

The Western Moscow – Maritime Liens

The recent decision in *Western Bulk Shipowning III A/S v Carbofer Maritime Trading ApS & others* (The Western Moscow) [2012] EWHC 1224, has underlined the status of Charterparty liens as equitable charges as a matter of English law. Practically, this means that as a security interest, a lien should be registered against the company granting the lien within 21 days of the charter being agreed to take full effect in case of that company's insolvency.

The Owners of the Western Moscow time chartered the vessel to Carbofer (Charter 1) who sub-chartered the vessel to Ocean Task (Charter 2) who sub-sub-chartered to Sea Task (Charter 3). Charters 1 and 2 both contained an amended version of the NYPE 1946 clause 18 giving Owners a lien upon all hire and sub-hire for amounts due under the charter. Charter 3 provided for "no lien" on sub-hire.

When amounts became due, Owners notified Sea Task of the lien and their entitlement to hire. This was held to be legitimate - the inclusion of "all...sub-hire" in clause 18 of charter 1 entitled Owners to claim any sub-hire down the line of charters. It was sufficient for Owners to notify Sea Task they had a lien over any sub-hire due from them to Ocean Task; it was not necessary for Ocean Task to also notify Sea Task. The fact that the Ocean Task - Sea Task charter provided "no lien" for sub-hire did not prevent Owners claiming sub-hire from Sea Task; it only prevented them claiming from parties below Sea Task in the chain. Owners, however, did still have a direct lien under the bill of lading against any parties below Sea Task.

The Western Moscow clarifies the position in relation to liens on sub-hire in a charter chain. Importantly, it also confirms the status of liens as assignments by way of charge and that in certain jurisdictions, including England and Wales, the charge must be registered to take effect against an insolvent charterer. If unregistered, the charge may not take effect. The case again serves to remind of the value of liens as a protective measure for the Owners to recover amounts due from a charterer from third parties in what remains an uncertain shipping climate.