



QORTI ĊIVILI – PRIM’AWLA
ONOR. IMHALLEF MIRIAM HAYMAN LL.D.
Seduta tal-lum il-Ġimgha 11 t’Ottubru, 2024

Rikors Ġuramentat Nru: 478/2015MH

Numru:3

**Avukat John Bugeja bhala mandatur speċjali f’isem u ghan-
nom tas-soċjeta’ estera EVERGREEN MARINE (UK) Ltd
maghrufa bhala Evergreen Line**

Vs

**Noel Cefai eżerċitat fil-kummerċ bl-isem Green Care Trading
f’ismu propju u/jew bhala aġent tal-kumpanija estera FMS
Seaways AG u/jew Canusa Hershman Recycling Company u
b’digriet tat-23 Settembru 2015 giet ordnata korrezzjoni fl-okkju
tal-kawża fis-sens illi isem l-intimat ghandu jaqra’ “Noel Cefai
eżerċitanti fil-kummerċ bl-isem Green Care Trading f’ismu
propju u bhala aġent tal-kumpaniji esteri FMS Seaways AG u
Canusa Hershman Recycling Company”.**

Il-Qorti

Rat ir-rikors ġuramentat fejn ġie premiss u mitlub kif se jingħad:-

1. *“ILLI l-intimat kien avvicina lill-agenti tal-linja Evergreen Marine (UK) Ltd. u cloe· lil MBL Shipping Agency limited nhar il-hmistax (15) ta' Jannar tas-sena elfejn u tlettax (2013) fejn kien tahom istruzzjonijiet sabiex jigu trasportati zewg (2) containers bin-numri EMCU 9484515 u GESU 6341689 minn Malta għal Xingang gewwa c-Cina (kopja tat-email mibghuta mill-intimat lill-Agenti tal-Linja qed tigi hawn annessa u mmarkata bhala Dok. 'A');*
2. *ILLI, l-intimat kien hallas Invoice number 060070 (kopja tal-invoice qed tigi hawn annessa u mmarkata bhala Dok.'B') lil Delta Container Services Co. Ltd. għall-garr tal-merkanzija permezz ta' BOV cekk numru 2064 datat il-hmistax (15) ta' Frar tas-sena elfejn u tlettax (2013), u liema cekk kien jammonta għas-somma ta' elf mija u tlieta u sittin Ewro u erba' centezmi (€ 1,163.04) (kopja tac-cekk qed tigi hawn annessa u mmarkata bhala Dok. 'C*
3. *ILLI, dawn iz-zewg containers ingarru taht il-polza ta' karigu numru 555300000218 (kopja annessa u mmarkata bhala Dok. 'D') u sussegwentement, waslu fil-Port tad-destinazzjoni u cioe' f'Xingang c-Cina nhar it-tmienja u ghoxrin (28) ta' Marzu tas-sena elfejn u tlettax (2013) (kopja tal-Arrival Notice qed tigi hawn anness u mmarkata bhala Dok. 'E');*
4. *ILLI, l-ebda miz-zewg containers ma gew irtirati wara l-wasla tagħhom fic-Cina u b'konsegwenza ta' hekk l-linja nkarigata mit-trasport tal-containers qeghda tinzamm responsabbli għad-danni ta' demurrage u detention relatati ma' dawn iz-zewg containers;*
5. *ILLI l-linja qeghda tagħmel l-arrangamenti għad-distruzzjoni tal-merkanzija gewwa dawn il-containers, u dan sabiex ma jibqghux jakkumulaw d-danni relatati ma' demurrage u detention;*
6. *ILLI sas-sbatax (17) ta' Dicembru tas-sena elfejn u erbatax (2014), d-danni relatati ma' demurrage u detention kif ukoll mad-distruzzjoni tal-merkanzija kienu stmati li jammontaw kompleksivament għas-somma ta' mija u elf u sitt Ewro (Eur 101,006.00). Is-somma tad-danni effettiva ser tigi ppruvata fil-mori tal-kawza gialadarba tkun sehhet d-distruzzjoni tal-*

merkanzija;

7. *ILLI l-klawzola numru 14(4) Ii tinsab fuq wara tal-polza ta' karigu b'numru 555300000218 tistipula cament is-segwenti:*

The Merchant of the Goods shall be jointly and severally liable to Carrier for the payment of all freight, Bunker Adjustment Factor (BAF), Currency Adjustment Factor (CAF), Terminal Handling Charge (THC), demurrage, detention, General Average, salvage and other charges, including but not limited to court costs, expenses and reasonable attorney's fees incurred in collecting sums due to the Carrier. Payment of Ocean Freight and charges to a freightforwarder, broker or anyone other than the carrier or its authorized agent, shall not be deemed payment to the Carrier and shall be made at Payer's sole risk.

8. *ILLI, s-socjeta' esponenti tixtieq tissottolinea illi t-terminu 'Merchant' huwa definit fi klawzola wiehed (1) tal-istess Polza ta' Karigu li jghid:*

"Merchant" includes the shipper, Holder, consignee, the receiver of the Goods, any person owning or entitled to the possession of the Goods, or this Bill any one acting on behalf of any such persons.

9. *ILLI, minhabba Ii d-definizzjoni tat-terminu 'Merchant' tinkludi wkoll kwalunkwe persuna ohra li setghet dehret f'isem is-shipper, dan ifisser illi l-intimat ghandu jinzamm unikament responsabbli ghal hlas ta' danni li ghadhom qed jakkumulaw sal-gurnata tal-lum;*
10. *ILLI, inoltre, s-socjeta' esponenti umilment tixtieq tissottolinea illi fid-dettalji suppliti lill-agent tal-linja, l-intimat indika bhala "shippers" is-socjetajiet FMS Seaways AG kif ukoll li Canusa Hershman Recycling Company. Meta entrambi socjetajiet gew ikkuntatjati mill-linja, dawn cahdu kategorikament li huma b'xi mod kienu nvoluti fdin l-istess konsenja (Kopja tal-Korrispondenza mibghuta ghan-nom tal-linja u r-risposti mibghuta minn dawn iz-zewg socjetajiet qed tigi hawn anness u mmarkata bhala Dok. 'F', Dok. 'G' u Dok. 'H' rispettivamente);*
11. *ILLI, l-intimat gie interpellat b'permezz ta' ittra ufficjali numru 2443/2014 ipprezentata nhar il-hamsa (5) ta' Awwissu tas-sena elfejn u erbatax (2014), izda rrespinga l-pretensjonijiet mitluba mis-socjeta' esponenti;*

Jghid ghalhekk l-intimat Noel Cefai ghaliex ghar-ragunijiet kollha premissi

dina l-Qorti ma ghandhiex:

1. Tiddikjara lill-intimat debitur tar-rikorrent nomine ghad-danni;
2. Tillikwida l-ammont tad-danni dovuti lir-rikorrent nomine;
3. Tikkundanna lill-intimat nomine jhallas li-rikorrent nomine l-ammont ta' danni hekk kif likwidat minn din l-Onorabbli Qorti.

bl-ispejjez legali, inkluz dawk relatati mal-ittra ufficjali numru 2443/2014 u bl-imghax legali dekorribbli mid-data tal-prezentata tal-istess ittra ufficjali, kontra l-intimat li huwa minn issa ngunt sabiex jidher ghas-subizzjoni”.

Rat ir-risposta ġuramentata fejn ġie eċċepiet illi¹:-

1. “Illi in linea preliminarj r-rikorrenti ghandu jipprova l-mandat tieghu mis-socjeta' estera Evergreen Marine (UK) Ltd.

2. Illi wkoll in linea preliminarj, qed jiġi sottomess illi-l-esponenti mhuwiex il-legittimu kontraddittur stante li m'ghandu ebda ness ġuridiku mas-socjeta' Evergreen Marine (UK) Ltd. Illi l-esponenti hadem mad-Delta Container Services Co Ltd u ghalhekk huwa ghandu jiġi lliberat mill-osservanza tal-gudizzju,

3. Illi t-talbiet tar-rikorrenti huma nfondati fil-fatt u fid-dritt fil-konfront tal-esponenti proprio et nomine ghar-raguni li l-esponenti m'ghamel xejn hazin li bih setgħa kkawza kwalsiasi dannu lir-rikorrenti nomine. Anzi, kif ser ikun ppruvat waqt it-trattazzjoni tal-kawza, l-esponenti mexxa b'mod l-aktar korrett f'dak kollu li għamel u għalhekk żgur li ma kkawza ebda danni lir-rikorrenti nomine kif allegat.

