

Liens

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A lien is a right in one man to retain that which is in his possession belonging to another, till certain demands of him the person in possession are satisfied¹.

In shipping business most common type of lien is shipowner's lien over goods while in his possession, i.e. during sea carriage, which is equally available for time and voyage chartered vessels. Usually this lien amounts only to a passive right to retain, cannot be transferred or sold and if/when the goods delivered to the receiver, the lien entitlement is lost forever.

The owners' right for lien over cargo is often expressly reserved in time charter contract. Such liens of contractual origin (contractual liens²) create respective rights only between parties to the contract (charter party) in question. Therefore the shipowners have no any right to retain the goods against bill of lading holders, unless bill of lading holders and the charterers are the same legal entity. See respective clauses in NYPE, Baltime and Shelltime4 forms below, notable that Baltime form qualifies the shipowners' right to the lien only over cargo belonging to the time charterer.

BPTIME3, clause 14, lines 282-284:

Owners shall have a lien upon all cargoes, hire, sub-hire, freights and sub-freights for any amounts owed by Charterers under this Charter.

SHELLTIME4, clause 26, lines 360-362:

Owners shall have a lien upon all cargoes and all freights, sub-freights and demurrage for any amounts due under this charter; and Charterers shall have a lien on the vessel for all monies paid in advance and not earned, and for all claims for damages arising from any breach by Owners of this charter.

NYPE, clause 23, lines 259-263:

The Owners shall have a lien upon all cargoes and ail sub-freights and/or sub-hire for any amounts due under this Charter Party, including general average contributions, and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.

Baltime, clause 18, lines 258 – 264:

¹ Per Grose J in *Hammonds and Another, Executors of Blight, against Barclay and Others, Assignees of Fentham a Bankrupt* [1802] EngR 107; (1802) 2 East 227 at p.235.

² Other types of liens are: tax liens, imposed to secure payment of a tax; attorney's liens, against funds and documents to secure payment of fees; maritime liens, imposed on ships by admiralty law; statutory liens imposed by statute, such for example as Civil Aviation Act 1982 of the United Kingdom which permits an airport to detain aircraft for unpaid airport charges and aviation fuel.

The Owners to have a lien upon all cargoes and sub-freight belonging to the Time-Charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.

Examples of contractual liens reproduced above are possessory liens. At common law such lien does not, in general, authorise a sale³.

Read this article in full here: http://www.lawandsea.net/CP_Time/Charterparty_Time_Liens.html

³ *The Thames Iron Works Company v The Patent Derrick Company* [1860] EngR 617