

ROYAL COURT
(Samedi Division)

22.

7th February, 1991

Before: P.R. Le Cras, Esq., Commissioner,
(Single Judge)

In re: Crane Shipping (Jersey) 1986 Limited (in liquidation)

Linksail Maritime Limited	Representor
Mitsui OSK Lines of Tokyo	First Party Convened
Geepee Corporation Limited	Second Party Convened
Thomas Hodgson (Liquidator of Crane Shipping (Jersey) 1986 Limited)	Third Party Convened
Stella Chartering and Brokerage Inc.	Fourth Party Convened

Her Majesty's Attorney General convened by the Court as "amicus curiae".

Advocate G.R. Boxall for the Representor.
Advocate M.C. St. J. Birt on behalf of the
Attorney General.

Only the advocates appearing on behalf of Linksail and the Attorney General were present at the hearing, the other remaining parties having declared that they rested on the wisdom of the Court.

The facts are set out in the Representation which accompanies this judgment.

Public International Law - Charterparty - clause providing, inter alia, that the owner (a company incorporated in Hong Kong) shall have a lien upon all cargoes and all sub-freights for any amount due to the owner from the charterer (a company incorporated in Jersey) under the charterparty.

Sub-charter - notice from owner to sub-charterer to pay directly to the owner an outstanding amount due from the charterer to the owner - charterer subsequently in voluntary liquidation - dispute as to validity of clause - effect of the maxim "meuble n'a point de suite par hypothèque" in such circumstances.

Held: The proper Law of the Contract is the Law of England and that the clause in question is valid under the Law of that jurisdiction. Even disregarding the provisions of the Security Interests (Jersey) law, 1983 (as amended) ("the Law") there is no rule of Jersey Public International Law that would prevent the Court from giving effect to the clause in the charterparty as the clause was neither illegal nor contrary to public policy. Article 12 of the Law now expressly recognises the validity of security given by, inter alia, a company incorporated in Jersey under a foreign law in respect of both tangible and intangible property, including choses in action.

JUDGMENT

COMMISSIONER LE CRAS: I declare that the lien is valid and I grant paragraph two of the Representation. I direct the Judicial Greffier to pay out to Linksail the sum paid by Stellar into Court with accrued interest to the date of payment.

Taxed costs to the Attorney General out of monies held in Court. Linksail Maritime Limited's taxed costs against Mitsui OSK Lines of Tokyo up to 27th December, 1989.

Authorities cited:

Dicey & Morris Conflict of Laws, 11th Ed'n. Vol. II, Rule 180
pp.1182-1190.

Dicey & Morris Conflict of Laws, 11th Ed'n. Vol. II, Rule 180
pp.1161-1164.

Dicey & Morris Conflict of Laws, 11th Ed'n. Vol. II, Rule 184
pp.1213-1232.

Security Interests (Jersey) Law 1983.

Security Interests (Amendment) (Jersey) Law, 1985.

Dicey & Morris Conflict of Laws, 11th Ed'n. Vol. II, Rule 115
pp.907-914.

Dicey & Morris Conflict of Laws, 11th Ed'n. Vol. II, Rule 162
pp.1112-1113.

22

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

(Samedi Division)

In the matter of Crane Shipping (Jersey) 1986 Limited (in liquidation).

REPRESENTATION OF LINKSAIL MARITIME LIMITED

Linksail Maritime Limited ("Linksail") humbly represents to the Court as follows:-

1. Linksail is a company incorporated under the laws and customs of Hong Kong and is the owner of a certain freight vessel called "Lady Trude".
2. By a time charterparty in the New York Produce Exchange Form and dated 24th September 1987 Linksail chartered Lady Trude to Crane Shipping (Jersey) 1986 Limited ("Crane"), a company incorporated under the laws and customs of this Island. A copy of the charterparty is annexed hereto marked 'A'.
3. On or around the 25th day of September 1987 Crane in turn executed two sub-charters in favour of Stellar Chartering and Brokerage Inc. ("Stellar") of New York, U.S.A., to carry a part cargo of bagged rice from Taiwan to Reunion and Angola. A copy of the two sub charter parties is annexed hereto marked 'B'.
4. Between the dates of execution of the two charterparties as aforesaid and 19th March 1988 (being the date when discharge of the cargo took place) Crane failed to pay outstanding hire to Linksail. By notice on or about 22nd February 1988 Linksail exercised the lien pursuant to clause 18 of the time charterparty over the sub-freight due from Stellar to Crane. A copy of such notice is annexed hereto and marked 'C'.

