

Liening on subfreights: a deadbeat charterer can get its shippers into trouble

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The U.S. Court of Appeals for the Fifth Circuit recently issued a decision that demonstrates how important it is for vessel owners, charterers, shippers and their intermediaries to make sure they understand fully all implications of their vessel charter agreements (often referred to as “charter parties”).

In this case, Chemex voyage chartered one vessel (i.e., leased it for a particular haul) from owner Chembulk, and time chartered another (i.e., leased it for a period of time) from owner Novorossiysk. Chemex then hauled freight owned by shipper Westway on both rented boats, but failed to pay either owner the agreed charter hire or demurrage. When everyone went to the mat, the whole mess went to a federal court in Louisiana.

Westway still owed Chemex some 31 grand in “subfreight” (the transportation costs a shipper pays a charterer or someone other than the vessel’s owner) for the haul Chemex had made *on Novorossiysk’s vessel*. Westway paid that sum to the trial court for ultimate distribution, thereby washing its hands of the matter. Trying to obtain financial security for Chemex’ unpaid obligations to it, Chembulk “attached” Westway’s outstanding subfreight balance, asserting a lien for collection of debt purposes. But Novorossiysk had already sought to impose a maritime lien (which would be superior to Chembulk’s attachment because it was asserted earlier in time) on the subfreight, claiming that its time charter party to Chemex specifically extended to “all freights” incurred by use of its vessel. Novorossiysk’s charter party provided a lien on “all freights.” Chembulk took umbrage, asserting that Novorsiyk had no basis for assert a maritime lien.

The trial court agreed with Chembulk, finding that Novorossiysk’s charter party term “all freights” didn’t include subfreights. The lower court noted that Westway didn’t sign onto the time charter party or otherwise have anything to do with it, and that “all freights” (which could have been defined in the contract to include subfreights) meant something like “all freights incurred pursuant to the charter party only.”

But on appeal, the Fifth Circuit reversed, going through a contract interpretation analysis that demonstrates just how risky and uncertain salty legal issues like this can be.

Novorossiysk did indeed hold a maritime lien on Westway’s freight. Carriers enjoy that legal advantage over their own shippers pretty much automatically. However, vessel owners who charter their boats out may impose liens on cargo owned by someone other than direct charterers only if they (1) reserve the contractual right to do so, and (2) properly perfect it by giving notice to the shipper, sub-charterer, or other affected player. Novorossiysk clearly had done the latter, but a question remained as to exactly what lien rights the carrier had reserved by the charter party term “all freights.”

Maritime contracts must be construed with a mind toward giving meaning to all terms used (so that, if possible, no contractual provision is rendered superfluous or contradictory). The court noted that it would make no sense for the charter party to have created a lien for compensation the carrier was owed which was limited to, well, the compensation it was owed. That interpretation would effectively secure the debt with no more than the debt itself, which would render the term meaningless and superfluous.

No, the court concluded, Novorossiysk's charter party was meant to be broader. Extension of the carrier's freight lien to the cargo and freight charges of Chemex's shippers was the only interpretation that made sense. Moreover, certain other legal precedents supported that interpretation in other contexts. Thus, Novorossiysk gets to collect Westway's subfreight in partial satisfaction of Chemex's unpaid obligations.

Just think of the implications of this! Had Westway's cargo not been delivered, Novorossiysk may have been able to seize it pending payment of Chemex's charter hire. As it is, innocent Westway had to involve itself in (and incurred the expenses of) somebody else's dispute. Everyone involved in chartered vessel carriage would be well served by fully scrutinizing all charter parties involved (there can be two or more for the same vessel), as well as the financial stability and integrity of all players. Find out if the vessel moving your (or your customer's) stuff is chartered, and do your best to ensure there are no hidden pitfalls.

Maritime law is largely designed to afford protection to vessel owners in the context of their inherently movable property. How it does this isn't always obvious, logical or clearly fair.

Ref: Chembulk Trading, PLLC v. Chemex, Ltd.; Novorossiysk Shipping Co. v. Chemex Ltd., et al, 393 F.3d 550 (5th Cir. 2004)