Mercantile Law Amendment Act 1994

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An Act to amend the Mercantile Law Act 1908

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

(1) This Act may be cited as the Mercantile Law Amendment Act 1994, and shall be read together with and deemed part of the Mercantile Law Act 1908 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and different dates may be so appointed by one or more Orders in Council for different provisions and different purposes.

2 New sections substituted

The principal Act is hereby amended by repealing section 13, and substituting the following sections:

“13 Interpretation

“(1) In this Part of this Act, unless the context otherwise requires,—

“‘Bill of lading’, ‘sea waybill’, and ‘ship’s delivery order’ shall be construed in accordance with section 13a of this Act:

“‘The contract of carriage’ means,—

“(a) In relation to a bill of lading or sea waybill, the contract contained in or evidenced by that bill or waybill; and

“(b) In relation to a ship’s delivery order, the contract under or for the purposes of which the undertaking contained in the order is given:

“‘Holder’, in relation to a bill of lading, shall be construed in accordance with subsection (2) of this section:

“‘Information technology’ includes any computer or other technology by means of which information or other matter may be recorded or communicated without being reduced to documentary form:

“‘Network’ has the same meaning as in section 2(1) of the Telecommunications Act 1987.

“(2) References in this Part of this Act to the holder of a bill of lading are references to any of the following persons:

“(a) A person with possession of the bill who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates:

“(b) A person with possession of the bill as a result of the completion (by delivery of the bill) of any endorsement of the bill or, in the case of a bearer bill, as a result of any other transfer of the bill:

“(c) A person with possession of the bill as a result of any transaction by virtue of which that person would have become a holder under paragraph (a) or paragraph (b) of this subsection had not the transaction been effected at a time when possession of the bill no longer gave a right (as against the carrier) to possession of the goods to which the bill relates;—

and a person shall be regarded for the purposes of this Act as having become the lawful holder of the bill of lading whenever that person has become the holder of the bill in good faith.

“(3) References in this Part of this Act to a person’s being identified in a document include references to that person being identified by a description which allows for the identity of that person to be varied, in accordance with the terms of the document, after its issue; and the reference in section 13a(3)(b) of this Part of this Act to a document identifying a person shall be construed accordingly.

“(4) Without prejudice to section 13b(2) of this Act, nothing in this Part of this Act shall preclude its operation in relation to a case where the goods to which a document relates—

"(a) Cease to exist after the issue of the document; or

"(b) Cannot be identified (whether because they are mixed with other goods or for any other reason);—

and references in this Part of this Act to the goods to which a document relates shall be construed accordingly.

"(5) The Governor-General may, by Order in Council, make regulations for the application of this Part of this Act to cases where a network or other information technology is used for effecting transactions corresponding to—

"(a) The issue, endorsement, delivery or other transfer of a document to which this Part of this Act applies; or

"(b) The doing of anything else in relation to such a document.

"(6) Regulations made under subsection (5) of this section may—

"(a) Make such modifications of the provisions of this Part of this Act as are appropriate in connection with the application of this Part of this Act to any case mentioned in that subsection; and

"(b) Contain supplemental, incidental, consequential, and transitional provisions.

"(7) The provisions of this Part of this Act shall have effect without prejudice to the application, in relation to any case, of section 209 of the Maritime Transport Act 1994.

"13a Application of this Part

"(1) This Part of this Act applies to the following documents:

"(a) Any bill of lading:

"(b) Any sea waybill:

"(c) Any ship's delivery order.

"(2) References in this Act to a bill of lading—

"(a) Do not include references to a document which is incapable of transfer either by endorsement or, as a bearer bill, by delivery without endorsement; but

"(b) Subject to paragraph (a) of this subsection, include references to a received for shipment bill of lading.

"(3) References in this Act to a sea waybill are references to any document that is not a bill of lading but—

"(a) Is such a receipt for goods as contains or evidences a contract for the carriage of goods by sea; and

"(b) Identifies the person to whom delivery of the goods is to be made by the carrier in accordance with that contract.

