Circular Ref: 2022/0012

Date: 30 June 2022

Incorporation of Charterparty In Bills – Clever Arguments

In new *London Arbitration 18/22*, a few maritime issues were revisited and clarified by the Tribunal.

Facts:

- By a Charterparty fixed on 3 September 2019, the claimant Owners chartered their vessel for a voyage from Tanzania to Vietnam with a cargo of cashew nuts.
- No charterparty was drawn up but the fixture was reflected in a recap email of 3 September and a pro-forma charterparty. The charterparty included arbitration provisions.
- Daily rate was to be USD12,500 net of commissions for non-cargo readiness/cargo documents or cargo related issues.
- Fifty bills of lading were endorsed by the shippers whose stamp appeared on the reverse of each bill of lading. Each provided on its face: '*Freight payable as per CHARTER-PARTY*'.
- The reverse side of each bill of lading provided: "*All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause, are herewith incorporated*".
- Following completion of loading at 1135 on 25 October 2019, fumigation was carried out and the vessel waited at anchorage for fumigation certificate that was issued at 18.00 on 1 November 2019
- The Owners claimed for in the arbitration – (1) detention in the sum of USD 87,196.18, (2) reimbursement of a loan covering freight tax in the sum of USD 62,500, (3) bank charges in the sum of USD 120 deducted from payments made to them by the charterers, interest on sums paid after the commencement of the arbitration, and costs.

Tribunal decided:

- Signing of bills by owners with shippers created a contract between the two parties.
- Although no date of charter party was incorporated, following a case of *The SLS Everest* [1981] 2 Lloyd's Rep 389, the bill would incorporate a charterparty.
- No formal charterparty was drawn cannot be an issue as there was a Re-cap and pro-forma charterparty. Accordingly arbitration clause in Recap would give jurisdiction to the arbitrator.
- Following the case of *The Saxon Star* [1958] 1 Lloyd's Rep 73, the language of the relevant clauses as incorporated into the bills of lading such that the word "Charterers" became "Shippers". Accordingly, the shippers had clear obligations, as reflected by the charter terms incorporated into the bills, in relation to the loading of the cargo, the counting of laytime and the payment of demurrage. Accordingly, the

shippers were liable to pay demurrage as provided for in the charter, but 3 hours were credited to the shippers/charterers and claim of Owners was reduced by 3 hours.

- The loan provided to the Charterers was allowed as a claim.
- The interest was awarded from 15 November 2019, a reasonable time after completion of lading to settle the issues.
- The Charterers were to pay their own costs, the costs of the owners and the cost of the award.
- Bank charges arose due to the Owner's instructions, accordingly they were not allowed.

FDD department of ALCO advice to the clients of Andrew Liu is that:

- Even though full charterparty was not drawn, but it is better to draft a charterparty to avoid legal arguments in case of disputes.

- FDD department is available as a resource 24 x 7 and can be used and it is available only to the clients of ALCO.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk