

Transfer of Contractual Right of Suit Evidenced in Carriage Contract of Bill of Lading in Nigeria

Authors : Eunice Chiamaka Allen-Ngbale

Abstract : Prior to bill of lading (BOL), merchants travelled along with their goods; then recorded the goods in the ship's mates' register; and finally started selling the goods while in transit by way of BOL, indicative that BOL is negotiable. Common law doctrine of privity of contract did not allow the transfer of right to sue to a non-party to the contract. This created hardship to cargo owners, which made many jurisdictions enact laws in this regard. Bill of Lading Act 1855 (BLA) was enacted in the United Kingdom, which applied as statute of general application under section 375 Merchant Shipping Act 1990 (MSA) in Nigeria; and conferred contractual rights of the suit on consignees and endorsees, but on the passing of ownership upon or by reason of such consignment or endorsement on the shipment of the goods simultaneously. The repeal of section 375 MSA by section 439 MSA 2007 created a lacuna, and the doctrine of privity of contract is the extant law in Nigeria. The aim of this study is to evaluate laws governing the transfer of the contractual right of suit to a third party under the bill of lading in Nigeria. The specific objectives of this study are to ascertain: (i) whether the extant law of common law doctrine of privity of the contract covers the transfer of the right of suit to the third party under the bill of lading in Nigeria; (ii) impediment(s) of the common law to transfer such right in Nigeria in the absence of any legislation; (iii) the level of applicability of the doctrine of privity of contract as it relates to transfer of the contractual right of suit to third party under the bill of lading in Nigeria; and (iv) whether to proffer possible suggestion on how to fill the lacuna left by the repeal of Merchant Shipping Act 1990. This work adopted a doctrinal approach with reliance on primary and secondary source materials. It finds that the common law doctrine of privity of contract in Nigeria is retrogressive. This work recommends for amendment of the relevant statute to cure this defect/lacuna like other commonwealth nations for best international practices.

Keywords : contract of carriage by sea, doctrine of privity of contract, lawful holder of bill of lading, third party right of suit

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