

LUMEN 2014

Ensuring the Rights of Ship-Owners - Maritime Lien and Cesser Clause -

Oana Adăscăliței^a *

^a*Maritime University Of Constanta, Mircea cel Batrin Street, 104, 900663, Constanta, Romania*

Abstract

Both by the common law or express contractual provision, the ship owner enjoys the right to retain the goods in the port of discharge as a security for the payment of freight or other charges. The article aims at analyzing the characteristics of common law and contractual liens: their legal nature, enforceability, effectiveness and conditions for the exercise of a contractual lien when cargo is owned by a third party. Closely related to the existence of lien is the cesser clause. Its purpose is to terminate the charterer's personal liability for specified payments on shipment of the cargo and at the same time to allow the ship owner to exercise a privilege as he might have at common law plus additional liens (typically for dead freight, demurrage and damages for detention). The conditions that enable the existence of a cesser clause are also analyzed thereby.

© 2014 The Authors. Published by Elsevier Ltd. This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/3.0/>).

Selection and peer-review under responsibility of the Organizing Committee of LUMEN 2014.

Keywords: common law lien; contractual lien; bill of lading; charter parties; cesser clause;

1. Introduction

A lien operates as a defence available to one in possession of a claimant's goods who is entitled at common law or by contract to retain possession until he is paid what he is owed. (The *Chrysovalandou Dyo* [1981]). The lien clause in the charterparty is needed to give the owner a lien in those cases where the sub-freight is due to the charterer and not to the owner, as where goods are carried on a sub-charter without any bill of lading. In such a case the owner could only become entitled to the sub-freight by virtue of the lien clause, and it would be too late to

* Corresponding author. Tel.: +40 241 664 740; fax: +40 241 617 260.
E-mail address: oana_adascalitei@yahoo.com