COMMONWEALTH MOOT COURT

Vino Classique Ltd.* v *Oceanus Pvt. Ltd.

OUTLINE OF APPLICANT'S ARGUMENT

The Applicant respectfully submits the following:

1. **The Respondent is liable for the lost cargo because:**

    a. The *Carriage of Goods by Sea Act, 1992* creates a relationship of privity between a carrier and the parties to a contract for the carriage of goods by sea.

    b. In law, the Respondent was the carrier, as evidenced by their signature on the front of the Bill of Lading, irrespective of the text on the front of the Bill and the nearly illegible details on the back purporting to limit its scope and application.

    c. In the alternative, even if there is no relationship of contractual privity between the Respondent and the Applicant, the Applicant can sue in tort for negligent carriage of the cargo.

    d. The clean Bill of Lading issued in this case created the presumption that the goods would be stored below deck. Unreasonably and in breach of its obligations, the Respondent stored the goods above deck, leading directly to the loss suffered by the applicant.

    e. That the goods were stored above deck constituted a fundamental breach of the contract of carriage. Therefore, the Respondent cannot invoke to its benefit any of the limitations in the contract or the Hague rules.

    f. In any event, the poor weather conditions that led the goods being swept overboard were entirely foreseeable and did not constitute an Act of God or other form of excluded liability under the Hague-Visby rules.

    g. The bill of lading must be read *contra proferentem* -- any onerous terms excluding liability would need to have been made clear to the Applicant

    h. The Respondent bears the burden of proof in establishing that the ship was seaworthy. There is no evidence on the record that the ship was seaworthy. The Respondent cannot avail itself of any defence of due diligence in the absence of

    i. The Respondent cannot rely on the clause on the bill of lading that states it can only take effect as a contract with the owners of the vessel. The identity of carrier clause is presumptively invalid as it is contrary to article 3(8) of the Hague Visby Rules. The charterer is a joint carrier

with the owner of the ship, and as such, bears responsibility for the safe delivery of the cargo. Article 3(8) states that any clause purporting to relieve the carrier of liability for loss or damage to cargo is null and void.

2. **The Master of the ship must immediately and unconditionally release the consignment because:**

    a. The Master had no right to impose a maritime lien on the applicant's goods. Indeed, in refusing to relinquish possession of the consignment, the Master may be liable in tort for conversion.

    b. There was no mention of a lien clause in the bill of lading or the charterparty. Neither can the Respondent avail themselves of the common law possessory lien as they are not a common carrier.

    c. Alternatively, if there was a lien clause in the charterparty, it would not be binding on the holder of a bill of lading unless it were explicitly incorporated into the bill of lading.

    d. The failure to deliver the consignment is a fundamental breach of the contract of carriage.

All of which is respectfully submitted, this 12th day of April, 2015.

_____ _____

Ada Keon
Junior Counsel to the Applicant

Samuel Greene
Senior Counsel to the Applicant

Region: CANADA

COMMONWEALTH MOOT COURT

Vino Classique Ltd.* v *Oceanus Pvt. Ltd.

OUTLINE OF RESPONDENT'S ARGUMENT

The Respondent respectfully submits the following:

1. **The Respondent is not liable for the lost cargo because:**

    a) Because Oceanus was the carrier under a charterparty, the terms of the bill of lading are not enforceable against it.

    b) The signature of the Respondent in the carrier box is not sufficient evidence to show that they were acting as the carrier. The document must be read as a whole to ascertain if the Respondent or Atlantis were to take responsibility for the goods during carriage. For charterers to undertake liability in contraindication to what was stated in the bill of lading, more than a mere signature is required.

    c) The bill of lading made clear to the signer, in bold letters, that the bill of lading could only take effect as a contract with the owners of the vessel. The Respondent was not the owner of the vessel. The fact that the writing on the back of the bill of lading is illegible is irrelevant insofar as nothing further need be established to exclude the application of its terms to the Respondent.

    d) In the alternative, if the Respondent was the carrier, the Applicant cannot prove that the storage above deck was the proximate cause of the loss of the cargo and is not entitled to a presumption to that effect. Because the cargo was stored on the appropriate stacking shoes, the loss was unlikely to have resulted from deck storage as such.

    e) The losses in this case resulted from extreme, unforeseeable and unusual weather conditions such that the carrier cannot be held liable therefor. The Hague-Visby Rules insulate carriers from liability for losses resulting from Acts of God and Perils of the Sea.

    f) In the further alternative, the Respondent exercised due diligence in properly loading, storing and securing the cargo and can avoid liability on that basis.

2. **The master of the ship is not obliged to release the cargo until the duty is paid because:**

    a) The Master validly incurred a lien when paying the duty on the cargo. Masters' liens for disbursements are recognized in the *Liens & Mortgages Convention, 1993* and in the *UK Merchant Shipping Act, 1995*.

b) The *Supreme Court Act, 1981*, section 21(2) provides the High Court with jurisdiction in Admiralty over disbursements of masters and other persons, and the requirements for recognition of Master's lien were met in these circumstances, since:

   i. Goods or services acquired were necessaries; ie what a prudent person would have ordered for the ship in the circumstances. The Master needed to pay the duty in order to off-load the cargo and continue on the journey.

   ii. The goods were for the ship and common venture and not for master's own benefit.

   iii. Master disbursed his own money and incurred his own personal liability

   iv. Disbursements were made by the Master

   v. Disbursements were incurred in accordance with section 41 of the *Marine Shipping Act, 1995*. The Master was acting within his or her traditional authority as master, or alternatively was acting on implied special instruction from the ship owners.

c) The Respondent is entitled to reimbursement of the duty by the Applicant as the original sale was conducted on CIF Incoterms which stipulates that the buyer shall be responsible for duties, customs fees and taxes as well as customs broker clearance fees.

All of which is respectfully submitted, this 12th day of April, 2015.

Ada Keon	Samuel Greene
Senior Counsel to the Respondent	Junior Counsel to the Respondent

Region: CANADA