Incorporation of Charterparty Terms into Bills of Lading

The issue of incorporation of a charterparty arbitration clause into a bill of lading was considered in "Sea Venture" Volumes 16 ¹ and 17 ² in the context of the decision in the "Nerano" ³. This issue has been considered more recently in the "Delios" ⁴ where the charterparty provided inter alia:

13. [By typed amendment] This contract shall be governed by the laws of England... Any disputes under this Charter Party shall be settled by Arbitration in London.

16. [Printed] Any dispute arising during the execution of this Charter Party shall be settled in London. Owners and Charterers each appointing an arbitrator.

The bills of lading issued in respect of the cargoes were in two forms. Congen bills were issued for a cargo of soya bean oil and provided inter alia:

"All terms and conditions, liberties and exceptions to the Charter Party... including the Law and Arbitration clause are herewith incorporated."

The Ocean bill issued in respect of the other cargoes contained a clause printed on the front stating inter alia:

"This shipment is carried under and pursuant to the terms of the charterparty ... and all the terms whatsoever of the said charter... apply to and govern the rights of the parties."

The vessel discharged each of the cargoes underwater and one of the cargoes was both short delivered and contaminated with seawater. The cargo owners commenced court proceedings against the shipowner. The shipowner sought to stay the action on the ground that the bills of lading incorporated the arbitration clause.

The shipowners argued that by applying the decision in the "Nerano" the arbitration clauses in the charterparty were incorporated in the Congen bills by express reference and that it was possible to construe the arbitration clause so as to apply it to disputes between the cargo owners and the shipowners.

The cargo owners submitted that only clause 13 of the charterparty was incorporated because only it (and not clause 16) could be described as the "Law and Arbitration clause" that the bills only incorporated one clause and that the wording of clause 13 "any disputes under this charterparty" was, in any event, not wide enough to apply to the claims in tort or bailment.

It was conceded that there was no express reference in the Ocean bills to the charterparty arbitration clause (or to any arbitration clause) nor did the arbitration clauses in the charterparty refer to the bills.

The Court held that the owners were correct in their submissions on the Congen bills and the cargo owners were correct on the Ocean bills. The Congen bills plainly referred to the "Law and Arbitration clause" as a clause (or term) to be incorporated in the bills. The "Rena K" ⁵ and the "Nerano" were clear authorities that, in such circumstances, the parties to the bills intended to arbitrate and to do so as if they were the parties to the arbitration clause appearing in the charterparty.

The Court agreed with the cargo owners that the wording of the Congen bills was sufficient only to incorporate clause 13 and not clause 16 of the charterparty and that clause 13, in using the words "any disputes under this charterparty", was narrower than "in connection with" or "arising out of". The words used in clause 13 were, however, not to be so restricted to exclude from their scope the claims for breach of duty and bailment in this case, the basis of which was dependent upon the existence of the bills. The Court stated that a party agreeing to arbitrate claims under the bills must be taken to have intended also to submit such claims to arbitration where they are, in reality, interdependent.

In relation to the Ocean bills, however, the principal underlying the authorities was that the bills were negotiable documents concerned with the carriage of the goods and arbitration clauses were not directly germane to the carriage or are collateral to it. While the word "whatsoever" in the Ocean bill incorporation clause was a word of considerable width, the need for express incorporation has been long established by authority.

Therefore, the court proceedings under the Congen bills were stayed while those relating to the Ocean bill were not.

¹ Page 84
² Page 88
³ [1994] 2 Lloyd's Rep 50 (first instance decision) and [1996] 1 Lloyd's Rep 1 (Court of Appeal)
⁴ [2001] 1 Lloyd's Rep 703
⁵ [1978] 1 Lloyd's Rep 545