



Lessons to be learnt: Tidal Energy Ltd v Bank of Scotland

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In *Tidal Energy Ltd v Bank of Scotland* [2014] EWCA Civ 1107 – the Court of Appeal was asked to assist a paying party who had fallen foul of fraud when paying an invoice. This is a useful case for those involved in shipping. It is not unusual to receive a request to pay monies to a third party, which is different to a named party in a charterparty. It is also not unusual to find details of a bank and a beneficiary in a freight invoice –with no prior agreement on the intended bank/beneficiary being discussed at the recap stage.

The background to the case was that in January 2012, Tidal Energy took steps to pay one of its suppliers Design Craft Ltd the sum of EUR 217,781.57. On 31 January Tidal gave instructions to their bank to pay the outstanding sum.

The instructions were given on one of the banks standard clearing house automated payment systems (CHAPS)

transfer forms. That form required the company to fill in a number of boxes, including the receiving beneficiary sort code, the receiving bank and branch, the receiving customer account number and the receiving beneficiary customer name.

After the transfer form had been filled in, it was signed by two authorised signatories of Tidal. The boxes had been completed in manuscript and the sums were to be credited into Design Crafts account held at Barclays Bank. On 31 January the transfer form was sent to their banks CHAP processing team. Tidal Energy's account in Cardiff was then debited and the funds were credited by Barclays to the stated account number and the sort code, which was a branch of Barclays in Bury St Edmunds.

Unbeknown to Tidal, it had actually been given fraudulently false information about the receiving account which did not belong to Design Craft but rather to another company called Child Freedom Ltd. On 6 February Tidal telephoned its bank, the Bank of Scotland, to say that it had been induced by fraud to pay the funds to account number and sort code given on the CHAPS transfer form. Tidal asked the bank to get the money back. After about five minutes the bank rang Barclays with this information and requested that the customer should not be able to draw on the funds until further notice. However, Barclays declined to put a stop on the funds unless required to do so by Court order. By close of business on 6 February, Barclays allowed the holder of the account to withdraw EUR 217,781.57 of the funds.

Tidal argued that Barclays had no authority to accept the CHAPS payment on behalf of Design Craft because that was not the name of the customer who held the account at its Bury St Edmunds branch. As a result, no valid acceptance of the payment was ever given and Barclays ought to have rejected the transfer and returned the funds the same day. The Bank's defence was that it had not undertaken to ensure that Design Craft received the money and that it was normal banking practice to process payments through CHAPS on the basis of the payee's account number and sort code, - not the name of the payee.

The Court of Appeal decided that the CHAPS transfer form authorised the banks to debit the claimant's account when three identifiers were correctly recorded i.e. the sort code, bank name and account number. The fourth identifier, the customer name was not a part of the authorisation. Expert evidence was produced to show that the beneficiary's name/identity was not used as a primary means by which a payment is routed through CHAPS and could be relied upon to construe the transfer form.

The Court was conscious that there was no reasonably available material to the customer to show how the CHAPS system worked and in particular to inform the customer of the fact the CHAPS did not use the account name. However, even if the banking practice was not reasonably available to a customer, the Court should still needed to be minded to avoid a construction of the contract which was inconsistent with business common sense. The object of the CHAPS system was to achieve rapid payment (maximum of one and a half hours) and the Court should lean against a construction which involved imposing a requirement on the receiving bank which would frustrate the customers' wishes to have the money transferred within one and a half hours.

Tidal's construction placed on the remitting bank an obligation, in effect, to guarantee correspondence between the beneficiary name and the account name, even though it had no control over the care of which its customers'