4. Illi f'operazzjoni fejn jintbghat container jew aktar minn pajjiż għall-iejor, tkun involuta l-hidma ta diversi nies u/jew kumpaniji. Għalhekk jekk jirrizulta li tabilhaqq l-attur nomine sofra xi danni, dawn setgħu gew ikkagunati minn xi haddiehor jew xi aġenzija jew xi kumpanija li kienet involuta fit-tragħit in kwistjoni. Għalhekk, stante li kif ġia ingħad l-esponenti

¹ Folio 30.

ma ghamel xejn hazin li bih setgha kkaguna kwalsiasi dannu lir-rikorrenti noe kif allegat, huwa qiegħed min issa stess jitlob il-kjamata fil-kawza ta' (i) is-socjeta' FMS Seaways AG; (ii) is-socjeta' Canusa Hershman Recycling Company; (iii) is-socjeta' MBL Shipping Agency Limited; (iv) is-socjeta' Tainjin Jinzhengehun Metal Products Co. Ltd; (v) l-Awtorita' li tiehu hsieb il-port ta' Xingang fic-Cina; u (vi) is-socjeta' Delta Container Services Co. Ltd.

Salv Eccezzjonijiet ohra kemm -il darba jkun il-kaz”.

Rat l-atti kollha tal-kawza.

Rat in-noti ta' sottomissjonijiet, semgħet ukoll kull trattazzjoni.

Ikkunsidrat.

Illi sintetikament din hija kawza fejn l-attriċi soċjeta nvoluta fis-*shipping* tfittex mingħand il-konvenut danni, spejjeż u kontrostallija kollha inkorsi minna meta fuq inkarigu tal-konvenut hi wasslet konsenja ta' plastic pressat lejn port ġewwa iċ-Ċina, liema konsenja baqgħet mhux miġbura u baqgħet hemm abbandunata għal snin.

Il-konvenut iressaq diversi eċċezzjonijiet. L-ewwel tnejn jorbtu mal-mandat mogħti lil attur nominee ukoll għal fatt li hu mhux il-legittimu kontradittur biex jrrispondi għax-xilja.

Eċċezzjonijiet

Mandat.

L-ewwel eċċezzjoni mressqa tolqot il-mandat li ġie mogħti l-attur nomine minn soċjeta' estera, dan jorbot mal presenza tal-attriċi fi ġżiritna biex tressaq u tipproseġwi bil-kawża.

Għal dan l-iskop ġiet esebita *Power of Attorney*, prokura,² a favur l-attur nominee. Konsegwentement il-Qorti tastjeni milli tiegħu konjizzjoni ulterjuri ta' l-istess eċċezzjoni.

It-tieni eċċezzjoni; legittmu kontradittur.

Kif ġia ngħad *supra* din il-kawża ssib il-baži tagħha fuq transport ta' merkanzija li baqgħet abbandunata fil-*Port of Discharge*.

² Folio 225

Inevitabilment ġiet redatta s-soltu Polza ta' Kargu, Bill Of Lading, marbut ma l-istess trasport. Kif se naraw aktar l-isfel meta jkun qed jiġi trattat il-mertu, dan sar fuq informazzjoni lil kumpanija trasportattri rċevit mingħand il-konvenut, li kien hu li kien innegozzja l-biegh tal-merċe involut u thallas tiegħu. Il-konvenuta hallset ukoll id-dovut tat-trasport tal-merkanzija lil attriċi tarmite rappresentanti lokali.

Mill-lat ġurisprudenzjali insibu illi biex parti tkun idonea tirrispondi għal xilja jinhtieg li tkun munita b'ċerti elementi. Għalhekk fid-deċiżjoni fl-ismijiet **Angela sive Gina Balzan vs L- Onorevoli Prim Ministru** et deċiż fil-15 ta' Diċembru 2017⁹ ingħad hekk –

“Kif qalet riċentement din il-Qorti stess fil-każ Joseph Grech et vs Nikka Developments Company Limited et deċiż fit-3 ta' Novembru 2017 -

“Dwar l-argument tas-soċjeta' li hija mhijiex legittimu kontraddittur, kif qalet din il-Qorti fil-każ Pauline MacDonald vs Medistar Healthcare Services Limited et deciz fit-28 ta' Settembru 2016³ - “Il-kriterji li jirrendu parti f'kawża bħala legittimu kontraddittur jirriżultaw ben ċari mill-ġurisprudenza:

Focal Maritime Services Company Limited vs Top Hat Company Limited deċiża fid-9 t'April 2008 mill-Qorti tal-Appell:

“In linea ta' prinċipju generali huwa, bla dubju, indiskuss illi d-deduzzjoni ta' konvenut f'gudizzju trid, neċessarjament, titwieled minn rapport ġuridiku, sija jekk dan jemani minn kuntratt, leżjoni ta' dritt minn intervent delittwuz jew akwiljan, ope successionis jew minn sitwazzjonijiet strutturalment komuni (ad eżempju, f'kondominju jew il-krejazzjoni ta' ċerti servitujiet). Li jfisser, b'konsegwenza, illi kawża ma tkunx tista' tikkonsegwi

³ Rik Gur 700/14

l-iskop tagħha jekk mhux fil-konfront ta' dak li miegħu l-attur għal xi waħda mill-konnessjonijiet aċċennati, għandu relazzjoni ġuridika.

Fil-każ fl-ismijiet Edgar Urpani pro et noe vs Continental Meat Co. Ltd deciz fit-23 t'Ottubru 2009⁴ intqal hekk:

“Huwa ben risaput illi, u apparti mill-operat tal-ligi, il-kostituzzjoni in ġudizzju ta' parti mharrka tinsel minn qagħda ta' rapport ġuridiku preċedenti, sija kontrattwali, extra-kontrattwali, delittwuz jew akwiljan. Ara Artikolu 959 Kodiċi Ċivili. Dan neċessarjament ifisser illi l-azzjoni proposta jrid ikollha bejn il-partijiet konnessjoni ma' l-oġġett jew it-titolu tal-kawża.”

Illi inoltre l-ġurisprudenza tkompli hekk:

“Għal fini tal-valutazzjoni ta' l-integrità tal-kontradittorju rigward irid isir b'mod esklussiv għal dak prospettat mill-attur bit-talba tiegħu. Dan għaliex il-kontradittorju hu determinat fuq il-bażi tad-domanda proposta.”

(Avukat Dr Aaron Mifsud Bonnici noe vs European Institute of Education Limited)⁵

Inoltre fil-każ Av. Michael Psaila noe vs Joseph Pace et deciz fit-3 ta' Ottubru 2008⁶ ingħad li - “Min jeċċepixxi li hu mhux il-leġittimu kontradittur jeħtieġ illi jipprova li hu ma kienx il-persuna li kellu jirrispondi għat-talba proposta bl-istanza għaliex hu ma kienx daħal f'ebda rapport mar-rikorrent noe jew li m'għadx għandu tali rapport.”

Illi mingħajr dubbju, u a prexxindere minn dak li se jirizulta fil-mertu, il-konvenut jikkwalifika f'dik ir-rabta ġuridika meħtieġa għaliex bejnu u bejn l-attriċi bin-negozzju tat-trasport tal-merkanzija kif rifless fil-Bill of Lading, inħalaq dak ir-rapport meħtieġ biex il-konvenut jista' jkun tenut iwieġeb għall-vertenza.

Konsegwentement din l-eċċezzjoni qegħda tiġi miċhuda.

⁴ Rik 1758/99 Qorti tal-Appell (Sede Inferjuri)

⁵ (Nru 777/06) Deciz 13 ta' Marzu 2009 mill-Qorti ta' l-Appell

⁶ Cit Nru 1236/07

Mertu.

Qabel ma tghaddi biex teżamina l-mertu n vertenza ghandu jiġi puntwalizzat illi l-konvenut fir-raba' eċċezzjoni jitlob il-kjamat in kawża ta' kumpaniji, anke Ċinizi, li kienu marbuta jew laqtu b'xi mod ma din il-vertenza. Pero tul il-kors ta' dawn il-proċeduri naqas li j avvanza din it-talba għal kunsiderazzjoni sew ta' din il-Qorti u ma reġghetx tqajjmet jew inhass il-bżonn li tiġi diskussa din il-vertenza.

Konsegwentement dik il-parti ta' din l-eċċezzjoni qeghda tiġi miċhuda.

Xhieda miġbura u mressqa.

Xehed **Godwin Scerri**⁷ bħala manager ta' MBL Shipping Agency li tirrappresenta lil Ever Green Lines ġewwa Malta.

Spjega li Noel Cefai kien klijent regolari tagħhom tant li xehed li magħhom kien ixxipja madwar mittejn, sitta u sittin container.

⁷ Folio 136

Jixhed lil komunikazzjoni fuq din l-ordni in vertenza waslet minghand Cefai tramite Green Care Trading, wieħed mill-ismijiet li Cefai kien jikkummerċjaw tahtu.⁸ Kien Cefai li għamel *booking* biex jixxipja żewġ containers għal Xinjiang ġewwa iċ-Ċina.

