<u>REPUBLIC OF TRINIDAD AND TOBAGO</u>

IN THE HIGH COURT OF JUSTICE

CV2012-00369

BETWEEN

M. RAMPERSAD AUTO SUPPLIES LIMITED

CLAIMANT

AND

POINT LISAS INDUSTRIAL PORT DEVELOPMENT CORPORATION LIMITED

DEFENDANT

<u>Before the Honourable Mr. Justice R. Rahim</u>

<u>Appearances:</u>

Mr. R. Kawalsingh instructed by Mr. A. Bhajan for the Claimant

Mr. P. Deonarine and Mr. V. Deonarine instructed by Ms. S. Narine for the Defendant

DECISION ON PRELIMINARY POINT

1. At trial, the parties agreed that the sole preliminary issue for determination by the court, which will determine the proceedings by agreement was whether the Claimant can succeed on his claim in the absence of the original Bill of Lading. The parties accordingly made their submissions on this issue for the Court to make its decision. Having determined the preliminary point this court gave its decision (not an oral decision) on the 31st March 2015 and distributed an unedited draft to the parties. The court then specifically enquired as to the order which the parties were seeking having regard to the decision and both parties indicated that in the circumstances the court should enter judgment for the Claimant in keeping with their agreement to abide by the court's decision. The court then made the appropriate order.

2. That which follows is that which was delivered to the parties but in edited form.

3. By Claim Form dated the 30th of January, 2012, the Claimant claims the sum of $875,495.00 for the value of the loss of goods and profit thereon, and/ or for damages for the loss of goods arising out of the Defendant's custody thereof as a bailee for reward, and/ or damages for conversion from the loss of said goods and/ or breach of contract and/or breach of duty and/ or for negligence of the Defendant as bailee.

Background

4. The Claimant, a local dealer in new motor vehicles and automotive parts, purchased three new motor vehicles and motor vehicle accessories from a company situated in Thailand. On the 9th January 2011, these goods were packed into a forty foot container which was loaded aboard a vessel and was supposed to have been shipped from Thailand to Trinidad and Tobago. A container bearing the number TCLU 513696-0 entered the port at Point Lisas on the 22nd of February 2011, and was offloaded. The Claimant's Custom Brokerage agent submitted the relevant documents to the Customs and Excise department and paid the sum of $152,139.93 in customs and import duties, motor vehicle taxes, port charges, and value

Added tax. The Claimant subsequently then attempted to take delivery of said container on the 28th of February 2011, but discovered that said container was missing from the storage facility.

5. Two copies of the Bill of Lading made by PAP Prosperity Ltd, both of which appear to indicate that there was to be transshipment through Shanghai. For the sake of identification they shall be referred to as "the First Bill" and "the Second Bill" respectively, the First Bill being the one bearing the stamp "surrender". Attached to each Bill is a list of the goods that were shipped. The First Bill lists the vessel for upon which the goods were to be shipped as the "Ninos", the Second Bill lists the vessel the "Pacific Voyager". The First Bill lists the port of loading as Laem Chabang, Thailand and the Second Bill lists the port of loading as Lad Krabang, which is also in Thailand. Both bills set out that the place of receipt of goods was Lad Krabang Thailand.

6. The Defendant submits that the Claimant's has failed to prove that such a container with such goods actually came into the Port. It says that in order to prove its case the Claimant must produce the original Bill of Lading. The Defendant averred that the Claimant has produced two different copies of the Bill of Lading which were inconsistent with one another in form and substance. Further, the Defendant accepts that the container arrived at its port but denied that the container was stored in its storage facility, and allege that the payments the Claimant professes to have made to the CED were made prematurely, and not to the Defendant. Further, the Defendant maintains that the container was allowed to leave the port with the consent of the CED, in breach of established procedures.

7. The Defendant maintained that it operated as a gratuitous bailee, and that it was not negligent as the container could have only been allowed to leave under the authority of the CED. The Defendant's evidence stated that the CED should be held liable for any loss proven by the Claimant, as they controlled the port.

8. The Claimant has not produced the original Bill of Lading, but has put into evidence what has been referred to two copies of the Bill of Lading. During the course of Case Management, the Defendant applied for and was granted an order of specific disclosure in respect of the search and production of the original Bill of Lading. However to date it has not been located.