"(4) References in this Part of this Act to a ship's delivery order are references to any document that is neither a bill of lading nor a sea waybill, but contains an undertaking that—

"(a) Is given under or for the purposes of a contract for the carriage by sea of the goods to which the document relates, or of goods which include those goods; and

"(b) Is an undertaking by the carrier to a person identified in the document to deliver the goods to which the document relates to that person.

"13b Rights under shipping documents

"(1) Subject to this section, a person who becomes—

"(a) The lawful holder of a bill of lading; or

"(b) The person who (without being an original party to the contract of carriage) is the person to whom delivery of the goods to which a sea waybill relates is to be made by the carrier in accordance with that contract; or

"(c) The person to whom delivery of the goods to which a ship's delivery order relates is to be made in accordance with the undertaking contained in the order,—

shall (by virtue of becoming the holder of the bill or, as the case may be, the person to whom delivery is to be made) have transferred to and vested in him or her all rights of suit under the contract of carriage as if that person had been a party to that contract.

"(2) Where a person becomes the lawful holder of a bill of lading when possession of the bill no longer gives a right (as against the carrier) to possession of the goods to which the bill relates, that person shall not have any rights transferred to him or her by virtue of subsection (1) of this section unless that person becomes the holder of the bill—

"(a) By virtue of a transaction effected in pursuance of any contractual or other arrangements made before the time when such a right to possession ceased to attach to possession of the bill; or

"(b) As a result of the rejection to that person by another person of goods or documents delivered to the other person in pursuance of any such arrangements.

"(3) The rights vested in any person by virtue of the operation of subsection (1) of this section in relation to a ship's delivery order—

"(a) Shall be so vested subject to the terms of the order; and

"(b) Where the goods to which the order relates form a part only of the goods to which the contract of carnage relates, shall be confined to rights in respect of the goods to which the order relates.

"(4) Where, in the case of any document to which this Part of this Act applies,—

"(a) A person with any interest or right in or in relation to goods to which the document relates sustains loss or damage in consequence of a breach of the contract of carriage; but

"(b) Subsection (1) of this section operates in relation to that document so that rights of suit in respect of that breach are vested in another person,—

the other person shall be entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent as they could have been exercised if they had been vested in the person for whose benefit they are exercised.

"(5) Where rights are transferred by virtue of the operation of subsection (1) of this section in relation to any document, the transfer for which that subsection provides shall extinguish any entitlement to those rights that derives,—

"(a) Where that document is a bill of lading, from a person's having been an original party to the contract of carriage; or

"(b) In the case of any document to which this Act applies, from the previous operation of that subsection in relation to that document;—

but the operation of that subsection shall be without prejudice to any rights which derive from a person's having been an original party to the contract contained in, or evidenced by, a sea waybill and, in relation to a ship's delivery order, shall be without prejudice to any rights deriving otherwise than from the previous operation of that subsection in relation to that order.

"13c Liabilities under shipping documents

"(1) Where section 13b(1) of this Act operates in relation to any document to which this Part of this Act applies and the person in whom rights are vested by virtue of that subsection—

"(a) Takes or demands delivery from the carrier of any of the goods to which the document relates; or

"(b) Makes a claim under the contract of carriage against the carrier in respect of any of those goods; or

"(c) Is a person who, at a time before those rights were vested in him or her, took or demanded delivery from the carrier of any of those goods,—

that person shall (by virtue of taking or demanding delivery or making the claim or, in a case to which paragraph (c) of this subsection applies, of having the rights vested in him or her) become subject to the same liabilities under that contract as if that person had been a party to that contract.

"(2) Where the goods to which a ship's delivery order relates form a part only of the goods to which the contract of carriage relates, the liabilities to which any person is subject by virtue of the operation of this subsection in relation to that

order shall exclude liabilities in respect of any goods to which the order does not relate.

"(3) This section, so far as it imposes liabilities under any contract on any person, shall be without prejudice to the liabilities under the contract of any person as an original party to the contract.

Compare: 1908, No. 117, s. 13"

This Act is administered in the Ministry of Commerce.