Kien ukoll Cefai li trasmettielhom l-istruzzjoni tal-kontenut tal-Bill Of Lading. Tant li bagħat ukoll *speciman* ta' l-istess Bill of Lading⁹. Ta' dan iġid li kien hemm sensiela ta' komunikazzjonijiet bejniethom. B'hekk da parti tagħhom saret *reservation* fuq il-vapur, ukoll ġie finalizzat il-Bill of Lading¹⁰ li spjega jiġi il-*contract of carriage* bejn *is-shipping line*, ċioe' Ever Green f'dan il-każ, u l-klijent.

Spjega lid-dettalji kollha li kienu jidhru fuq l-istess Bill of Lading kienu suppliti mill-istess Cefai. Anzi jkompli li kien hemm anke emails fejn Cefai ta struzzjonijiet u approvazzjoni tad-draft Bill of Lading.

⁸ Ara dok GS1 folio 147

⁹ Dok GG3 folio 150

¹⁰ Dok GS4 Folio 154

Ikkonferma li Cefai kien ħallas tas-servizz li kien se jiġi provdut tas-shipping. Esebixxa ukoll is-*shipping order* li nħarget mill-attriċi li kienet tippermetti lil Cefai li jdaħħal fil-Freeport iż-żewġ containers li kienu se jiġu trasportati.¹¹

Dwar l-*invoice* maħruġa f'isem Delta Containers Services Limited¹² u c-cheque tal-ħlas relattiv mill-konvenut lil istess Delta¹³, spjega li din Delta kienet kumpanija oħra fil-grupp tagħhom. Tant li hu kien ukoll managing director tagħha. Żid li din kienet *Non Vessel Operating Common Carrier* u kienet tixtri spazji fuq il-vapuri. Il-fatt li l-*invoice* ħarget fuq Delta kienet kif spjega hu parti mill-proċedura interna tagħhom li ma kienet ttellef xejn mill-*contract of carriage* li sar bejn s-shipper u l-carrier, għalhekk bejn Cefai u MBL Evergreen.

Żid ukoll li Cefai mar oltre il-proċedura normali u talab li ssir dik l-imsejjha *telex release*, fi kliem ix-xhud “*Bażikament fejn inti tavża l-carrier li the documents of title tal-merkanzija qegħdin f’idejna. Għaldaqstant ir-riċevitur m’għandux għalfejn jerga’ jirrappreżenta (recte jippreżenta) dokument iehor imma once li jippreżenta jkun hemm release għall-merkanzija. Jiġifieri hemmhekk mill-konferma tas-Sur Cefai illu hu qed jikkontrekja ikkonferma ukoll illi ssib il-firma tiegħu li qed jassumi responsabilita’ tar-rilaxx tal-merkanzija at destination*”.¹⁴

¹¹ Dok GS6 folio 157. Ara ukoll dok GS7 fir-rigward folio 158.

¹² Dok B folio 8

¹³ Folio 9

¹⁴ Folio 140

Jixhed li mir-records jirriżultalu lil vapur kien telaq minn Malta fl-4 ta' Frar, 2013 u wassal Xinjiang fit 28 ta' Marzu, 2013. Presenta d-dokument GS8 li kien mibgħut miċ-Ċina li kien juri lit-tgħabbija ma kienetx giet miġbura. Dan hu datat 3 ta' Mejju, 2013.¹⁵

Igħid li saru hafna komunikazzjonijiet bejnu u bejn Cefai fuq dan il-fatt, jsemmi emails fl-ammont ta' 248 paġni ta' komunikazzjonij biex Cefai li kien qed jkellem kljient minn Xinjiang anke jipprova jsib soluzzjoni għal għelt li nqala'.

Žid li biex tinstab soluzzjoni kien hemm hafna komunikazzjoni bejn Cefai u Jonathan Mizzi, minhabba l-ispejjeż li kienu qed jiġu nkorsi aktar kemm kienet iddum *unclaimed* il-merkanzija, tant li l-istess Cefai prova jsib bejgħ tal-merkanzija x'imkien ieħor.

Xehed ukoll li f'Diċembru kien hemm splużjoni kbira ġewwa l-port fiċ-Ċina, fejn anke mietu n-nies u s'hawn il-merkanzija kienet għada hemm.

¹⁵ Folio 159.

Ighid ukoll li skont ir-records li kellhom il-merkanzija kienet ghada mhux distrutta. Huwa hawn kien qed jixhed fis-sena 2016.

Skontu, mistoqsi minn kien jikkwalifika bħala *l-merchant f'dan in-negozzju*, wiegeb li għalih kien is-Sur Cefai li kien jibqa' dejjem responsabbli għal merkanzija sakemm tiġi rritirata.

In kontro eżami, tista tgħid li ssikat fuq dak li m'hemmx imniżżel fuq il-Bill of Lading, baqa' insistenti lil *Merchant* fik kaz odjern kien biss is-Sur Cefai. Dan jirriżulta minħabba l-fatt li fil-kaxxa bin-numru 8 fid-dokument imsemmi ma hemm imniżżel ebda isem.

Baqa' insistenti lil *Merchant* kien Cefai anke n kwantu għal fatt lid-dettalji fuq il-Bill of Lading kienu ġew fornuti biss mill-konvenut u l-merkanzija ntbagħtet iċ-Ċina biss fuq inkarigu tiegħu.

Spjega ukoll lil Bill of Lading darba li mis-shipper jmur għand ir-riċevitur, dan jikkostitwixxi ċertifikat li bih dan jista' jiġbor il-merkanzija. Allura jagħti dritt ir-riċevitur għal dik il-merkanzija. Spjega li *telex release*, kienet forma oħra ta' Polza ta' Kargu, kienet tokkorri meta jkun hemm ftehim bejn is-shipper u r-

receiver li ma jkunx hemm bżonn li jiġi presentat Bill of Lading *at Port of Discharge* u r-riċevitur jista' jirtira l-merkanzija xorta.

Jixhed ukoll illi fuq Bill of Lading kien hemm kundizzjoni li tgħid li min jibgħat il-merkanzija jibqa' hekk responsabbli sakemm tiġi rritrata, u jekk jokkorri dan il-carrier iddur fuq is-shipper.

Ġew esebiti ukoll l-iskambji ta' emails li ddepona fuqhom ix-xhud, dawn bejn Green Care, Noel Cefai u Jonathan Mizzi li juri skontu t-tentattivi li kienu qed ssiru mill-istess Cefai biex isib soluzzjoni tal-merkanzija li baqgħet ma ġietx rritrata.¹⁶ Tant li l-istess Cefai anke prova lli jbiegħ l-istess merkanzija abandonata lil haddiehor. Għalhekk naraw illi f'email meta rinfaċċat bit-theddida ta' l-ispejjeż tal-merkanzija mhux irtirata Noel Cefai jwieġeb li illum il-merkanzija ma kienetx aktar tiegħu stante li hu kien thallas tagħha (ara email datata 22 ta' Ottubru, 2013¹⁷, ukoll email simili datata 23 ta' Mejju, 2013¹⁸. Pero detto cioè', narawh ukoll li Cefai jipprova li jieħu l-istess merkanzija go Port Ċiniż ieħor biex jehles mill-problema tal-flejjes *qua* spejjeż u danni li kienu qed jiġu attribwiti u mitluba minnu.¹⁹

¹⁶ Dok A minn folio 169 sa folio 209.

¹⁷ Folio 193

¹⁸ Folio 203.

¹⁹ Folio 200 email datata 30 ta' Lulju, 2013.

In kontro eżami²⁰ spjega illi huma kienu jirrapresentaw lill-kumpanija Evergreen Shipping Malta tramite M B L Shipping Agency.

Spjega lil Bill of Lading huwa proof of contract of carriage. Ighid lil Bill of Lading huwa bejn minn qed jixxipja l-merkanzija u minn jirċievi l-merkanzija. Spjega lil Bill of Lading generalment jintbagħat mis-*shipper* li jibgħatu lir-riċevitur bħala *proof of cargo* u r-riċevitur jkun jista' jirtira l-merkanzija mill-Port of Discharge.

Fiehem ukoll x'inhum *telex release*, li spjega pero li kien mod ta' rilaxx ta' merċe xorta bil-Bill of Lading.

Ikkonferma li nonostante l-akkadut Cefai kien klient regolari tagħhom, ukoll li kien esporta f'inqas minn sentejn 600 container bi scrap. In-negozzju bejniethom kompli anke wara li nqalgħet din il-kwistjoni n eżami.