9. At trial, the parties agreed that the sole preliminary issue for determination by the court which will determine the proceedings by agreement is whether the Claimant can succeed on his claim in the absence of the original Bill of Lading. The parties accordingly made their submissions on this issue for the Court to make its decision.

<u>The witness statements</u>

10. The witness statements also provide some assistance with the background of the case and the differing submissions of both parties on the preliminary issue. They are of course not yet evidence but the court is of the view that they can be explored in order to assist in the determination of the preliminary point. The court is also mindful that there has been no cross-examination in that regard.

11. The Claimant has filed witness statements by Rajdaye Ramadhin General Manager of the Claimant, Narish Rampersad, Managing Director of the Claimant company, and Stephen Kallicharan, a Customs Clerk Grade III, who brokered the importation of the container for the Claimant. Each witness has stated that the Claimant was the lawful owner of and was entitled to possession of the said goods. Rampersad at paragraphs three and four of his witness statement set out the Claimant's purchase of the goods, and annexed the Claimant's commercial invoice/ packing list, bank statements and US Wire Transfer requests, Bank Statements and the aforementioned Bill of Lading (for the Pacific Voyager) in support of his statements. Kalicharan, who works in the Brokerage department of Caribbean Shipping Agencies Limited ("CSA") in Trinidad, stated that CSA has been handling the Claimant's importations and containers for the past four years and handled the brokerage in respect of the missing container. Kalicharan further testified that he processed the importation

documents for the said goods of the Claimant, and annexed as evidence of such the Customs Declaration Form, the Assessment Notice and the receipt for total payment dated the 2nd, the 7th and the 28th of February 2011 respectively (paragraph 5).

12. All the witnesses for the Claimant and also the witness for the Defendant Harold Ragbir, state that the value of the goods imported in the container were not and usually are not contained in the Bill of Lading. The value is however stated in the Customs Declaration Form submitted by Kalicharan as aforementioned.

13. It is Kalicharan's witness statement at paragraph seven he states that the Defendant's responsibility is to store containers at the port. He explained that after certain revenues are received by the Customs and Excise Division ("CED"), which he appears to have paid as evinced at paragraph eight, the CED authorizes the Defendant to release the container to the importer (the Claimant). The container is then opened and inspected either at the CES station or at the business premises of the importer (at the CED's discretion).

14. Kalicharan further stated at paragraph eight that, as far as he was aware, the container and goods therein disappeared from the Defendant port after it arrived on "Pacific Voyager" and was offloaded and secured at the Defendant's storage area between the 22nd and 28th of February 2011 as by then he had made all payments which are ordinarily to be made.

15. The Defendant has relied on the statement of the witness Harold Ragbir, Vice President of Operations of the Defendant. He states that the copies of the Bill of Lading presented to the court appear to be differently formatted. This the court interprets to mean that different persons are able to print the copies which may be formatted differently but which all relate to the same Bill of Lading. In this regard there is no suggestion that the copies presented are not genuine copies. Ragbir states that it is irregular for the Claimant not to have in its possession one of the original Bills of Lading, the evidence on the copy being that three originals were issued. He says that this is particularly so where the cargo remains uncollected for the Port. The Port requires an original print of the Bill of Lading bearing original stamps of Customs and the shipping line showing that the cargo is ready for delivery. Without this delivery cannot be made. To date that has not been produced. According to Ragbir, even if the

Original is surrendered by the supplier to the shipping line in Thailand, the Claimant would still have to produce a copy bearing the original stamps of Customs and the Shipping Line with an endorsement that the cargo be released.

16. Ragbir also points out that the Second Bill in respect of the journey from Shanghai to Point Lisas is not stamped "surrender" as is the case with the First Bill. So that there is no evidence that the container was surrendered to the ship Pacific Voyager in Shanghai for transport to Point Lisas. He states that in a house to house transaction (where the contained is released from the Port and opened on the compound of the consignee), the original Bill would have a house to house stamp.

Submissions

Claimant

17. The Claimant submits that there is no privity of contract between the holder of the Bill of Lading and the Defendant port. As aforementioned, the Claimant has submitted that the Bill is a contractual document between the shipper (the provider of the goods), the shipping line (the carrier) and the consignee (the buyer). As such, the Defendant has no contractual basis on which to demand the Bill of Lading in order to prove the value of the goods in the container.

