

## Freight forwarded acting as carrier in Italy art. 1741 Italian Civil Code

1. According to art. 1737 of the Italian Civil Code (“C.C.”) the freight-forwarder (“FF”) undertakes to enter, in his own name but on behalf of the principal (shipper), into a contract of carriage and to take care of all ancillary operations (such as, for example, customs procedures, collection and delivery of the goods etc.). Art. 1739 C.C. requires the FF to comply with its principal’s instructions in relation to route, means and mode of transport or, failing such instructions, to act in the best interest of the principal exercising the professional due diligence.

2. Art. 1741 C.C. governs the specific case of a FF acting as carrier (“carrier FF”), i.e. the case where the FF, resorting to its own means and personnel or those of a subcontractor, undertakes to carry out, in full or in part, the carriage itself, as it often happens in combined/intermodal carriage.

The legal effect of the above is that the carrier FF undertakes the legal and contractual obligations of the carrier, with particular reference to the duty to care for and preserve the carried goods, as opposite

to the typical obligation of the “pure” FF, which is limited to exercising the professional diligence in the selection of a carrier fit for performing the relevant carriage.<sup>1</sup>

3. Even though in theory it may appear easy to distinguish between a pure FF and a carrier FF, in practical terms this may result in a problematic exercise.

According to Italian Courts this is a matter of fact to be established case by case looking at the specific arrangements of the relevant transaction and at all relevant factual circumstances: the judge is requested to investigate what was the common intention of the parties having regard to their overall behavior, even going beyond the strict wording of the contract.

4. Italian Courts have established over the years some presumptive criteria which assist in assessing

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<sup>1</sup> For example, the mere FF is not liable for carrier’s and/or carrier’s agent’s failure in loading the container on board the ship where the carrier FF is (Trib. Brescia 30.4.2016).

whether a FF qualifies as carrier FF. In particular, under said case law, a FF is likely to be found to have acted as carrier in the circumstances where:

- the FF is granted extensive discretionary powers in organizing the carriage of the goods;
- transport documents (bill of lading, waybill or other) are issued by the FF on its own letterhead and bearing its own signature;
- fees and disbursements (such as custom fees and freight) are charged by the FF as an all-inclusive lumpsum, rather than separately from each other in an itemized breakdown.

The presence of only one of the above criteria may not be sufficient in itself to qualify the FF as carrier FF. In view of more burdensome liability regime applicable to the carrier FF this qualification should be applied with caution.

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