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TERMS OF A CHARTER PARTY INCORPORATED INTO BILLS OF LADING

The Court of Appeals for the Second Circuit affirmed the district court's ruling holding that the bills of lading incorporated the terms of the charter party notwithstanding the fact that the bills of lading failed to identify the charter party with specificity and incorrectly contained the date of the charter party.

Continental Insurance Co. v. Polish Steamship Co.
United States Court of Appeals for the Second Circuit
346 F.3d 281
(Decided October 8, 2003)

Plaintiff, Continental Insurance Co. ("Continental") filed suit for damages to a cargo of steel coils shipped under COGSA. Continental filed this action against the *M/V Ziemia Suwalska* and the vessel owner Polish Steamship Company ("PSC"). PSC filed a third-party complaint against the charterer of the vessel Trans Sea Transport N.V. ("TST"), seeking to indemnify PSC for any judgment rendered against the vessel owner. TST moved to dismiss PSC's third-party claims as time barred and to stay any third-party claims pursuant to an arbitration clause in the PSC/TST charter party. PSC cross-moved to dismiss based on the same arbitration clause pursuant to Federal Rule of Civil Procedure 12(b)(3).

The United States District Court for the Southern District of New York dismissed the action in its entirety finding that the terms of the charter party agreement were incorporated into the bills of lading and thereby bound all parties to the arbitration clause contained in the charter agreement. On appeal, the issue facing the Second Circuit was whether the charter party was properly incorporated into the bills of lading. The Circuit Court reviewed the issue *de novo* and the factual findings for clear error.

The Second Circuit's analysis began by stating the well-established rule that incorporation of a charter party agreement into the bills of lading requires that specific reference of the charter party be contained in the bills of lading along with unmistakable language to indicate incorporation. The result of incorporation causes the terms of the charter agreement to be binding on all parties claiming damages under the contract of carriage. In support of a finding of incorporation, the court cited the specific language in the bill of lading stating, "all terms and conditions, liberties and exceptions of the charter party, dated as overleaf, are herewith incorporated." Additionally, the court found that this language also effectuated incorporation of the arbitration clause contained in the charter party into the bills of lading.

The only remaining issue before the court was whether the charter party was specifically identified in the bills of lading. The Circuit Court, relying on *Import Export Steel Corp. v. Mississippi Valley Barge Line Co.*, 351 F.2d 503, 506 (2d Cir. 1965), explained that bills of lading should be "carefully if not restrictively construed" and if under that rule, the charter party was specifically identified. Here, the bills of lading utilized the standard "CONGENBILL" form to be used with charter parties. On the form, a line read "freight payable as per CHARTER PARTY dated" with "06.01.2000" typed in the blank.

Continental claimed that there was inadequate identification because TST was not named on the bills of lading. In rejecting this argument, the court noted that while it is preferable to identify the charter party with more specificity, all that is legally required was identification by date. Continental maintained that the line containing the date should be treated as a nullity because it was not included in the appropriate location on the bills of lading. The court was not persuaded by this argument holding that the date included in the bills of lading clearly identify the charter party.

Ultimately, the court affirmed the decision of the lower court holding that the charter party was effectively incorporated into the bill of lading making the terms of the charter party including the arbitration clause binding on Continental. Thus, Plaintiff's claims were properly dismissed.

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