Clause 18 provides as follows:-

"18. That the owners shall have a lien upon all cargoes, and all sub-freights for any amount due under this charter, including general average contributions, and the charterers to have a lien on the ship for all monies paid in advance and not earned, and over paid hire or excess deposit to be returned once. Charterers will not suffer, nor permit to continue, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners of the vessel."

The effect of this notice was to require Stellar to pay the freight directly to Linksail in the light of the outstanding hire due to Linksail.

5. The final hire account rendered by Linksail to Crane and dated 19th March 1988 claims the sum of US dollars 125,127.39 as being due in respect of outstanding hire and other amounts due under the charterparty between Stellar and Crane.

6. Stellar has formally agreed that the amount owed to Linksail is in the sum of US dollars 50,583.72.

7. Stellar accept that it received formal notice of the lien of Linksail of the freight otherwise due to Crane and Linksail believe that Stellar is willing to pay the money in the agreed sum as detailed in paragraph 6 hereof to Linksail.

8. By Special Resolution registered on the 29th March 1988 Thomas Hodgson, of 52 Marshall Street, Johannesburg, Republic of South Africa ("the liquidator") was appointed liquidator of Crane. A copy of the Order of the Judicial Greffier to register such special resolution is annexed hereto and marked 'D'.

9. In an action commenced before the Royal Court by Mitsui OSK Lines of Tokyo ("Mitsui") against Crane, Crane was found liable to pay Mitsui the sum of US dollars 103,440.52 together with interest on such sum which Crane was found

to be holding as constructive trustee for Mitsui and Crane was also ordered to pay the reasonable costs of Mitsui's Jersey advocates which have been quantified as £1,409.

10. In an action commenced before the Royal Court (ref 88/86) by Geepee Corporation Limited ("Geepee"), Crane has agreed to pay Geepee the sum of US dollars 16,304 together with Geepee's Jersey advocates' reasonable costs in full and final settlement of Geepee's claim which has been accepted by Geepee and a Consent Order of the Royal Court is being obtained.

11. The liquidator has ascertained that, without prejudice to his rights to dispute any further amount claimed by Linksail, the amount due to Linksail by Crane in respect of the time charter of Lady Trude is no less than US dollars 50,583.72.

12. Stellar will not pay over such monies as may be due unless authorised to do so by the liquidator.

13. English law impliedly governs the charterparty and accordingly the lien of Linksail over the sub-freights held by Stellar is valid subject only to a requirement to have the lien registered against Crane as a charge over that company's property pursuant to S 395 of the English Companies Act 1985, were Crane incorporated in England under the provisions of that Act.

14. However since Crane is incorporated in Jersey, any requirement to register the lien is governed by Jersey companies law. There being no requirement under the Jersey Companies Law equivalent to S 395 as aforesaid or any other requirement to register charges in the Register of Limited Liability Companies the lien of Linksail over the sub-freights was not nor could it be registered against Crane in Jersey.

15. Accordingly Linksail avers that the lien is effective and binding upon all of the parties and that the money as detailed in paragraph 6 hereof should properly be paid over by Stellar to Linksail.

WHEREFORE Linksail prays that the Royal Court may:-

1. Convene Mitsui OSK Lines of Tokyo, Geepee Corporation Limited and the liquidator and such other persons as the Court shall think fit as parties to the representation;
2. Declare that the lien in favour of Linksail Maritime Limited over the sub-freights is valid against Crane Shipping (Jersey) 1986 Limited;
3. Direct the liquidator to authorise payment of the sub-freights in the sum of US dollars 50,583.72 by Stellar Chartering and Brokerage Inc. to Linksail Maritime Limited;
4. Order that the cost of this Representation be costs in the liquidation of Crane Shipping (Jersey) 1986 Limited.