²⁰ Folio 340

Irrefera ukoll għal kundizzjoni stipulata fuq il-Bill of Lading li jekk tibgħat merkanzija li tibqa mhux irtirata, l-carrier iddur fuq is-shipper għal irkupru tad-danni u jinheles mill-merkanzija.

Xehed ukoll **Jonathan Mizzi**.²¹ Dak iż-żmien tal-incident *de quo* kien commercial manger ta' M B L Shipping Delta Focal Maritime. Ikkonferma li kien sar *booking* minn Noel Cefai għal *shipping* ta' żewġ *containers* għaċ-Ċina.

Jispjega li ġew infurmati mill-*port of discharge* li l-merċe baqgħet mhux irtirata.

Igħid li avżaw lil Greencare, lil Cefai bl-akkadut.

Igħid li flimkien ma Cefai bdew jesploraw jekk is-*shipment* setax jerga jingib Malta jew jittiehed il-Malasja, pero l-*costs*, inkluz *storage charges* kienu għoljien.

Ikkonferma lid-draft Bill of Lading, kemm bħala draft u dak finali, inħargu fuq dettalji li kien tahom l-istess Cefai. Jikkonferma ukoll li l-ismijiet ta' dawk li sejjah is-shippers, FMS Seaways u AG Kanusa Hershtmen, kienu ukoll provduti

²¹ Folio 211 et. Seq.

mill-istess Cefai. Daqstant ieħor kkonferma li kien Cefai li ħallas b'*cheque* tas-servizz mogħti.

Jixhed ukoll illi kien ta *quotation* lil Cefai biex l-istess merkanzija abbandinata johodha f'port ieħor, pero il-konvenut kien wiegħbu li kien se jitlef il-flus kieku jagħżel din is-soluzzjoni.

Xehed ukoll illi għalkemm id-dettalji tal-Bill of Lading ġew provduti minn Cefai, pero il-*consignees* tal-merkanzija, FMS u Kanusa, kienu kkomunikaw magħhom li Green Care ma kellhiex permess tinnegozja f'isimhom, ukoll li la kienu jafu bi Green Care u lanqas bix-*shipment*.

Ġie preżentat ukoll l-affidavit ta' ċertu **Thomas L. Tisdale**²², ġuramentat.²³ Jixhed *qua* avukat ta' Evergreen Marine (UK) Limited, imsejjha hawn Evergreen. Jixhed dwar il-fatt li l-attriċi rranġat għax-*shipment* ta' żewġ *containers* u nħareg il-Bill of Lading relattiv. Ukoll illi in-*notify parties* fuq l-istess Bill of Lading ċioe' Canusa Hershman u FMS Seaways u AG, darba lil merkanzija wasslet Xinjiang goċ-Ċina u ġew debitament notifikati b'dan, ma rtirawx l-istess merċe. Ighid li l-uffiċju bagħat ittri *via certified mail* lil dawn pero ma rċevew ebda risposti.

²² Folio 220 Dok A

²³ Dok A folio 220 et. seq.

Minflokki ġew ikkuntattjati minn ċertu Micheal Mitchell, *sales representative* ta' EverGreen ġewwa l-Amerika, li l-imsemmija Canusa u FMS kienu kkunttatjaw l-uffiċju u tawhom risposta li ma kienux jafu b'din il-merkanzija, ukoll bil-parti l-oħra involuta fl-istess u lanqas *bit-terms* ta' l-istess *shipment*.

Dawn ma tawhom ebda informazzjoni ulterjuri hlief għal fatt li huma ma kienu qed jiehdu ebda responsabilita' għal istess merkanzija.

Igħid li attriċi ġiet adebittata bis-somma ta' RMB \$259,160 (USD42,650.22) dan sal 25 ta' Frar, 2014, dawn bħala *storage charges*.

Ġie presentat l-affidavit ta' **Jerry Chang**²⁴ (ukoll ġuramentat). Dan impjegat bħala *deputy manager* ma Evergreen Shipping. Jixhed li huma kienu rċevew istruzzjonijiet mingħand Cefai f'isem Green Care Trading biex jibgħat żewġ *containers* minn Marsaxlokk Malta għal Xinjiang, iċ-Ċina.

Igħid li kien dan Cefai li tahom d-dettalji tas-*shipper* u l-*consignee*.

²⁴ Folio 234.

Kif irċevew il-pagament minghand Cefai, iż-żewġ containers ġew *shipped* skont l-istruzzjonijiet mogħtija.

Meta il-merkanzija wasslet iċ-Ċina, iġhid li l-agent tagħhom hemm ċertu Jerry Cai, kien infurmahom lil merkanzija kienet baqgħet ma ġietx irtirata.

Minn hawn huma kkunsultaw l-avukati tagħhom Thomas L. Tisdake għal assistenza tagħhom. Iġhid (pero ma jgħidx kif sar jaf b'dan, ċioe kellux konossenza diretta) li aktar tard meta ġew infurmati mis-suppost *consignees* li dawn ma kellhom x'jaqsmu xejn mal konsenja tal-plastik, huma daru fuq MBL Shipping Agency biex jinfurmahom bl-akkadut ukoll biex jiġi nfurmat Noel Cefai li skont dak imniżżel fil-bill of Lading kien hu responsabbli biex jagħmel sew għad-dovut (charges) għal *unclaimed cargo*. Jagħmel referenza għal klawnsola 14(4) tal-Bill of Lading. Dan id-dovut kien relatati *inter alia* ma detenzjoni, distruzzjoni tal-merkanzija u kontrostallija.

Jixhed dwar informazzjoni li rċevew minn għand MBL li Cefai kien qed jipprova jfittex opzzjonijiet oħra biex jehles mill-merkanzija u jirrixippja il-*containers*.

Ighid lil merkanzija ġiet distrutta mill-awtoritajiet Ċiniżi fil-bidu tas-sena 2017.

Jixhed fuq il-VAT invoice maħruga mill-awtoritajiet Ċiniżi mmarkata bħala Dok AW1²⁵ riflettenti ic-*charges* għad-distruzzjoni fl-ammont ta' RMB 167,427 dawn jiġu ekwivalenti għas-somma ta' €21,582.00 (skont il-kambju data 17 ta' Lulju, 2017), ukoll spejjeż relattati ma *storage* u *demurrage* ammontanti għal USD138,546 ekwivalenti għal €120,913.84, (bl-istess rata ta' kambju). **Din hi datata 23 ta' Jannar, 2017.**

Id-dokument AW3²⁶ hija kopja ta' l-invoice, mhux imħallsa, li l-attriċi ħarget lil Noel Cefai għal Green Care Trading għad-dovut.

Chen Kong Ling²⁷, bħala direttur ta' Hatsu Marine Hong Kong agent ta' Evergreen Marine Corp jikkonferma l-ispejjeż u d-dovut imsemmi.

Aldo Zahra²⁸ in rappresentanza tal-bank HSBC xehed dwar pagament għal ammont ta' erbatax -il elf, ħames mija u ħamsa u ħamsin dollari amerikani li sar

²⁵ Folio 236 u 237

²⁶ Folio 238

²⁷ Folio 242.

²⁸ Folio 324

fl-24 ta' Gunju, 2013 li ntbagħat mill-kumpanija Teipun Jekxun (*recte* Tianjin Gexun) Import and Export China u li kien pagabbli lil Noel Cefai, Green Care Trading, Dok AZ.²⁹

Da parti tiegħu **Noel Cefai**³⁰ presenta l-affidavit tiegħu. Fih spjega li hu kummerċjant, eżerċanti kummerċ bl-isem Green Care Trading u li kien jopera fil-qasam ta' skart għal skop ta' riċiklagġ. L-aktar li kien jesporta kienu lejn il-pajjiżi asjatiċi.

Jixhed li kien ġie avviċinat minn sensar dwar bejgħ ta' *high density polyethylene*. Ighid li dan kien laqgħu ma kumpanija Ċiniża bl-isem Tianjin Jinzhengchun Metal Products Co.Ltd. li kienet interessata f'dan il-materjal. Għamel kuntatt max-xerrejja u kkonkludew il-bejgħ ta' żewġ *containers* plastik impressat.

Presenta d-dokument NC³¹ li kienu d-dettalji minnu riċevuti tal-*consignee* fil-każ tagħna ix-xerrejja, ukoll kif kellu jintela' l-Bill of Lading. Dawn id-dettalji iġid li jagħti *overview* tan-negozju innifsu. Ta' dan presenta ittra presubilment rilaxxata mill-istess sensar Ben Chang-Yuan Sung, Dok NC1, li jispjega in-negozzju, ukoll li Cefai kien tħallas tal-konsenja u hallas lis-sensar *commission*.

²⁹ Folio 327

³⁰ Folio 722

³¹ Folio 723

(Senjatment din l-ittra qatt ma ġiet ikkonfermata bil-ġurament, der resto bħal oħrajn esebiti.)

