Shipping & Logistics

How to Effectively Incorporate the Law and Jurisdiction Clause of a Charterparty into a Bill of Lading?

Introduction

In *Caresse Navigation Ltd v Office National De L’Electricite and others (The “Channel Ranger”)* [2013] EWHC 3081 (Comm), the English Commercial Court held that it is effective where a bill of lading incorporates a “law and arbitration clause” of a charterparty when the dispute resolution clause in that charterparty provides for English law and court jurisdiction, not English law and arbitration.

Background

The Claimant is the owner of MV “Channel Ranger”. The 1st Defendant, a Moroccan company, was the receiver of the cargo. The other Defendants were the insurers of the cargo.

The Claimant entered into a time charterparty with U-Sea Bulk A/S (“U-Sea”) for a cargo of coal on 23 March 2011. U-Sea entered into the time charterparty for the performance of its voyage charter with Glencore International AG (“Glencore”) dated 6 January 2011 (the “Voyage Charter”). The Voyage Charter was based on the Americanised Welsh Coal Charter (“Amwelsh”) form 1979, Clause 5 of which provided that “This Charterparty shall be governed by English law, and any dispute arising out of or in connection with this Charter shall be submitted to the exclusive jurisdiction of the High Court of Justice of England and Wales.”

Shipment of the cargo on board MV “Channel Ranger” was acknowledged by a bill of lading dated 6 April 2011 which named Glencore as the shipper and was consigned to the order of the 1st Defendant (the “B/L”). The B/L was on CONGEN 1994 form and on the reverse, it provided “All terms and conditions, liberties and exceptions of the Charterparty dated as overleaf, including the Law and Arbitration Clause, are herewith incorporated.” The charterparty incorporated by reference was the Voyage Charter.

Dispute arose between the parties concerning the damage to the cargo. The Claimant commenced proceedings in the English Commercial Court seeking a declaration of non-liability for any damage to the cargo. The Defendants made an application to challenge the jurisdiction of the English Commercial Court and commenced proceedings in Morocco.
The Arguments

The Defendants argued that the wording in the B/L should be taken literally. As there was no “Law and Arbitration Clause” in the Voyage Charter to incorporate, Clause 5 regarding the “Law and Jurisdiction” in the Voyage Charter should not be deemed incorporated into the B/L. Therefore, they contended that no inference as to English jurisdiction could be made, and the proper forum should be Morocco. The Claimant, however, contended that, where a bill of lading contains specific words of incorporation, there is no need to interpret those words strictly.

The Issues

There are two main issues in the present case, namely, (i) whether the B/L is a contract governed by English law; and (ii) whether the B/L contains a term giving the Court exclusive jurisdiction to determine any claim in respect of the B/L.

Is English Law the Governing Law?

The Court held that regardless of the effect of the words “and arbitration” in the B/L clauses, the express references to the governing law of the Voyage Charter amount to an irrefutable case that the parties to the B/L intended their contract to be governed by the same law as was applicable to the Voyage Charter, provided that the law so chosen was usual and proper for the trade. Since the Amwelsh form is a commonly used charter form for the carriage of coal, there was nothing surprising or unusual about the choice of English law.

Does the English Court have Exclusive Jurisdiction?

In determining whether the jurisdiction clause in the Voyage Charter was incorporated into the B/L, the Court considered that the real question was what the parties should reasonably be understood to have meant by the words “law and arbitration clause” in the B/L clauses. That is a question to be answered objectively, having regard to the background circumstances, which include the fact that the Voyage Charter did not contain an arbitration clause but a law and jurisdiction clause. It was held that the only clause in the Voyage Charter to which the parties could have intended their words to refer was the law and jurisdiction clause. Accordingly, the Court concluded that the B/L contained a term requiring any dispute to be submitted to the exclusive jurisdiction of the English Court.

Conclusion

As can be seen from the above, the dispute in The Channel Ranger case arose as the B/L clauses referred to “law and arbitration clause” of the Voyage Charter when in fact the Voyage Charter only contained a law and jurisdiction clause. As such, if parties wish to incorporate the law and jurisdiction clause of a charterparty into a bill of lading, they should pay particular care and attention to ensure there is no ambiguity in the bill of lading in the references to the law and jurisdiction clause of the charterparty. Nevertheless, the Court
seems to be flexible in the incorporation of law and jurisdiction charterparty clause into a bill of lading that as long as specific words of incorporation are used in the bill of lading to incorporate a clause in a charterparty, minor mistakes in the reference wording could be corrected so as to give effect to the parties’ intentions. The decision is subject to appeal.

For enquiries, please contact our Litigation & Dispute Resolution Department:

E: shipping@onc.hk T: (852) 2810 1212
W: www.onc.hk F: (852) 2804 6311
19th Floor, Three Exchange Square, 8 Connaught Place, Central, Hong Kong

Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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