea while in the hands of the carrier is necessarily incapable of physical delivery. During this period of transit and voyage, the bill of lading by the law merchant is universally recognized as its symbol, and the indorsement and delivery of the bill of lading operates as a symbolical delivery of the cargo. Property in the goods passes by such indorsement and delivery of the bill of lading, whenever it is the intention of the parties that the property should pass, just as under similar circumstances the property would pass by an actual delivery of the goods. And for the purpose of passing such property in the goods and completing the title of the indorsee to full possession thereof, the bill of lading, until complete delivery of the cargo has been made on shore to some one rightfully claiming under it, remains in force as a symbol, and carries with it not only the full ownership of the goods, but also all rights created by the contract of carriage between the shipper and the shipowner. It is a key which in the hands of a rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be.*

To conclude, a bill of lading is a transferable document which, depending on its holder, can operate as:

- an acknowledgement of receipt of the quantity and condition of goods, as well as any leading marks required to identify the goods;
- evidence of a contract of carriage;
- conclusive evidence of a contract of carriage in the hands of an endorsee; and
- a document of title.

#### **Comment**

*Associated Agencies Limited* demonstrates the importance of expressly specifying the capacity in which various parties are acting when negotiating or entering into a contract – for example, whether they are acting as principals in their own right or as agents on behalf of someone else.

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#### **Endnotes**

(1) *Associated Agencies Limited v Roha Premicum (sic) Potato Limited*, Appeal 10/2012, dated 22 May 2018.

(2) Cap 149.

(3) (1978) 1 CLR 439.

(4) (1951) 1 KBD 55.

(5) (1888) 20 QBD 475.

(6) (1883) 11 QBD 327.

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