Jispjega li bħala *Non-Vessel Operating Common Carrier* sab lil Delta Containers Services Ltd li kienet tikri spazji fuq vapuri f'dan il-kaz M B L Shipping Agency Ltd, agenti ta' EverGreen Marine Uk Ltd.

Igħid li hu għadda d-dettalji kollha tax-xerrej lil MBL, li da parti tagħhom għamlu l-verifiki anke ta' *Black Listing* fuqu u fuq il-bejjiegha.

Igħid li da parti tas-*shippers* dawn ikkonfermaw mas-soċjeta' xerrejja li Green Care kienet ibbukkjat żewġ containers biex jigu kkonsenjati lilhom fil-port ta' Xinjiang fiċ-Ċina. Ġew għalhekk assenjati żewġ containers bin-numri indikati għal dan l-iskop.

Presenta ukoll id-draft Bill of Lading maħrug minn M B L li juri l-containers bin numri tas-sigilli tagħhom, ukoll informazzjoni oħra bejn ix-xerrej u l-aġent tiegħu, Dok NC3³², dan fil-fatt hu d-draft Bill of Lading.

³² Folio 740.

Ighid ukoll li kif il-*containers* telqu minn Malta inhargitlu il-fattura ta' esportazzjoni, dan kif jidher mid-dokument NC4.³³ Jispjega Prattika fis-*shipping* illi kif tithallas din il-fattura lil trasportatur, is-*Shipping Line* toħrog u tirrilaxxa f'idejn il-konsenjattur il-Bill of Lading biex dan ikun jista' jgħaddiha lil konsenattarju, xerrej fil-kaz tagħna, biex darba li dan ta' l-aħħar ikun hallas li konsenjatur, allura lil konvenut fil-kaz odjern, ix-xerrej issa jkun jista' jirtira il-merkanzija mill-*Port of Discharge*.

Spejġa ukoll l-użu ta' l'hekk imsejjaħ *Bill Telex Release*, fejn minflok it-trasportatur jgħaddi Polza ta' Kargu lil konsenjatur bejjiegħ, li minn naħa tiegħu jibgħatha lix-xerrej bil-*courrier* sabiex tiġi preżentata fil-*Port of Discharge* u b'hekk ikollu aċċess għal *containers*, tiġi minflok generata email awtomatika minn naħa tat-trasportatur li tintbagħat fil-kaz odjern lil Ever Green UK goċ-Ċina, minn hemm jikkuntatjaw lir-riċevitur, u stante li dan is-*seaway bill release* turi *proof of ownership*, dawn is-sidien Ċiniżi jkunu jistgħu jirtiraw il-merkanzija b'mod aktar effettiv.

Jinsisti li din ta' l-aħħar kienet il-proċedura adoperata fil-kaz odjern.

³³ Folio 742

Jispjega li hu ħallas li Delta Containers Services Ltd permezz ta' cheque, Dok NC5³⁴. Ighid ukoll li hu ġie mħallas ukoll minn Tianjan Jinzhengchun Metal li da parti tagħhom ħallsu tal-konsenja permezz ta' bank transfer.³⁵

Ighid li b'hekk avża lir-rappresentant ta' MBL fiċ-Ċina Jerry Chai sabiex jirrilaxxaw il-*containers* permezz ta' *Seaway Bill Release*, esebit bħala Dok NC7³⁶. B'hekk jixhed lil Tianjan kellha kull dritt tiġbor il-*containers* mill-port Ċiniż għax hu ma kienx għadu propjetarju tagħhom.

Jixhed ukoll li b'hekk hu ma kellu ebda dritt li jieħu xi deċiżjoni fuq l-istess *containers* għax l-*ownership* tal-*cargo* kien għadda f'idejn Tianjan, x-xerrej Ċiniż.

Iżid li xahar wara lil *containers* wasslu għol Port of Discharge, fit-28 ta' Marzu, 2013, pero li ma ġewx miġbura mix-xerrej. B'dan kien għarfu Jonathan Mizzi, *commercial manager* ta' MBL.

³⁴ Folio 743

³⁵ Dok NC6 folio 744.

³⁶ Folio 745.

Jilmenta li ma ġietx esebita prova ta' ebda sforz da parti Ever Green Ċina biex dawn jagħmlu kuntatt mal-konsenattarju, *consignee*.

Jixhed ukoll li hu rċieva email mingħand il-klijenti tiegħu li jwissuh biex ma jidholx fil-kwistjoni. Din hi datata 26 ta' Mejju, 2013, Dok NC8.³⁷

Igħid ukoll li hu ma setax jieħu azzjoni fuq dawn il-*containers*, ukoll lit-trasportatur ukoll baqa' ma battalx l-istess *containers* mill-plastik nonostante li dawn kienu jappartjenu lilu għax kien jissogra azzjoni legali da parti tal-*consignee*.

Jilmenta lis-*shipping line* lanqas mexxiet il-*containers* go *bonded stores* biex jiffrankaw akkumulu ta' spejjeż. Lanqas pruvaw ibiegħu l-istess b'subasta.

Jkompli li Jonathan Mizzi kien bagħtlu email Dok NC9³⁸ fejn infurmah li kien se jżommuh responsabbli għad-danni. Ukoll li kien avżawh li il-materjal kien se jiġi distrutt, DokNC10.³⁹

³⁷ Folio 747

³⁸ Folio 802

³⁹ Folio 804

Jinsisti li nonostante l-azzjoni odjerna li kienet qed tittieħed kontra tiegħu, hu qatt ma ġie *blacklisted* mis-soċjeta' attriċi, għall-kuntrarju, kien u baqa' jagħmel negozju magħhom b'mod prolifiku u regolari. (ara Dok NC11)⁴⁰.

Jinsisti li Jonathan Mizzi kien prova ssib bejgħ ieħor għal dawn il-*containers*, ukoll li hu ma seta' jieħu ebda deċiżjoni fir-rigward ladarba l-*ownership* kienet għaddiet f'idejn il-konsenattarji.

Jikkontradixxi x-xhieda ta' Godwin Scerri fejn insista lil *Merchant* fil-każ odjern skont il-Bill of Lading kien hu. Ta' hekk esebixxa Dok NC13⁴¹ fejn l-istess kumpanija attriċi kienet qegħda f'istanzi oħra tagħti deskrizzjoni tas-shipper li-xerrej.

Xehed in subizzjoni **Dr. John Bugeja**⁴² li *qua* mandatarju wieġeb biss li ma kellu ebda għarfien ta' ftehim li kien hemm bejn is-*shipper* u l-*carrier* b'mod partikolari hawn kienx jitratta ta' *telex release*.

⁴⁰ Folio 806 et. seq.

⁴¹ Folio 829

⁴² Folio 849

Ikkunsidrat.

Illi din il-kawża ssib il-pern tagħha fi spejjeż akkumulati f'port ġewwa ċ-Ċina n kwantu għal merkanzija ta' plastik għal użu ta' riċiklagġ li baqgħet mhux miġbura mix-xerrej tagħha. L-attur *noe* għadda biex ifittex ta' kull spejjeż u danni nkorsi ta' din l-merkanzija abbandunata lil *shipper* ta' l-istess, għalina s-Sur Cefai, li skontu tramite sensar innegozja ma soċjetà' Ċiniża nvoluta ukoll fl-iskart għax-xiri ta' dan il-plastik. Ighid li hu thallas mill-istess ta' din il-konsenja. Hallas ukoll li attriċi *qua t*-trasportatur għal konsenja taż-żewġ containers mgħobbija b'dan il-plastik.

L-pern jibqa' minn issa hu responsabbli għad-danni nkorsi tal-abbandun tal-merkanzija.

Qabel mal-Qorti tghaddi biex tagħmel id-debita analiżi tal-fatti jinhtieg li jiġi puntwalizzat li hawn bħala żewġ fatturi saljenti ftit saru kontro eżamijiet u oltre hekk ġew esebiti sensiela ta' dokumenti li jew huma kopja jew qatt ma ġew ikkonfermati.

Sar ampja referenza għal dak stipulat fil-Bill of Lading li gie redatt mis-soċjeta' trasportattriċi fuq dettalji mogħtija lilha minn Cefai.

Huwa ta' rilevanza kbira għas-soluzzjoni ta' din il-vertenza dak li hemm stipulat fuq l-istess dokument li fuqu tibbaża t-talbiet tagħha l-attriċi inkwantu tghabbi lil Cefai bid-definizzjoni ta' *Merchant* f'dan in-negozju.

