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### QT Trading, L.P. v. M/V Saga Morus United States Court of Appeals, Fifth Circuit 641 F.3d 105 (Decided May 11, 2011)

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**COGSA CARRIER STATUS CAN BE DESTROYED BY A CHARTERER AGENT'S FAILURE TO ADHERE TO PROVISIONS OF A CHARTER PARTY AGREEMENT AS WELL AS FOR DISREGARDING MATE'S RECEIPTS OR MASTER'S AUTHORITY, AND A CLAIM FOR BAILMENT IN ADMIRALTY CAN NOT SUCCEED WHERE BAILEE LACKS EXCLUSIVE POSSESSION OF BAILMENT**

**The United States Court of Appeals for the Fifth Circuit held that a vessel was not a carrier under applicable COGSA regulations. Also, the physical carrier of cargo cannot be considered to have exclusive possession where an agreement says to the contrary.**

QT Trading, L.P. v. M/V Saga Morus  
United States Court of Appeals, Fifth Circuit  
641 F.3d 105  
(Decided May 11, 2011)

This case arose when a shipment of steel pipes from China arrived in Houston in damaged condition. The plaintiff, QT Trading L.P. ("QT" or "Plaintiff"), ordered 800 bundles of steel piping from a Chinese company which contracted the transportation of the product from Dalian, China to Houston, Texas with Daewoo Logistics Corp. ("Daewoo"). Daewoo, in turn, utilized a two year charter party agreement ("Charter Party") with Saga Forrest Carriers International AS ("Saga") for the transit of the bundled steel pipes.<sup>1</sup> Saga itself chartered the vessel from *in personam* defendant Attic Forest AS ("Attic"), the actual owners of the vessel. *In personam* defendant Patt Manfield & Co., Ltd. ("Patt") served as the technical manager and operator charged with employing officers and unlicensed crew as well as operating the vessel according to charterer's instructions and applicable laws. The Charter Party by its writing explicitly authorized Daewoo or its agents:

to sign on Master's and/or on Owners' behalf Bills of Lading as presented in accordance with the Mate's or Tally Clerk's receipts without prejudice to Owners' rights under this Charter Party, but Charterers [were] to accept all consequences that might result from Charterers and/or their agents signing Bills of Lading not adhering to the remarks in Mate's or Tally Clerk's receipts.<sup>2</sup>

Sometime prior to loading the 800 bundles of steel pipe, Attic's Protection & Indemnity Club ("P&I") hired an independent cargo surveyor. On April 6, 2008 the independent cargo surveyor issued a "Preshipment Cargo Condition Report," ("Preshipment Report") to the ship's master noting that damage had occurred on a large number of pipe bundles. This Preshipment Report was the Mate's receipt. That same day, the Captain of the M/V Saga Morus authorized Daewoo's agent to "sign on [his] behalf all bills of lading covering the present shipment . . . according with the mate's receipt and the P&I remarks."<sup>3</sup> On April 7, 2008, the Captain also authorized Daewoo to sign bills of lading on his behalf on the condition that "the original Bills of Lading [were] issued in strict conformity with the Mate's Receipts, i.e., all remarks of quantity and condition which are contained in the Mate's Receipts must be entered on the Bills of Lading prior to signing."<sup>4</sup> However, the bills of lading signed by Daewoo's agent failed to mention or include the Mate's Receipts or the Preshipment Report. Rather, Daewoo's agent noted that the 800 bundles of pipe were "clean on board."<sup>5</sup> The M/V Saga Morus arrived and

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<sup>1</sup> QT Trading, L.P. v. M/v Saga Morus, 641 F.3d 105, 107 (5th Cir. 2011) (describing the rights granted to Daewoo or its representatives under the Charter Party Agreement, a contract between parties in admiralty law).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 107.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

discharged the goods in the port of Houston, Texas on May 19, 2008. There, QT's own cargo inspector notified QT that the cargo had been "discharged in a damaged and non-conforming condition" due to "rough, careless, and/or improper handling" as well as "faulty stowage."

QT quickly filed suit on March 10, 2009 in the Southern District of Texas *in rem* against the M/V Saga Morus, and *in personam* against Daewoo, Saga Forest, Attic, and Patt. Soon after, Daewoo filed bankruptcy without ever filing an answer, and the district court dismissed without prejudice QT's claims against Daewoo on June 24, 2010. Upon docking in Los Angeles on March 1, 2010, QT seized the M/V Saga Morus and obtained a Letter of Undertaking to secure its claim before releasing the vessel. On March 10, 2010 QT filed an *in rem* and *in personam* suit in the Central District of California against the remaining defendants.

That district court entered an order granting summary judgment on November 5, 2010 to Defendants on QT's *in rem* claim against M/V Saga Morus because of a forum selection clause placing venue in Hong Kong. That court received and granted a motion for summary judgment on June 15, 2010 dismissing the *in personam* Defendants of QT's claims for under Carriage of Goods by Sea Act ("COGSA"), bailment, and maritime negligence claims. There, the court found that because Daewoo had not incorporated or referenced the Mate's Receipts the Defendants were not COGSA carriers. Furthermore, the bailment claim failed for lack of legal authority showing that any Defendant was a "bailee" with exclusive possession of cargo. QT timely appealed the district court's grant of summary judgment on its COGSA and bailment claims.