18. The Claimant then set out for the Court the various definitions and uses of Bills of Lading. The Claimant identified a Bill of Lading in the function of a receipt, a document transferring constructive possession of goods, a document of title, and a potentially transferrable contract of carriage.

19. As a receipt, the Bill enables the consignee or buyer to verify that the goods described in the Bill are the goods that have been shipped to and received by him. It is considered "prima facie evidence in the hands of the shipper against the carrier as to the good order and condition of the goods" (paragraph 16 of the Claimant's submissions).

20. As a transfer of constructive possession, the Bill identifies the consignee, entitling the consignee as the holder of the Bill to claim the goods from the carrier, who functions as a bailee of the goods shipped. In other words, the Bill confers a possessory right onto the consignee. The Bill of Lading is considered 'spent' when the entitled party takes delivery of the goods. The Bill is therefore no longer able to transfer constructive possession as its function has passed.

21. As a document of title, the Bill of Lading operates as proof to the shipping line that the delivery is to be made to the consignee, the party entitled to delivery. The Claimant makes particular reference to an "original negotiable" Bill of Lading, which is a type of Bill of Lading that can be transferred to a third party. A non-negotiable Bill of Lading however is only deliverable to a named consignee. According to ***J I MacWilliam Company Inc v Mediterranean Shipping Company SA (The Rafaela S)*** [2005] UKHL 11, however, referred to the Court by the Claimant, the straight or non-negotiable bill should also be presented before delivery. The Claimant relied on the case of ***Lickbarrow v Mason*** [1775-1802] All ER Rep 1, which extended the rights created by the Bill of Lading from possessory to ownership rights, should the parties intend to do so upon endorsement. Counsel further relied upon the dicta of Lord Diplock at page 88 of ***Barclays Bank Ltd v Customs and Excise*** [1963] 1 Lloyd's Rep 81 wherein his Lordship stated that a Bill of Lading operates as a:

"*combined contract of bailment and transportation under which the shipowner undertakes to accept possession of the goods from the shipper, to carry them to their contractual destination and there to surrender possession of them to the person who, under the terms of the contract is entitled… So long as the contract is not discharged, the bill of lading in my view, remains a document of title by indorsement and delivery of which the rights of property in the goods can be transferred.*"

19. The Claimant further submitted that delivery must be made against original, negotiable copies and not certified copies or photocopies. This was supported by the case of ***Motis Exports Ltd v Dampskibsselskabet AF 1912, Aktieselskab and another*** [1999] All ER (D) 233, where the ship owner was deceived by a fraudulent Bill of Lading, causing the ship

owner to deliver the goods to the wrong party. It was held that the fact that the ship owner also suffered from fraud (along with the true owner) did not negate the fact that delivery of goods to a person with a forged bill of landing worked in contradiction to the rights of the owner to receive the goods by virtue of his original bill of landing. As such, the ship owner was held to be liable for the loss of goods.

20. The Bill of Lading further operates as a potentially transferable contract of carriage as it discloses the terms of the initial contract of carriage between the carrier (ship owner) and the shipper. It therefore serves a contractual function, incorporating the terms of the charter party in either a long or short format.

21. The Claimant consequently submitted that the only parties that require the Bill of Lading are the seller, the ship owner and the consignee. As such, it is the Claimant's submission that the Defendant has no legal interest in the Bill of Lading, and therefore cannot demand to see such.

22. The Claimant has secondly submitted that the original negotiable bill of lading need only be presented for the delivery of goods. The Claimant submits that the delivery of the goods is not in issue in the present matter, submitting that the Defendant did not deny that the aforementioned container entered and left its port. It was ergo delivered, and as such, the Bill of Lading is no longer required. The Claimant further observed that the usual practice is to issue a bill of lading in one set of three originals, with copies. The copies are marked non-negotiable, but it is submitted that they can be used as evidence of receipt or of contract of carriage. However, as aforementioned, only the original can be used for the delivery of goods. As the Claimant again advances the point that the issue of delivery is not in contention, the submission of the Claimant may be that as delivery has already been made, and that delivery can only be made with an original bill of lading, this must mean that the original was already used and its purpose effectively carried out.

23. The Claimant further submits that a secondary requirement for the original bill of lading to be shown would be to avoid a fraudulent obtaining or delivery of the goods. It is submitted

that fraud is not the issue at hand, and as such, once more there is no need for the Defendant to have access to the original Bill of Lading.