L-artikolu 14(4) tal-imsemmi dokument tal-Polza ta' Kargu li għamlet referenza għalih l-attriċi fix-xhieda sudetta jaqra hekk;

“The Merchant of the Goods shall be jointly and severally liable for the payment of all freight to the carrier for the payment off all freight, Bunker Adjustment Factor (BAF) Cuurency Adjustment Factor (CAF), Terminal Handling Charge (THC), demurrage, detention, General Average, salvage and other charges, including but not limited to court costs, expenses and reasonable attorney fees incurred in collecting sums due to the carrier. Payment of ocean freight and charges to a freight forwarder broker or anyone other than the Carrier, or its authorised agent, shall not be deemed payment to the Carrier and shall be made at payer's sole risk.”

Inoltre, barra minn min jirrizulta li hu mgħobbi b'din id-definizzjoni ta' *Merchant*, hu sinifikattiv parti mid-difiża li jressaq il-konvenut cioè', il-mod tar-release tal-merkanzija lli skontu saret tramite 'l hekk imsejjaħ *telex relaese*. Għal aħjar istruzzjoni l-Qorti ser tagħmel is-segwenti referenzi biex jinftehm aħjar is-sinifikat ta' l-istess.

“What is the difference between a Telex Release and a standard BOL (Bill of Lading)?

BILL OF LADING

*A standard Bill of Lading (BOL) is a **transferrable document** issued by the carrier of a shipment that acts as a **title for the goods** during the transport process to ensure shippers receive payment and buyers receive their product. The BOL details the **terms of sale** and serves as a **receipt and release mechanism** for cargo. The Bill of Lading must be surrendered to the carrier before the goods can be released at their destination.*

TELEX RELEASE

*A Telex Release is simply an **electronic message** used to release cargo once the Original Bill of Lading documents have been **surrendered at origin**. Telex Releases are specifically used when a **physical set of Original Bill of Lading documents is printed and issued by the carrier**.⁴³”*

Insibu ukoll spjegat hekk:-

When to use a bill of lading, sea waybill, express release, telex, or a smart B/L?⁴⁴

July 21, 2020

“This is a common question, but the answer is not a simple one. It depends on the processes your company uses, and how your business model is set up. But the arguments for using any of these document options are easy to make. Follow me!

*In short - both the bill of lading (paper or digital) and sea waybill **act as a contract of carriage**, with all the terms and conditions of the transport. They both act as **receipts for the goods** being transported.*

*But **only the bill of lading serves as a document of title**, transferring the ownership, sometimes enabling trading with the document, or as collateral security. What is most important - a bill*

⁴³ <https://www.greenworldwide.com/what-is-the-difference-between-a-telex-release-and-a-standard-bill-of-lading/>

⁴⁴ **Simon Ručigaj**, digitalization advisor and communication manager

of lading must be used always when there are banks involved in the shipping transactions. When this is not the case, a **telex release** can help optimize time and courier costs. But the new **smart bill of lading** concept (on a blockchain) is here to rule over all of these, with undisputable auditability, transparency, and immutability.

So, why the bills of lading in the first place?

Under the **Hamburg Rules of 1978**, established by **UNCITRAL** (U.N. Commission on International Trade Law), which regulate the international transport of goods by sea, it is provided that information about the carriage of goods must be documented with a bill of lading (B/L). At this point, we will avoid to digress into the debate about the Hague, Hague-Visby Rules, Hamburg Rules, US COGSA, and the recently designed Rotterdam Rules, together with the history of the bill of lading, and leave that for another article in the future - but these are all the frameworks propping up the extreme diversity of the shipping industry's rules, documents and information processes.

What bills of lading do you really own?

So, let's return to the question! The bill of lading is a **document of title to the goods**, and it carries the ownership over to the next holder. With this document, the owner can claim the goods from the carrier at the port of destination.

A B/L sometimes is a **negotiable document** that promises the ownership of goods to a specific person or assignee. That is why it is also accepted by banks as collateral security. Of course, this depends on the type of the bill of lading in question.

The bill of lading **declares ownership**, and it might likely remain in the hands of the exporter until payment for the goods is received - all while the goods are already sailing to the port of destination. Only after receiving payment can the exporter send the B/L to the importer, to hand over the title to the goods. Sometimes, the bank is the interim holder of the bill of lading, until financial transactions are cleared.

Sea Waybill a.k.a. express release B/L

*The sea waybill is, in its primary function, a document that only serves as **evidence of the cargo transfer**. It does not facilitate any transfer of ownership between the parties in the process. It is not negotiable and does not allow trading of the goods while they are being shipped.*

*This document is used when the payment has been made in advance of the shipment and the ownership of the goods has already been transferred, or if the importer has good credit with the exporter or supplier. It **implies a high level of trust** between the shipper/exporter and the consignee/importer - such as when both entities are part of the same business group, and no negotiations are needed ahead of the cargo's release.*

To make things a little more complicated in terms of terminology: the sea waybill is sometimes loosely referred to as an express release bill of lading or straight bill of lading. But this is not completely accurate, as a straight bill of lading is just a non-negotiable, non-transferrable document, entitling the release of cargo only to the named consignee and only upon surrender of at least one of the original bills issued. And with a sea waybill, there are actually no bills of lading issued.

But what about the telex release ...

The world of ocean shipping would not be so interesting if there weren't so many variations and confusing terms, which nobody is really sure what they mean but the whole industry nonetheless runs reliably by using them in different situations.

*One of these is the **telex release**. It is sometimes considered the equivalent of an express release, as they are used almost interchangeably, usually for fast cargo release procedures. But their definitions are different, and so are their uses. **The telex release, you see, is only the service of releasing the cargo at the port of destination by means of informing them through a telex message that the relevant bill of lading has already been surrendered by the shipper or exporter at the port of origin.***

The above-described express release document and process are also used in situations when there is no time to lose; often an actual bill of lading follows close behind, or guarantees are issued through different channels.

“Difference Between Original and Telex Release Bill of Lading May 31,2024

Industry News

Freight Forwarders

Bills of lading are mainly divided into two types: original bills of lading and telex-released bills of lading. What are the differences and how to choose during the transportation of goods

....

Bill of lading is not only a proof of the contract for the carriage of goods, but also a certificate of ownership of the goods. Understanding different types of bills of lading, especially original bills of lading and telex release bills of lading, is crucial for smooth logistics operations and cargo release, affecting the efficiency, safety and legality of cross-border transportation of goods.

Bills of lading are mainly divided into two types: original bills of lading and telex release bills of lading. They each have different characteristics and uses. Choosing the right type of bill of lading is of great significance for reducing costs, improving efficiency and ensuring transaction security.

What is an original bill of lading?

An original bill of lading is an original bill of lading that is a proof of the contract for the carriage of goods and also a certificate of ownership of the goods. The holder of the original bill of lading is entitled to collect the goods. The detailed information of the goods, including the type, quantity and destination of the goods being transported, is listed.

In international transportation, the original bill of lading is usually issued by the carrier or its agent as a formal record of the transportation of goods. The original bill of lading can be transferred by endorsement, thereby realizing the transfer of ownership of the goods. The original bill of lading is usually issued in multiple originals (usually three). Each original has the same legal effect.

Key Functions of an Original Bill of Lading

In international transport, the consignee must present the original bill of lading at the port of destination in order to claim the goods. The bill of lading is usually sent to the buyer by courier, bank or other secure means to ensure that the legal owner can claim the goods.

Receipt of Goods: The OBL confirms that the carrier has received the goods described in the document for shipment.

Evidence of Contract: It outlines the terms and conditions of the contract between the shipper and the carrier, including details such as the parties involved, description of the goods and destination.

Document of Title: The OBL represents the title to the goods and is a negotiable instrument that can be transferred to a third party (such as a bank or consignee) by endorsement.

The physical nature of the OBL is crucial because the OBL must be presented to the carrier at the port of destination in order to claim ownership and release the goods. Failure to produce the original document may result in the cargo being detained until the proper documentation is provided.

What is a Telex Release Bill of Lading?

A telex release is an electronic message or authorization sent by a carrier or its agent at the port of origin to the port of destination, allowing the release of goods without the need for the physical original bill of lading. This process is initiated after the shipper surrenders the original bill of lading at the origin, thus speeding up the release process.

Telex release simplifies logistics by eliminating the need to courier a physical OBL to the destination. This is particularly useful when the original bill of lading is delayed or lost in transit, or the cargo arrives before the physical document. Telex release bills of lading reduce the physical handling of paper documents, improving efficiency, while also introducing new security measures to prevent fraud. This reduces the risk of delays as there is no need to wait for the original bill to be couriered to the destination.

While telex release provides convenience, it lacks the transferability and proof of title provided by the original bill of lading as it is a non-negotiable document.

Main Differences Between Original and Telex Release Bills of Lading

format

The original bill of lading is a physical, transferable document, while the telex release bill of lading is an electronic message or authorization.