For QT to successfully appeal the issue of COGSA carrier liability, they needed to first demonstrate that they were considered carriers of goods.<sup>6</sup> COGSA defines a "carrier" as "the owner or charterer who enters into a contract of carriage with a shipper."<sup>7</sup> Also, a "contract of carriage" applies only to contracts "covered by a bill of lading or any similar document of title."<sup>8</sup> However, a contract of carriage can be established by "virtue of the charterer's authority to bind the vessel owner by signing the bill of lading 'for the master'" in addition to a typical bilateral contract.<sup>9</sup> Therefore, in order to demonstrate the COGSA status of the Defendants, QT had the burden of showing that the charterer had the authority to sign the bill of lading for the Master and that the Master had the authority to sign bills of lading for the ship owner.<sup>10</sup>

Here, QT failed to confer carrier status upon Attic and Patt. To assert a direct claim against Attic or Patt for the purpose of COGSA liability, QT needed to establish privity of contract<sup>11</sup>. However, QT did not attempt to present evidence demonstrating privity of contract. In the alternative, QT could have presented an indirect claim based on establishing the authority of the charterer to sign on behalf of the Master and the Master's authority to bind the owner. QT presented no evidence demonstrating the Master's role as an agent of Patt or Attic nor did QT attempt to show that the either Defendant gave the Master authority to bind it. Rather, the court construed any mentioning of "Master" and "owner" as referencing Daewoo's Charter Party with Saga.

In considering the question of whether Saga would be considered a COGSA carrier, the court determined that due to the circumstances Saga could not be considered a carrier.<sup>12</sup> Here, the court noted that Daewoo's agent signed the Bills of Lading as "Agent For The Carrier Daewoo Logistics Corp," although it had the authority to sign the Bills of Lading on behalf of Saga.<sup>13</sup> In contrast, the Fifth Circuit affirmed the decision in *Pacific Employers Insurance Co. v. M/V Gloria* that the ship owner was a

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<sup>6</sup> See *Thyssen Steel Co. v. M/V Kavos Yrakas*, 50 F.3d 1349, 1351 (5th Cir.1995).

<sup>7</sup> 46 U.S.C. § 30701(a) (2006).

<sup>8</sup> *Id.* § 30701(b).

<sup>9</sup> *Thyssen*, 50 F.3d at 1352 (citing *Pac. Emp'rs Ins. Co. v. M/V Gloria*, 767 F.2d 229, 236 (5th Cir.1985)).

<sup>10</sup> *QT Trading*, 641 F.3d at 109.

<sup>11</sup> *Thyssen* at 1353.

<sup>12</sup> *QT Trading*, 641 F.3d at 111.

<sup>13</sup> *Id.* at 109.

COGSA carrier when a charterer's agent explicitly signed bills of lading on its behalf.<sup>14</sup> Therefore, by signing the bill of lading for Daewoo rather than explicitly signing under the authority of the Master, the charterer failed to confer carrier status to Saga.<sup>15</sup>

Moreover, the Fifth Circuit announced that if the explicit language of signees of the bills of lading was not determinative, Saga could still not be considered a COGSA carrier.<sup>16</sup> While Daewoo's agent had authority to sign bills of lading on behalf of the master, it failed to sign in conformance with the Mate's receipts.<sup>17</sup> By failing to recognize the Mate's receipts which recognize the P&I's Preshipment Reports, Daewoo's agent exceeded their authority as per the Charter Party.<sup>18</sup>

Finally, QT claimed that regardless of a failed COGSA claim there was still a viable claim for bailment.<sup>19</sup> They reasoned that Saga, by knowingly taking exclusive possession of QT's cargo during the time of QT's loss, was liable for the loss.<sup>20</sup> However, the Court explained that bailment is "the delivery of good or personal property to the bailee in trust, under express or implied contract, which requires the bailee to perform the trust and either to redeliver the goods or to otherwise dispose of the goods in conformity with the purpose of the trust."<sup>21</sup> Specifically, a bailment claim under admiralty law does not arise unless the bailee has been delivered bailment and the bailee has exclusive possession of the bailed property including as against the owner.<sup>22</sup> Here, Clause 8 of QT's Charter Party destroyed Saga's exclusive possession by noting that the charterers had responsibility for loading, stowing, securing, and discharging the cargo.<sup>23</sup> Therefore, QT's bailment claim failed for Saga's lack of exclusive possession of the damaged cargo.

The Fifth Circuit thereby affirmed the district court's grant of summary judgment on QT's bailment and COGSA claims.<sup>24</sup>

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<sup>14</sup> *Pac. Emp'rs Ins. Co.*, 767 F.2d at 237–238.

<sup>15</sup> *QT Trading*, 641 F.3d at 111.

<sup>16</sup> *Id.* at 110.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 111.

<sup>20</sup> *Id.*

<sup>21</sup> *Thyssen*, 50 F.3d at 1354-55 (citing *T.N.T. Marine Serv., Inc. v. Weaver Shipyards & Dry Docks, Inc.*, 702 F.2d 585, 588 (5th Cir. 1983)).

<sup>22</sup> *Id.* (citing *T.N.T. Marine Serv.*, 702 F.2d at 588).

<sup>23</sup> *QT Trading*, 641 F.3d at 112.

<sup>24</sup> *Id.*