

Trade&Transport CaseNote

September 2010

Geofizika DD v MMB International Limited & Ors (The "Green Island") [2010] 2 Lloyds Rep 1

The decision of the Court of Appeal in England in this case provides a salutary lesson to traders and freight forwarders when buying goods and arranging for the shipment of goods which a carrier might wish to stow on deck.

The facts in the case were that a Croatian company agreed to buy on CIP (Carriage and Insurance Paid To) terms Tripoli three four- wheel drive Land Rover ambulances from a British company. The sellers retained freight forwarders to ship the goods. The buyers had requested that the cargo be shipped on a ro-ro vessel.

The carrier with whom the freight forwarder negotiated provided a booking confirmation which contained the following remarks:

"ALL VEHICLES WILL BE SHIPPED WITH "ON DECK OPTION" this will be remarked on your original bills of lading."

The vehicles were shipped on a general cargo ship and the bill of lading contained a liberty clause permitting carriage on deck without notice to the merchant.

The goods were shipped on board on 29 November 2006. On receipt of the original bills of lading on 4 December 2006 the freight forwarders declared the shipment under their open cover, late declarations being permitted.

The forwarders issued a certificate of marine insurance under the open cover under the Institute Cargo Clauses (A) and also the following additional provision:

"Warranted shipped under deck"

The ambulances were in fact shipped on deck, unpacked and unprotected. Two of them were washed overboard in the course of the voyage in the Bay of Biscay.

The buyers' claim against the insurers was declined on the basis of the breach of the warranty. The buyers claimed against the carriers under the bills of lading in Libya and those proceedings were settled.

The buyers then brought the proceedings in the United Kingdom against the sellers seeking the difference between their recovery from the carriers and

their loss, and they were successful at first instance against the sellers, as were the sellers against the freight forwarders.

The sellers and freight forwarders were both successful on appeal.

On the appeal it was relevant to the decision that under CIP terms the sellers would effect "minimum cover", that is Institute Cargo Clauses (C).

The Court of Appeal found that the words used in the booking note constituted a prior antecedent agreement to the effect that if the vehicles were to be carried on deck there would be an endorsement to that effect, thereby circumscribing the liberty contained in the bill of lading. Accordingly under the Contract of Affreightment there was no right to carry on deck.

The Court of Appeal also found that the insurance cover provided, being subject to the warranty of under deck shipment, was not valid insurance as between the buyers and the sellers. The freight forwarder, it was held, was also negligent in giving the warranty in having failed to check that the goods were in fact shipped under deck.

Because the sellers were only obliged to provide cover under Institute Clauses (C) and the loss of the two vehicles would not have been covered under those clauses, it was held that the buyers had not suffered any loss by reason of the seller's breach in providing invalid insurance or the forwarders negligence.

It is noteworthy that two of the Court of Appeal judges reached the result with regret. As Sir Nicholas Wall said in his judgment:

"Equally, as a relative stranger to this category of litigation, it never ceases to surprise me that apparently acute men of business, who are sufficiently affluent to be able to afford good advice and who deal with substantial sums of money, are so careless with language as to require this court to tell them the meaning and effect of critical words in their dealings with each other."

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