Fast and Convenient

The telex release bill of lading makes cargo delivery faster and more convenient due to its electronic nature.

Proof of Ownership and Transferability

The original bill of lading is a document of title, representing ownership of the goods, and ownership can be transferred by endorsement. In contrast, telex release bills of lading are non-transferable and do not confer title.

....

Advantages and disadvantages of original bills of lading

Advantages

It is legally binding and is suitable for situations where strict proof of ownership and contract performance is required.

It acts as a negotiable document of title, representing the ownership of the goods.

It provides a higher level of security and fraud prevention through the exchange of physical documents.

It is widely used in customs clearance and document handling processes.

Disadvantages

It is slow to process and susceptible to physical damage or loss.

If the physical documents are delayed or lost during transportation, the release of the goods may be delayed.

Additional costs incurred in couriering the documents to the destination port.

Advantages and Disadvantages of Telex Release Bill of Lading

Advantages

No need to wait for the physical OBL, thus speeding up the release of goods.

Reduces costs associated with courier original bills and potential demurrage charges.

Simplifies logistics processes, especially in time-sensitive situations.

Disadvantages

Lacks the transferability and proof of ownership provided by the original bill of lading.

Potential security issues due to the lack of physical document exchange.

May not be accepted for certain customs clearance or documentation processes.

Choose the most appropriate type of bill of lading to ensure a smooth transaction and safe delivery of goods. Original bills of lading are highly secure and widely accepted, while telex release bills of lading are fast, convenient and quick.

While telex release offers convenience and potential cost savings, original bills of lading remain the preferred method for secure and legally binding transactions, especially where proof of ownership and transferability are key factors. The choice between the two depends on the specific requirements, timelines and risk tolerance of the shipping parties. Understanding these differences can help companies make informed decisions, optimize shipping processes, and ensure smooth international trade operations.”

Ukoll

“Telex release in shipping is an optional process that shippers, consignees, or NVOCC can use to file a release of the shipment from the shipping carrier at the destination port without needing a physical bill of lading. As a part of the standard procedure of shipment release, an original bill of lading reaches the port of destination from the shipper. The shipping company signs the bill of lading, the consignee approves that the shipment has been received in good condition, and the shipper is notified. For specific reasons, if the bill of lading is delayed, a telex release is processed, allowing the shipment release, via an email sent by the shipper to the shipping company stating all required details of the consignee and shipment. Let us learn more about telex release in shipping.

What is the telex release in shipping?

*Telex release in shipping refers to the process of electronically releasing goods from the hands of a shipping carrier to the ownership of the consignee without presenting a physical copy of the **ocean bill of lading**. It is also known as a telegraphic exchange service, which uses an email text that replaces the bill of lading in shipping. Different types of goods are transported across international borders using ships. For this, shippers use various ships to transport the goods to the destination port. **AMS in shipping** facilitates container inspection by customs authorities at the border, electronically transferring all documents required at borders for prior approval and inspection.*

Upon reaching its destination, the consignee should receive the goods after the carrier or shipping lines offer a bill of lading to the consignee, which both shipping parties sign. It assures that the shipment has reached its destination in good condition and that the consignee has taken ownership of it. The consignee sends a release authorisation to the exporter, allowing the carrier to surrender the shipment to the consignee upon acceptance.

In situations where the bill of lading cannot be physically provided, a telex in shipping can help shipping carriers release the goods and transfer their ownership to the shipper. This is an efficient way of shipping goods and filing their release, even without a hard copy of the original bill of lading.

...

Benefits of telex release

The advantages of telex release in shipping are as follows –

1. ***Speed and efficiency*** – *By filing for a telex release instead of waiting for a physical bill of lading, shippers, consignees, and shipping carriers can reduce the time to release goods. This removes the dependency of shipments on a bill of lading to complete their delivery process, helping improve supply chain agility and offering enhanced efficiency at ports.*

...

These are a few benefits and uses of telex release in shipping, making it an efficient option for multiple shippers and consignees involved in maritime shipping."⁴⁵

45 **Telex Release in Shipping: A Comprehensive Guide** July 4, 2024 Shipping Innovations; Lotus Companies.

Il-Qorti għaddiet biex tagħmel din ir-riċerka qasira in materja biex turi il-komplessità ta' din il-vertenza li tista' tinċidi ukoll fuq id-difiża imressqa għat-talbiet.

Apparti li mhux daqstant ċar jekk ir-rilaxx tal-merkanzija kienetx tramite *telex release*, pero daqstant iehor mhux ċar jekk konċess li hawn sar *telex release*, jekk dan waħdu bla aċċettazzjoni tal-merkanzija mill-*consignee* jitfax fuq ta' l-aħħar it-titolu ta' proprjeta' ta' l-istess merċe. Dan qed jingħad għaliex meta wasslet il-konsenja għewwa ċ-Ċina u l-aġent Ċiniż tal-kumpanija trasportattriċi avżat lil kumprattriċi b'dan, din ta' l-aħħar għar-raġunijiet mhux spjegati lil Qorti⁴⁶ irrifjutat mhux biss li tiegħu konsenja tal-merkanzija imma saħansitra nnegat l-konoxxenza jew kuntatt kummerċjali ma' Green Care Trading. Almenu dak li intqal lil Qorti u mhux kontradett.

Għalhekk, **jista** jagħti l-kaz li l-argument ta' Cefai li hu neża' minn kull responsabilita' tal-cargo darba li hawn gie trasmess *telex release*, huwa kemm xejn kompromess għax ma jidher li kien hemm qatt aċċettazzjoni tal-konsenja. Apparti għal kwistjoni jekk *telex release* waħdu jgħaddix it-titlu.

⁴⁶ L-unika raġuni li tista tasal għaliha l-Qorti kient il-kambjament tal-policies millgvern Ċiniż rigward skart impurtat.

Kif ingħad bla dubbju l-Bill of Lading gie rilaxxat bl-istruzzjonijiet li provda Cefai lil attriċi kif rappresentata f'pajjiżna minn M.B.L. Kien hu li anke ħallas lis-sensar il-*commission* tali sablu negozju ma soċjeta Ċiniza b'halu nvoluta fir-riċiklaġġ ta' l-iskart. Jekk wieħed kellu jargumenta dan il-bejgħ ta' mobbli mill-lat ċivili ai terminu ta' l-artikolu 1347 tal-Kap 16, il-merċe *qua* mobbli saret propjeta' esklussiva tax-xerrej. Pero, hawn si tratta ta' bejgħ u konsenja piutost aljeni għal kuncett ċivili. X'hin tgħaddi t-titolu tal-propjeta' huwa sugġett mhux maqbul u dibattibli.

Kif rajna f'dak ċitat, *telex release* mhux neċessarjament jikkonferi titlu. Il-*consignee* stranament, nonostante li kienet ħallset għal merkanzija rrifjutata, anzi nnegat in-negozzju. Ukoll mhux ċert jekk il-Bill Of Lading innifsu ġiex fi ħdana. Li hu ċert li Cefai tħallas tal-merkanzija u svesta ruħu mill-pussess tagħha. Pero hawn *non si tratta* ta' ftehim xolt, dan hu ftehim mhux rikonnout.

Detto cioè', b'dak li okkorra l-attribiċi giet esposta għal ċertu spejjeż ta' danni ukoll ta' kontrostallija fost oħrajn. Inevitabilment il-Qorti se terġa ddur fuq il-Bill of Lading u l-kundizzjonijiet hemm stipulati għas-soluzzjoni ta' din il-vertenza. (Verament dawn huwa ta' qies ta' tipa tali, *font*, li huma għal kollox illegibbli bla lenti. Dan mhux skużant.)

L-argument hawn idur mad-definizzjoni tal-kelma *Merchant* kif misjuba fis-

suċitat artikolu 14(2).

L-istess Bill of Lading użat fil-kaz odjern jiddefinixxi il-kelma *Merchant* fl-artikolu 1(9) hekk;-

“..includes the shipper, Holder, consignee, the receiver of the Goods, any person owning or entitled to possession of the Goods, or this Bill and anyone acting on behalf of any such person.”

Din hija definizzjoni vasta u tagħti lok għal interpretazzjoni varja, ukoll għal possibiltà ta' manuvra kbira lil attriċi biex ai terminu ta' l-artikolu 14 imsemmi tfittex għad-danni jew spejjeż minna nkorsi.

Barra minn hekk fl-istess kundizzjonijiet imposti fil-Bill of Lading hemm mhux biss il-warranty lil *Merchant* jagħti u hu obligat biha lejn il-carrier, imma insibu ukoll illi fl-artikolu 13 hemm stipulat taħt *Merchant's Responsibility inter alia* illi:-

“(1). The Merchant warrants to the carrier that the particulars relating to the Goods as set out overleaf have been checked by the Merchant on receipt of this Bill of Lading and that such particulars and any other particulars furnished by and on behalf of the Merchant are correct.”