24. The final submission of the Claimant is that a suit in a tort, being a non-contractual claim, does not require the original bill of lading as proof of the contract. Counsel relied on **Palmer on Bailment** which states that the owner or person entitled to goods can, in tort, sue regardless of whether the person is a party to the bill of lading or not. As such, the Claimant submits that it can be inferred that the original bill is not needed if a party to the bill is not required.

The Defendant

25. The Defendant submits that in order for the Claimant to succeed on a claim for bailment, conversion, negligence and contract as claimed in its claim form, it must show that it has a right to possession of the goods. However, it is submitted that the Claimant has failed to do so. The Defendant also relied on **Palmer on the Law of Bailment 3rd Ed (2009)** , at paragraph 20-003 at page 1101, wherein it is stated that the essential ingredient for bailment is that the bailee is proven to possess goods to which the bailor is entitled to. The bailor must have a superior right.

26. **Clerk and Lindsell on Torts 20th Ed (2010)** at paragraph 17-43 of page 1115 similarly sets out in relation to conversion that the Claimant must have possession, or an immediate right to it.

27. For negligence, the Defendant relied on ***Leigh and Sillavan v Aliakamon Shipping Co Ltd*** [1986] 1 AC 785H to page 786A, which highlighted the principle that legal ownership or possessory title must be shown for a right to a claim in negligence. The court held in that matter that had the bill of lading changed hands, the right to possession would have passed along with it.

28. Counsel also noted that section 1 of both the **UK Bill of Lading Act, 1855** and the **Bill of Lading Act** Cap 50:03 of Trinidad and Tobago were identically worded, supporting the relevance of the use of the UK section in ***Leigh v Aliakamon*** (supra). Counsel further relied upon ***Leigh v Aliakamon*** in support of the submission that the Claimant also needed to show possession in contract. The Defendant noted that the plaintiff ultimately failed both in contract and tort. The claim that contract failed on that issue was overturned in ***Leigh***, but only as a result of an overlooked section in the UK Sale of Goods Act, which the Defendant submits bears no relevance to this jurisdiction.

29. The Defendant submits that the Claimant must further fail in its claim in contract as there is no privity of contract between the Claimant and the Defendant. The Defendant denies that a contract was created between the Claimant and the Defendant, the consideration being the freight costs paid to the shipping line/ agent. It is submitted by the Defendant that the Claimant in claiming against the Defendant in contract, has attempted to impose an obligation on the Defendant despite his not being a party to any contract with the Claimant.

30. The Defendant further submits that the original Bill of Lading is essential to the cause of action as the presentation rule (release of goods on delivery of bill of lading) is required in order for goods to be released. ***The Rafaela S*** was referred to, wherein both negotiable and non-negotiable bills of lading were held to be applicable to the presentation rule. The Defendant submits that the Bills of Lading in the present case are non-negotiable, again referring to ***The Rafaela S*** at page 443 where Lord Bingham of Cornhill referred to certain features of a bill of lading, which was an original and non-negotiable bill. The Defendant submits that the features listed by Lord Bingham of Cornhill are present in the copies of the Bills of Lading submitted for evidence by the Claimant. The court notes that the Defendant does this on the assumption that the Claimant's copies are evidence of the originals, which it claims has not been proven (footnote 3 of paragraph 62 of the Defendant's submissions). The Defendant went at great pains to show that both a negotiable (order) and non-negotiable (straight) bill of lading should be presented so that delivery may be effected, quoting Lord Bingham's references to various international jurisdictions which followed the same principle. As such, it is submitted that an original straight bill, such as the one presently

before the court, must be produced for the Claimant to be entitled to the goods. As the Claimant has shown no original Bill of Lading, its case must fail.

