

# Unusual order for the delivery up of the unrepresented original bills of lading in Sang Stone Hamoon Jonoub Co Ltd v Baoyue Shipping Co Ltd

Neil Henderson represented the successful defendant shipowner in Sang Stone Hamoon Jonoub Co Ltd v Baoyue Shipping Co Ltd (“The Bao Yue”) [2015] EWHC 2288 (Comm), including an unusual order for the delivery up of the unrepresented original bills of lading.

The claim was by an Iranian trading company for the alleged conversion of a cargo of iron ore in bulk which was shipped from Bandar Abbas, Iran to Tianjin, China in February/March 2012 where it was discharged from the vessel and put into secured storage. Three and a half years later the cargo remained in storage and the claimant had made no effort to collect it. The defendant shipowner counterclaimed for the storage charges which exceeded the value of the cargo and an order for delivery up of the original bills of lading.

The alleged conversion was two-fold: first, because the shipowner had caused the cargo to become subject to a lien without the express or implied authority of the claimant; secondly, because the shipowner’s agents had denied the claimant access to the cargo. The claim on the first conversion failed because the judge held that the shipowner had express authority to discharge the cargo into storage where it would become subject to a lien under the terms of the bill of lading, alternatively implied authority to do so as an aspect of the well-established general law of bailment applicable to the situation where a bill of lading holder fails to take delivery of the cargo at the discharge port. The second ground of conversion also failed because the acts of the shipowner’s agents relied upon fell well short of a denial of access to the cargo.

In those circumstances the claimant was in breach of the contract of carriage in failing to take delivery of the cargo at the discharge port and accordingly the shipowner was entitled to be reimbursed for the storage charges. The judge held that the shipowner was also entitled to an order for delivery up of the original bills of lading on the basis that a bill of lading holder has a continuing duty to take delivery of the cargo once it is landed and to do what is necessary to co-operate in minimising loss and expense if it is unwilling or unable to take delivery of the cargo. In this instance this required that the claimant deliver up the original bills of lading.