

## Contentious terms of a Bill of Lading

Disputes between shippers and carriers as to the terms of the contract of carriage often boil down to the question of whether the terms and conditions reflected on the reverse of the bill of lading correctly reflect the agreed terms of the contract of carriage.

In such circumstances the carrier will often point to the 'clause paramount' contained in the bill of lading which states that the terms reflected on the bill of lading override any other terms contained in any other agreement between the parties. The difficulty with this is that, because of the practicalities of the business of international trade, it is often the case that a shipper would not have entered into the contract at all if it had known the terms would be those of the bill of lading.

The result is disagreement between the parties as to what the terms of contract are- a dispute which all too often favours the carrier. What then is the legal position and what remedy does the shipper have when the bill of lading fails to accurately reflect the contract of carriage as agreed between the parties?

It is long established law that a bill of lading is good evidence of a contract of carriage, but not necessarily evidence of the terms of the contract itself. If it can be shown that the shipper has accepted the terms of the bill of lading, whether expressly or tacitly, then the court will accept that the bill of lading does in fact reflect the agreement between the parties.

In other words, if a shipper does not believe that the terms of the bill of lading accurately reflect the negotiated contract of carriage it must do something which evidences this view. For example, it can notify the carrier of the deficiency and request that the terms of the bill of lading be amended accordingly.

In the matter of the *mv Ardennes* the carrier issued a bill of lading which gave it the right to proceed by any route to the named destination and also the right to carry the goods beyond their named destination at its discretion.

This was contrary to what had previously been agreed between the shipper and the carrier in terms of their original contract of carriage. More specifically, the agreement had been that the cargo would be transported directly from the load port to London and discharged there. When the cargo spoiled as a result of the delay caused by a deviation via Antwerp, the shipper alleged a breach of contract.

The carrier relied on the relevant clauses in the bill of lading, however, the court found that the bill of lading did not necessarily reflect the terms of the contract of carriage and that the carrier could consequently not rely on it. It also found that on the particular facts of the case, it could not be said that the shipper had ever accepted the bill of lading as evidence of the terms of the agreement.

Where the shipper accepts a bill of lading without complaint within a reasonable time, it would be difficult for it to deny that it had accepted the terms of the bill of lading and that the bill was proper evidence of the full contractual terms of the contract of carriage.

The 2008 case of the *mv MSC Spain* provides an interesting insight into this discussion. The facts of the matter were briefly as follows:

X, an exporter of fruit to the Middle East arranged a contract of carriage with a carrier Y in terms of which a consignment of litchis was to be transported from Durban to Dubai via Reunion. It was particularly important to X that the litchis arrive as soon as possible.

The general terms of carriage were thus agreed, however, as a result of a number of circumstances which subsequently arose, the carrying vessel stopped at various ports prior to reaching Dubai. By the time it reached the Middle East the litchis had deteriorated to a point at which they were no longer sellable.

X claimed that Y and its agents had breached the contract of carriage and sued for damages. The court found in this case that, because X was familiar with the terms contained on Y's standard bills of lading and had not done anything on this occasion to voice its concerns, the bills of lading were evidence of the agreed terms of the contract of carriage. The terms of the bill of lading made provision for the carrier to deviate at its discretion. The result was that X's claim for damages failed.

One should never take the terms and conditions of a bill of lading for granted. They should be carefully considered and if they do not reflect the agreed terms of the contract of carriage these concerns should be raised as soon as possible- and preferably prior to sailing. Failure to do so could mean that the terms of the bill of lading become of the terms of the contract of carriage- to the shipper's detriment.

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