31. The Defendant also referred to the case of ***Carewins Development (China) Ltd v Bright Fortune Shipping Ltd*** [2009] 3 HKLRD 409 in which Ribiero PJ at paragraph 17 observed the points laid out by ***The Rafaela S*** regarding the characteristics of a bill of lading: as a receipt, a memorandum of terms, and a document of title. ***Carewins*** further emphasized the importance of the presentation rule, with Ribiero PJ stating at paragraph 21 that "*the carrier is both entitled and bound to refuse to release the goods shipped to a person claiming delivery save against production of an original bill of lading covering those goods*". Further at paragraph 29 that "*the terms of the bills of lading issued in this case demonstrate a contractual intention that delivery should only be made against presentation of the original bills*". Ribiero PJ further referred to the use of a seaway bill instead of a bill of lading should the parties have wished to deliver with mere proof of identity of the recipient instead (paragraph 30). At paragraph 34, his Lordship referred to ***SA Sucre Export v Northern River Shipping Ltd (The Sormovskiy 3608)*** [1994] 2 Lloyd's rep 266, in which Clarke J stated, "*A shipowner must not deliver the goods otherwise than against presentation of an original bill of lading".*

32. The Defendant made the final submission that the two Bills of Lading provided by the Claimant fatally contradict one another, and thus have no weight in evidence. The Defendant observes that it is impossible for the same container with the same goods to be shipped from two different places in Thailand, on two different ships. The Defendant submits that the Claimant is wrong in stating that the First Bill came from Thailand, and the second from Shanghai, as on the copies, in the box labelled "Port of receipt of goods" and "port of loading", both entries are ports in Thailand. The Defendant submits that as the Claimant must rely exclusively on these two bills in order to prove that the alleged goods were in the container, the claim must fail as the two bills are in contradiction with one another. The court notes however that the Claimant has stated from inception in its Claim Form and witness statements that there are other documents identifying the goods in question, particularly the customs declaration form.

33. The Defendant further submitted in reply to the Claimant's submission that it was never admitted by the Defendant that goods were delivered to the Defendant port, merely that the container was delivered there. The Defendant submits that the Claimant does not claim ownership of the container, but of the goods.

34. The Defendant further submitted in response to the Claimant's submission that the presentation rule is relevant only to the parties, that the bill of lading also functions as a document of title. The Defendant states that the terms of the contract are not in dispute (contradicting its Defence where it disputed the terms of the contract at paragraphs 11 and 12, claiming a certain formula to be applicable which the Claimant denied), but that it is the function of the bill of lading as a document of title that is significant to the present matter. The Defendant further claims that this characteristic is often relied upon by persons who are not parties to the contract, such as bankers and insurers. The Defendant has however given no evidence on this point, particularly on whether the original bill of lading is used by the bankers, or whether copies would suffice. The court will in the absence of further evidence therefore consider that the bill of lading serves as a document of title for the aforementioned contracted parties.

Discussion

35. The Court accepts the Defendant's submission that he is not a party to any contract with the Claimant. As such however, the court is of the opinion that the principle stated by the Defendant itself must be applicable not only against the Claimant but against the Defendant itself. The Defendant referred to the case of ***Scruttons***, where it was held that persons who were not parties to the contract could not rely on its terms. As the Defendant has accepted that he is not a party to the Bill of Lading, the court considers that pursuant to the principle counsel for the Defendant has raised, the Defendant is not entitled to rely on the terms of the Bill of Lading. This has been a pivotal part of the Defence, in that the Defendant has sought to show that the terms and conditions of the copy is unclear, and a general need for the original copy of the bill of lading to be shown to him so as to enable him to adjudge whether

he is in fact potentially liable to the Claimant as possessor and owner of the goods. Pursuant to this principle however, the Defendant has no right to use the terms of the Bill of Lading to his benefit.

Whether the container arrived at the Port

36. The Defendant has admitted that the container bearing the number TCLU 513696-0 arrived at its port but has denied that it was kept in its container storage facility. See paragraph 13 of the Amended Defence. However in the witness statement of Ragbir at paragraph 15, it appears to be calling on the court to draw an inference that the container never arrived, suggesting that it remained in a port in Thailand as both Bills carry different Ports of loading albeit within Thailand.

37. Having regard to all of the evidence, the court is of the view that it can be reasonably concluded as follows; the Second Bill appearing to carry markings of the local shipper and other stamps, is one which was printed by the local shipper for the purpose of presentation by the broker to the Customs and Excise department for clearing of the shipment. The First Bill appears to be a print of that which was retained by the shipper in Thailand after it surrendered the cargo to the shipping line. The First Bill carries no container number but the Second Bill does in fact carry the number of the container under dispute. The First Bill attaches particulars of description as an annexed document while the Second Bill, in addition to so doing has the container number written on the Bill itself. Both documents however, confirm that the seal number of the container is the same namely ZZD038546. It must therefore be that both Bills relate to the same sealed container.

