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English Court of Appeal dismisses appeal concerning the doctrine of undisclosed principal

Berge Bulk Shipping Pte Ltd v Taumata Plantations Limited & others [2025] EWCA Civ 876

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Summary

In a recent judgment concerning the law of agency and specifically the doctrine of undisclosed principal, the Court of Appeal upheld an earlier decision by the Commercial Court that the English courts do not have jurisdiction to deal with claims brought by a disponent shipowner against three New Zealand timber companies under two letters of indemnity (the "**LOIs**").

Background

The three respondents were New Zealand companies which exported New Zealand timber (the "**Exporters**"). The Exporters' agent for the sale and marketing of logs was a company called TPT Forests ("**Forests**"), which had entered into Log Marketing and Sales Agency Agreements (the "**Agency Agreements**") with each Exporter for this purpose. Under the Agency Agreements, Forests also acted as the Exporters' agent in chartering vessels for the carriage of logs overseas.

In 2004 the TPT Group, of which Forests is part, decided to establish a new company, TPT Shipping ("**Shipping**"). Shipping was formed for the purpose of managing the inherent risks of chartering vessels, thereby ringfencing the other companies within the TPT Group (including Forests and, as was later determined, the Exporters) from such risks.

Forests entered into a Shipping Services Agreement with Shipping in 2012, pursuant to which Forests would deal with Shipping solely in its capacity as agent for the Exporters, and Shipping would accept instructions from Forests in respect of the handling and shipment of products on behalf of the Exporters.

Shipping issued the LOIs which are the subject of the present case to the appellant shipowner, Berge Bulk, in its own name, to enable cargo to be delivered at the relevant discharge ports without production of the bills of lading. These LOIs were governed by English law and provided for the jurisdiction of the English courts.

Disputes arose following the discharge of two shipments involving voyage charters between Berge Bulk as owner and Shipping as charterer. This resulted in a series of claims leading down to the LOIs, following which Shipping entered into administration and later liquidation.

Berge Bulk (together with another disponent shipowner from whom Shipping had chartered a vessel) brought a claim against Shipping, Forests and the Exporters under the LOIs. The claim form was served on the Exporters in New Zealand pursuant to CPR 6.33(2B) on the alleged basis that the Exporters were the undisclosed principals to the LOIs (which provide for the jurisdiction of the English courts) which had not been paid by Shipping.

Forests and the Exporters challenged the jurisdiction of the English courts to determine the claim, arguing that there was no good arguable case that they were the undisclosed principals of Shipping.

The judgment at first instance

In dealing with the claim against Forests, the Court applied the test of a "good arguable case" for jurisdiction under CPR 6.33(2B) and found that there was no good arguable case that Forests was an undisclosed principal to either the charterparties or the LOIs.

In respect of the claim against the Exporters the Court held, by reference to the terms of the Agency Agreements, that Shipping had acted as principal and not as agent for the Exporters when entering into the charterparties. The Court also determined that the LOIs were issued by Shipping on its own behalf, and that there was no evidence to suggest that the Exporters had authorised the issuance of the LOIs other than through the agency of Forests.

It followed that the English courts had no jurisdiction to hear the claim against the Exporters. In reaching its judgment, the Court also found that upon the establishment of Shipping, the TPT Group had indeed been structured in such a way as to ensure that the inherent risks in chartering vessels were borne solely by Shipping.

Berge Bulk appealed this decision.

The appeal

Berge Bulk's appeal was unanimously dismissed by the Court of Appeal.

In delivering the Court's judgment, Males LJ confirmed that the applicable test for jurisdiction under CPR 6.33(2B) was that of the "good arguable case" and made the following points:

- Shipping had been established to ringfence both Forests and the Exporters from the risks inherent in chartering vessels. This was inconsistent with any intention for Shipping to act as the Exporters' agent in entering into the charterparties.
- The insulation of Forests and the Exporters was put into effect in the Agency Agreements, which clearly distinguished between circumstances where the ship charter would be between Forests and the shipping company on behalf of the Exporters, and when Forests would have access to vessels chartered by Shipping. The latter would not involve an agency relationship.
- Berge Bulk's argument that the Shipping Services Agreement (which states that Shipping "shall provide the Services *for and on behalf of*" the Exporters (emphasis added)) conclusively establishes Shipping's agency carries little weight. This language can also indicate any other relationship where one party acts for the benefit of another. Had the intention been for Shipping to act as the Exporters' agent, the failure to state this was a "surprising omission".
- Although it was the Exporters and not Shipping who had an economic interest in the charterparties, this did not necessarily mean that Shipping had acted as the Exporters' agent. This situation was equally consistent with an arrangement under which Shipping would contract as principal on the basis that it would in effect be indemnified by the Exporters.
- That Shipping had entered into the charterparties as principal was in itself a strong reason to find that Shipping had also issued the LOIs as principal and not as the Exporters' agent.
- Regardless, an agency relationship depends upon each party giving consent to such relationship, and the existence of this consent would need to be shown objectively through the parties' words and actions. The Court found that neither Shipping nor the Exporters gave such consent.

Berge Bulk also submitted that (i) Forests had ostensible authority to authorise the issue of LOIs on behalf of the Exporters, so that the Exporters were estopped from denying Forests' authority and (ii) as a consequence, Forests had acquired actual authority to authorise Shipping to issue the LOIs. Berge Bulk had not previously raised this argument and the Court did not consider it fair to permit it to be raised on appeal (noting that, in any event, it was a bad argument).

For these reasons, the Court found that the Exporters were not liable as undisclosed principals under the LOIs and therefore the English courts did not have jurisdiction to hear the claim against them.

Conclusion

The Court of Appeal's decision reaffirms the restrictions imposed when applying the doctrine of undisclosed principal and highlights the need for parties to be clear as to the capacity in which they are acting when undertaking their contractual duties.

The steps taken by the TPT Group to ringfence other group companies from particular risks through the establishment of Shipping is also an important reminder that the structure of a corporate group can play an important role in insulating entities within its group from certain liabilities.

If you have any questions about this article, please contact **Rachel Green** at rsgreen@vedderprice.com or any other Vedder Price attorney with whom you have worked.