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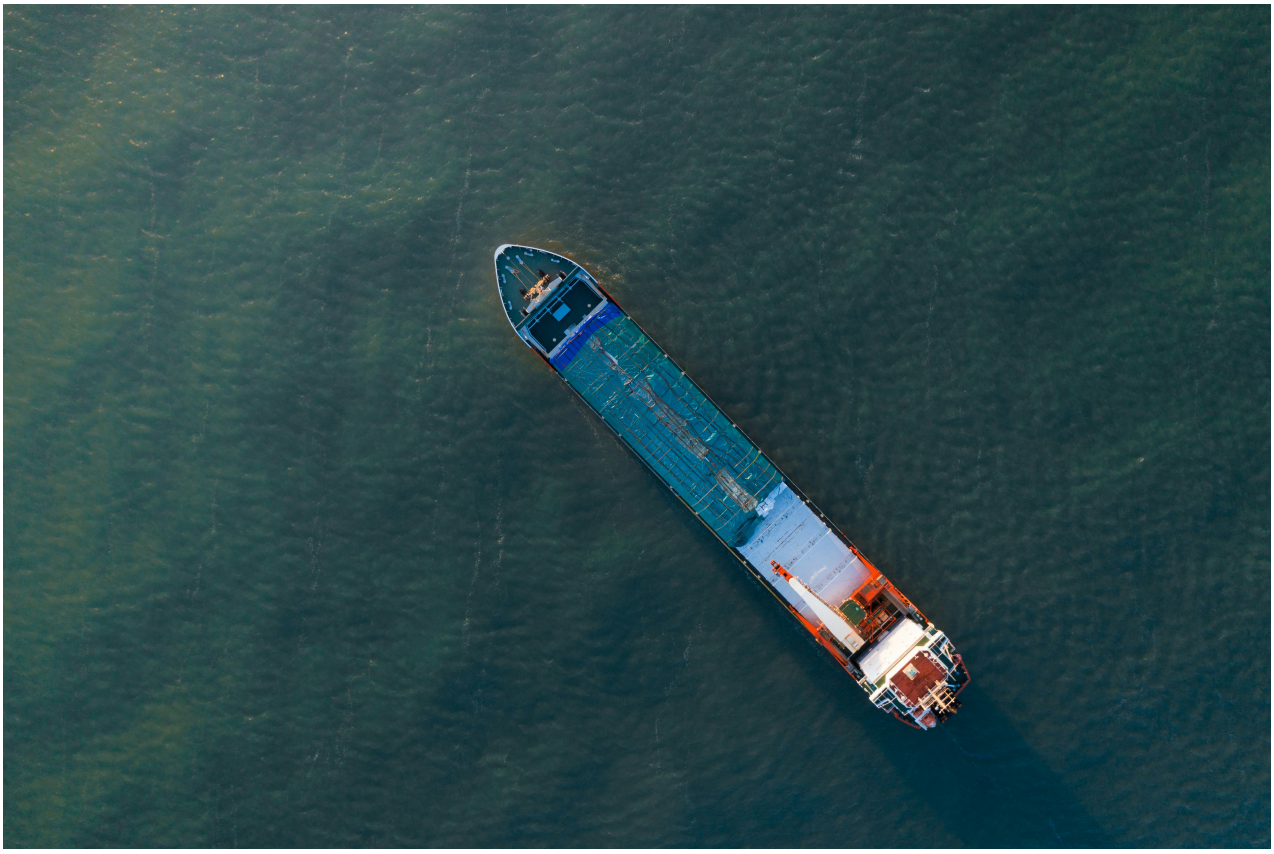

High Court confirms shipowners' right to sell liened cargo for unpaid freight – The Lord Hassan

12/03/2025

In The "Lord Hassan" [2024] EWHC 3305 (Comm), High Court in England & Wales has recently restated the shipowner's power to sell cargo over which it has a lien for unpaid freight. The Court's decision came on the back of an urgent (and admittedly unopposed) application by the shipowner in light of the deteriorating condition of the perishable cargo

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In the majority of time and voyage charters the shipowner has an express lien over the cargo for sums due under the charterparty. That lien is possessory and will be lost if the cargo is delivered – for that reason, it has been held that the shipowner must complete the cargo voyage but is entitled to hold off the discharge port if entering would compromise the lien (per The "Mihalos Xilas" [1978] 2 LLR 186).

The decision in The "Lord Hassan" confirms the position as set out in The "Moscow Stars" EWHC 2150 (Comm), in which the Court ordered the sale under s44 of the Arbitration Act 1996 of liened cargo which was owned by the time charterers of the Vessel.

Section 44 of the Arbitration Act deals with Court powers exercisable in support of arbitration, and provides at subsection (2)(d) for *"the sale of any goods the subject of proceedings"*.

In order to preserve the jurisdiction of the arbitral Tribunal, the Court's powers under s44 are only exercisable in case of urgency (per s44(3) for the purpose of preserving evidence or assets) or otherwise with the permission of the Tribunal or the agreement of the other parties (per s44(4)).

In The "Moscow Stars" the Court held that the liened cargo was 'the subject of proceedings', but appeared to make a connection between the ownership of the cargo and the jurisdiction of the Court to make an order for sale, per paragraph 32 of the Judgment (emphasis added):

*"…where a contractual lien is being exercised over a defendant's goods as security for a claim which is being advanced in arbitration. That does not depend on whether there is formally a claim in the arbitration for a declaration that the claimant is entitled to exercise such a lien, although as it happens the claimant has made such a claim. It is sufficient that the lien is being exercised in support of the arbitral claim and that, as a result, there is an impasse between the parties pending issue of an award**. I would add that in this case the defendant is the owner of the cargo. There is no need to say anything about what the position would be if the cargo were owned by a third party, not a party to the arbitration**."*

Despite this caveat, it had long been understood that the same principles would apply to cargo owned by a third party, i.e. receivers not a party to any arbitration proceedings between owners and charterers (for instance per the commentary in Voyage Charters at 17.28).

The Court has now confirmed this in The "Lord Hassan". Per the Judge (at paragraph 39 of the Judgment):

"I have considered the fact that it appears the cargo has been sold to a third party, which is a distinguishing feature from the Cargo in The Moscow Stars. I am satisfied, however, that this does not give rise to any defence to owners' claim or their right to assert the lien. Indeed, it might well be the case that the Receivers have a claim against Charterers under their sale contract, albeit that is not a matter for the Owners.

The one potential obstacle for shipowners might have arisen had freight been (in fact) pre-paid for the bills of lading. This did not arise on the facts but could theoretically give rise to an estoppel in favour of the third party.

Per Carver on Bills of Lading at paragraph 13-038:

*"**Freight prepaid.** There will be no lien for freight on the cargo of a third party who has a freight pre-paid bill of lading, if the freight has actually been paid before the lien is sought to be exercised, because there is no freight on which the lien can operate. Even where the freight has not been paid, the lien may be of little value against a consignee or an endorsee who has relied on the bill being marked freight prepaid and who may therefore be able to rely on estoppel as against the ship owner."*

In The "Lord Hassan" this issue did not arise on the facts, because although the bills of lading had been marked 'freight pre-paid', the original bills had been retained by the shipowner, and hence there was no reliance on the bills by an endorsee capable of forming an estoppel. It follows that this issue, and the related issue of whether an endorsee would be bound by the lien clause incorporated into the bills, may still be debated at a later date.

However, for now there is helpful clarity on the ability of the Court to intervene and sell cargo which is under lien.

Read this article online:
https://adamsmoorelaw.com/news/the-courts-power-to-sell-liened-cargo

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