38. Both Bills also set out that the container was to be shipped via Shanghai listing the vessel "Zim Savannah" as the vessel which was supposed to take the shipment at Shanghai. However, the Second Bill shows that the vessel name "Zim Savannah" was deleted and the replaced with the ship "Pacific Voyager". This is where the two documents deviate materially from each other. In that regard, if it is the case that such an amendment was in fact

made, it would mean that the First Bill was that prior to amendment, most likely that which was left with the shipper in Thailand prior to the change of vessel.

39. Both bills also differ in terms of the Port of Loading, giving two different ports of loading within Thailand. However both Bills set out the place of receipt of the goods to be the same. It may well therefore be that in addition to a change of vessel there was also a corresponding change of port of loading.

40. So that the Bills are not in the court's view inconsistent with each other. They show that after the issue of the First Bill, a change of vessel was supposed to occur at Shanghai. The inference is that when the Claimant was notified of the arrival of the cargo by vessel by way of the Second Bill, that vessel was the Pacific Voyager as stated on the Second Bill.

41. The documentary evidence therefore is supportive of the admission of the Defendant that the container was delivered to its port. While the Defendant avers that the container was not stored in its container storage facility it has produced no evidence of same. The court would have reasonably expected there to be evidence by way of formal entries made of containers which entered the facility but none was forthcoming. Suffice it to say that the Defendant having admitted that the container was delivered to it, the evidence by way of the copies shows that that which was contained therein were those items purchased by the Claimant. In those circumstances, the Defendant cannot admit that it received the container but successfully argue that it did not receive the goods contained therein.

Is the Claimant entitled to possession of the goods and delivery thereof

42. In this regard, the court takes particular note of the dicta of Justice Clarke in ***SA Sucre Export*** (supra) from Justice Ribiero's judgment in ***Carewins***, wherein His Lordship cautioned that the ship owner must not deliver the goods without presentation of the bill of lading. This statement clearly demonstrates that for the goods to be released, the original Bill of Lading must be presented to the Ship's Master who himself would have been in possession of one of the three originals which would have accompanied the cargo on board the vessel. He who possesses the original Bill of Lading is entitled to possession and

ownership of the goods. It would have been the duty of the local shipper through his broker to present the original Bill of Lading to the captain of the vessel in order that the cargo be handed over to the port. This is a matter between the consignee Claimant, and the ship. It is not a matter, in the absence of evidence to the contrary, which involves the Defendant. The Defendant only becomes involved as a bailee upon release of the container by the vessel to the owner of the shipment or his agent.

Bailment

43. Bailment involves the temporary placement of control over, or possession of personal property by one person, the bailor, into the hands of another, the bailee, for a designated purpose upon which the parties have agreed. It is generally considered to be a contractual relationship since the bailor and bailee, either expressly or impliedly, bind themselves to act according to particular terms. The bailee receives only control or possession of the property while the bailor retains the ownership interests in it.

44. In ***TRM Copy Centres Limited v Landwall Ser43vices Limited*** [2007] EWHC 1738 (QB), Thomas LJ sitting in the Court of Appeal summarised the categories of bailment after the following comprehensive review at paragraph 10:

> *"Bailment was once the subject of much learning, particularly in the late eighteenth and early nineteenth centuries, following the decision of Chief Justice Holt in Coggs v Bernard (1703) 2 Ld Raym 909. Professor Palmer, as editor of the section on bailment in Halsbury's Laws of England (4th edition) Volume 3 (1) (2005 reissue), sets out at paragraph 2 the five classes of transaction that have been categorised as falling within the definition of bailment.*
>
> > *"(1) the gratuitous deposit of a chattel with the bailee, who is simply to keep it for the bailor;*
> >
> > *(2) the delivery of a chattel to the bailee, who is to do something without reward for the bailee to or with the chattel;*

(3) the gratuitous loan of a chattel by the bailor to the bailee for the bailee to use;

(4) the pawn or pledge of a chattel by the bailor to the bailee, who is to hold it as a security for a loan or debt or the fulfilment of an obligation; and

(5) the hire of a chattel or services by the bailor to the bailee for reward."

