



12 August 2025

COMMODITIES IN FOCUS WEEKLY - ISSUE 136

THE COURT OF APPEAL CLARIFIES LIMITS OF UNDISCLOSED PRINCIPAL LIABILITY IN *BERGE BULK SHIPPING PTE LTD V TAUMATA PLANTATIONS LIMITED & ORS [2025] EWCA CIV 876*

INTRODUCTION

The Court of Appeal has considered the circumstances in which an undisclosed principal can be held liable under a contract, specifically two letters of indemnity (the "**LOIs**") issued to facilitate the discharge of two cargoes of timber without production of the bills of lading. The judgment provides important clarification on the law governing undisclosed principals.

THE FACTS

The dispute arose out of the shipment of timber cargoes from New Zealand to India. The three defendant New Zealand companies (the "**Exporters**") owned or had logging rights over forestry plantations in New Zealand. TPT Forests Ltd ("**TPT Forests**") acted as the Exporters' agent for export marketing and sales, including the

chartering of vessels from New Zealand to the relevant market, under individual agreements (the "**Agency Agreements**"). There also existed an agreement (the "**Shipping Services Agreement**") under which TPT Shipping Ltd ("**TPT Shipping**") agreed to provide shipping services to TPT Forests on the express understanding that TPT Forests acted solely in its capacity as the Exporters' agent.

TPT Shipping chartered vessels from the Claimants ("**Berge Bulk**") and subsequently issued to Berge Bulk two LOIs to enable cargo discharge in India without the production of original bills of lading. The LOIs were governed by English law and contained English jurisdiction clauses. However, the LOIs went unpaid, and TPT Shipping later went insolvent.

Berge Bulk argued that TPT Forests, acting as the Exporters' agent, had in turn appointed TPT Shipping as a sub-agent, and therefore the Exporters were TPT Shipping's undisclosed principals.



THE HIGH COURT

Whether the English Court had jurisdiction depended on whether there was a good arguable case that the Exporters were liable on the LOIs as TPT Shipping's undisclosed principals, as alleged by Berge Bulk.¹ The High Court held that Berge Bulk did not have a good arguable case and, accordingly, the Court had no jurisdiction over the Exporters. Berge Bulk appealed this decision.

THE LAW ON AGENCY

The Court of Appeal summarised the relevant principles, as follows.

Agency is a consensual relationship, requiring the consent of both principal and agent which is to be determined objectively from their words and conduct. It may be found that consent has been given even if the principal and agent do not themselves recognise that there is an agency relationship.

The 'undisclosed principal rule' establishes that an agent who contracts with a third party in their own name can bind an undisclosed principal, who may sue or be sued on the contract, provided that the agent acts with actual (not merely apparent) authority. This is so even where the third party was not aware that the agent had in fact concluded the contract on behalf of the undisclosed principal. If the third party chooses to sue, they must irrevocably choose whether to sue the agent or the undisclosed principal.

However, where a contract is made in the name of a particular person with nothing to indicate agency, the presumption is that the named party contracts as principal. This presumption can be rebutted only by proof (on the balance of probabilities) that the named party is, despite appearances, contracting on behalf of an undisclosed principal.

THE COURT OF APPEAL

The appeal was unanimously dismissed, with the following reasoning:

1. The purpose behind the creation of TPT Shipping as an entity was to insulate TPT Forests and the Exporters from the risks to which they might otherwise be exposed as vessel charterers. This purpose was inconsistent with the argument that Exporters consented to TPT Shipping acting as the Exporters' agents in concluding the relevant charterparties. However, it was consistent with express provisions in the Agency Agreements, which envisaged that TPT Forests would act as the Exporters' agent, but that TPT Shipping would act as principal.
2. The fact that the Shipping Services Agreement stated that TPT Shipping would provide services '*for and on behalf of*' the Exporters was not sufficient to lead to the conclusion that there was an agency relationship.
3. To successfully argue that TPT Shipping issued the LOIs as the Exporters' agent (with the consequence that the Exporters were undisclosed principals), it would be necessary to demonstrate objectively that the Exporters gave mutual consent. However, the Agency Agreements each contained a clause which provided that TPT Forests had no power to bind the Exporters to any agreement without the approval of the Exporters or their manager. The Agency Agreements also each contained an appendix setting out an approval process which TPT Forests was obliged to follow in the event that an LOI was required. TPT Forests issued their own approval, but did not follow the contractual process for obtaining the Exporters' approval. It was therefore clear that the Exporters had not consented to TPT Forests issuing the LOIs on their behalf.
4. The liability of an undisclosed principal only arises when the agent has actual authority to conclude a contract on the principal's behalf. There was no justification for extending the doctrine of undisclosed principal to encompass the argument that TPT Forests had ostensible authority to authorise the issue of the LOIs on behalf of the Exporters, such that the Exporters would be estopped from denying TPT Forests authority with the consequence that TPT Forests acquired actual authority to authorise the LOIs.

¹ It was common ground that the applicable test for the relevant jurisdiction gateway was that of 'good arguable case' pursuant to CPR 6.33(B).



CONCLUSION

Agency relationships are very common in the world of international trade. The doctrine of undisclosed principal is one which is often raised, for example where a party wishes to enforce rights under a contract concluded by its agent. However, this case demonstrates how complex the legal reality of those relationships can be, and the potential impact on the parties when the agency relationship is unclear or misunderstood.

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