In vista tal-fatt li ikun l-istess konsenjattur, fil-kaz tagħna il-bejjiegh tal-merkanzija, li provda kull informazzjoni li kienet imnizzla fuq il-Polza ta'

Kargu, allura minn dan il-lat Cefai **jista'** jiġi kkunsidrat bħala *Merchant* għal iskop tar-responsabilita' mfittxa.

Pero, dan jikkuntrasta sew ma dak li argumenta l-istess Cefai fin-nota ta' sottomissjonijiet tiegħu. Jiċċita mill-artikolu 25 stipulat fl-istess Polza ta' Kargu. Li qiegħed issa fuq il-*Merchant* ir-responsabilita' li jieħu

“..delivery of Goods within the time provided for in the Carrier's applicable Tariif. If the Merchant fails to do so, the Carrier may without notice unpack the Goods...and/or store the Goods ashore, affloat, in the open or under cover at the sole risk of the Merchant. Such storage such constitute due delivery hereunder, and thereupon all liability whatsoever of the Carrier in respect of the Goods or that part thereof shall cease and costs of such storage shall forthwith upon demand be paid by the Merchant to the Carrier.”

...

(3) If delivery of the Goods is not taken within a reasonable time or whenever in the opinion of the carrier the Goods are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, the Carrier may at its discretion and without prejudice to any other rights which it may have against the Merchant, without notice, and without any responsibility attaching to it, sell, abandon or otherwise dispose of the Goods, at the sole risk and expense of the Merchant, and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this Bill. Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this clause and/or to mitigate any loss or damage thereto shall constitute a waiver by the Merchant of any claim whatsoever relating to the Goods or the Carriage thereof.

...

(5) The Merchant's attention is drawn to the stipulations concerning free storage time, demurrage, and/or detention contained in the Carrier's applicable tariff, which is incorporated in the Bill”

Ċitat dan l-artikolu, jidher ċar li għal fini ta' *delivery, storage* kontrastallija u abbandun, issa bil-fors il-*Merchant* irid jiġi kkunsidrat li hu r-riċevitur tal-merkanzija, għax hu u hu biss hu obligat u għandu fuq kolloxx l-interess li jieħu *delivery* tal-merkanzija minnu mħallsa. Għalhekk kienet żbaljata l-attriċi meta għad-definizzjoni ta' *Merchant* siltet biss l-ewwel artikoli ċitati u naqset li tikkunsidra dawk l-aktar inċisivi għal vertenza odjerna li jolqtu id-*delivery* tal-merkanzija.

Stabbilit dan il-Qorti tħoss li għandu jiġi kkunsidrat fattur ieħor li joħrog mill-istess Polza ta' Kargu u li ukoll ilmenta minnu l-konvenut fid-difiża tiegħu.

Isaqsi l-Qorti x'għamlet l-attriċi biex tnaqqas lis-spejjeż u d-danni li ġew inkorsi matul il-kors lil merkanzija baqgħet għol Port Ċiniż abbandunata?

L-istess Bill of Lading jagħti lil Carrier id-dritt ta' l'hekk imsejjah *lien*. Dan kif stipulat fl-artikolu 15 ta' l-istess Polza. Naraw li hemm imniżżel illi

“The carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the carrier under this Bill, or any other contracts with the Merchant and expenses incurred by the carrier for the account of the Merchantand the Merchant jointly and severally and the Carrier shall have the right in its absolute discretion to dispose of the Goods and/or to sell the Goods by public auction or private treaty..”

Insibu illi dan il-*Lien* marittimu huwa deskritt hekk;

“The maritime lien for its part is a right, a right found in the lex marittima, in civilian tradition, it is a privilege.”⁴⁷

Għalhekk dan id-dritt gie deskritt minn Sir John Jervis fil-ġudizzju **The Bold Buccleugh** hekk;-

“Having its origin in this rule of Civil Law, a maritime lien is well defined by Lord Tenerden, to mean a claim or privilege upon a thing to be carried into effect by legal process; and Mr Justice Story...explains that process to be in rem.....This claim or privilege travels with the thing, into whosoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process, by a proceeding in rem, relates back to the period when it first attached.”⁴⁸

Jirriżulta mix-xhieda illi l-merkanzija wasslet Xinjiang fit-28 ta' Marzu, 2013 **pero giet distrutta biss fit-23 ta' Jannar, 2017**, dan skont il-VAT receipt esebita. Għalhekk id-distruzzjoni saret biss erba' snin wara.

Ta' dan id-dewmien jilmenta ukoll l-istess Cefai, tant li kif rajna fix-xhieda tiegħu jsaqsi għala s-soċjeta' attriċi ma mexxiex l-inkarġu ġewwa *bonded stores* biex tiffranka mill-ispejjeż li kienu qed jiġu nkorsi. Jikkumenta ukoll, kif la setgħat, hi ma għaddietx biex tbiegħ il-merkanzija abbandunata, kif

⁴⁷ **Maritime Liens And Claims William Tetley** paġna 37

⁴⁸ Ibid pge 39

kellha dritt tagħmel anke tenut kont lil *containers* tal-erbghin pied kienu t-tnejn tagħha.

Dan iwassal il-Qorti biex hi stess ssaqsi u tħaddan l-istess hsibijiet.

Huwa prinċipju miżmum illi kulhadd huwa obligat li jagħmel dak kollu li jista' biex jimilita kontra akkrexximent ta' danni. Minn dan kollu espost ma jirriżultax li dan sar mill-attriċi jew rappreżentanti tagħha. Għajr għal fatt lil Qorti giet infurmata li darba għol port ikkonċernat fiċ-Ċina kien inqala' incident ta' nar tant li mietu anke in-nies, ma giex pruvat li sar attentat mill-attriċi jew minn min kien hekk responsabbli li jiġu kemm jista' jkun ikkontrollati l-ispejjeż li kienu qed jiġu inkorsi, għajr għal attentati dgħajffa li jinsab xerrej alternattiv, u anke hawn mhux ċar minn kien qed ifittex din is-soluzzjoni.

L-opzjoni tal-bejgħ tal-merkanzija kien mhux biss dritt ta' l-attriċi kif joħroġ mill-privilleġ akkordat lilha, u l-artikolu 25 citat, imma kien tant ieħor obbligu tagħha biex tnaqqas aktar akkumulu ta' danni.

Jekk kif sew t'argumenta l-attriċi fin-nota ta' sottomissjonijiet tagħha lil-Polza tal-Kargu tagħmel prova bejn il-partijiet kollha interessati fit-tagħbija

ta' dak hemm stipulat fiha⁴⁹, din l-iskrittura trid tiġi applikata u mhaddma bil-*bona fede* kollha attribwit lil kull ftehim, bil-konsegwenzi kollha li jġib miegħu l-istess ftehim. Għalhekk il-prinċipju tal-*bona fede* bejn kull parti nvoluta rrid ikun applikat f'kull stadju ta' dik l-obbligazzjoni. Bla tnaqqis.

Il-*carrier*, kif insibu fil-polza ta' Kargu kellu hafna opzjonijiet biex jiffranka mill-ispejjez u danni li kienu qed jiġu nkorsi għat-tul lil merkanzija damet abbandunata sakemm giet distrutta, hekk kif jidher kemm mill-*lien* favurih ukoll dak provdut mill-artikolu 25 citat. Għala naqas f'dan jibqa' mhux magħruf. Jista' jkun li fil-fatt għandu ragun il-konvenut jargumenta li xilja kontrib kienet aktar faċċli u viabbli. Ma tistax l-attribwi tippretendi kieku kellha ragun fil-konfront ta' Cefai, li tħallih jerfa' l-piż kollu waħdu.

Premess dak kollu suespost, il-Qorti wara din id-debita analiżi ma tarax kif tista' fid-dawl tal-provi prodotti u l-interpretazzjoni mogħtija lil kelma *Merchant* marbuta mad-*delivery* u danni naxxenti, torbot lil Cefai ma dak dovut.

Konsegwentement, qeghda taqta' u tiddeċiedi kif ġej:

⁴⁹ Ara artikolu 325 tal-Kap 13 tal-Liġijiet ta' Malta.

Tiċhad l-ewwel żewġ eċċezzjonijiet pero' tilqa' it-tielet u r-raba' eċċezzjoni kif inghad ghajr ghal fejn jirrigwarda l-kjamati n kawża.

Tiċhad it-talbiet attriċi bi spejjeż għaliha.

**Onor Miriam Hayman
Imħallef**

**Maraya Aquilina
Dep.Reg.**