That classification is derived from Coggs v Bernard and the classic works: Sir William Jones' late eighteenth century synthesis of the common law, Roman and civil law: Essay on the Law of Bailments, (Ibbetson edition 2004); Chancellor Kent's early nineteenth century Commentaries on American Law; and Joseph Story's Commentaries on the Law of Bailment written in 1832. However, as is noted by Professor Palmer at paragraph 2 of Halsbury's Laws, modern authority now recognises many variations on these basic models of bailment and many examples that do not fit precisely into these categories. For example, as Professor Palmer points out at paragraph 2 of Halsbury's Laws and in Palmer on Bailment (second edition, at page 132), certain modern kinds of bailment such as contracts of hire purchase and conditional sales which arise by virtue of a title retention clause do not readily fall within the standard classification."

45. So this case falls into the category of bailment for reward. As the authority demonstrates, the ownership of the chattel is not necessarily a criterion of the relationship in bailment. The bailor must at the least be entitled to possession of the chattel in order to found a successful claim in bailment.

46. Having regard to history and circumstances of the claim as set out above, it must be that the original Bill of lading was presented to the ship's Master in order to secure the release of the cargo into the hands of the bailee. The Defendant does not appear to be a party to the contract between the shipper, the ship and the consignee. Further, the Defendant only becomes the bailee when the cargo is handed over by the ship, an event which has been admitted by the Defendant.

47. It must follow that the parties to the contractual bailment relationship are the consignee though its agent and the Defendant bailee. It also follows that the contract benefitted both

parties, having regard to the charges for storage charged by the port. An essential element of the relationship of bailment is ownership by the bailor of the property being bailed and/ or entitlement to possession. To that end it must be the case that the foundation of the contractual relationship when the parties are contracting is the implied representation by the bailor that he is the owner of the goods and/or entitled to possession. Without this the contract cannot arise in bailment. So that when the broker or shipper clears the goods and transfers possession of same into the hands of the port he is representing on behalf of the consignee that the consignee is the owner of the goods and/or entitled to possession. The issue therefore becomes one of proof of ownership or entitlement to possession. In this case the latter follows the former.

48. In this case, the production of the original Bill of Lading is but one means of proof of ownership of the container and its contents. It may not be the only means of proof. Whether there are other means of proof is dependent on the facts of any particular case. In so saying, the court agrees with the submission of the Claimant that the purpose for the production of the original is that of release of the goods by the shipper to the true owner to avoid fraud. Possession of the original ensures that the goods are handed over to its true owner. The event of handing over having taken place however, the original Bill of Lading remains the best evidence of title of ownership of the container and its contents. Where he best evidence is unavailable, a copy of the bill, in this case the Second Bill of Lading along with the receipts in possession of the bailor ought to suffice. So that, not being a party to the shipping contract, the Defendant cannot insist on the production of the original Bill of Lading as a pre-requisite for the release of the container and its contents. The only pre-requisite as a matter of law would be proof of payment of customs and other charges prior to release. The evidence in this case is that those charges were paid. See the witness statement of Stephen Kalicharan.

49. Put another way, in the case where a bailor is not the owner but is in fact the one who is entitled to possession of the goods, it could not be the case that he has to provide proof of ownership to the bailee in order to recover. That is the high standard that the Defendant seeks to impose in this case. However, in this case, the Claimant is both owner and entitled to possession. So that even assuming, (which is not the finding of this court), that the original

Bill of Lading is the only evidence of title or ownership, the copies of the bills and the receipts all show that at the least the Claimant was the one entitled to possession of the goods.

50. Additionally, for the Defendant to argue that the Claimant cannot succeed on the issue of bailment as it has failed to produce the original Bill of Lading in the face of its admission that it received the container but cannot now locate it is disingenuous. This is so as taken to its logical conclusion, it would mean that if the Claimant was to produce the original Bill of Lading to satisfy the Defendant, the Defendant would nonetheless be unable to fulfill its obligation as bailee and have the container released into the possession of the Claimant. This is so because the Defendant has been unable to find the container. It therefore cannot be that the original Bill of Lading is an absolute requirement in the context of the Defendant being unable to perform its obligations.

51. So that in the court's view, the answer to the preliminary point raised is that the production of the original Bill of Lading is not necessary for the Claimant to succeed in the claim.

Dated this day 31st day of March, 2015

Ricky Rahim

Judge