Bills of lading

Powerful documents deserve careful attention

Bills of lading play a leading role in contracts of carriage. Issued by carriers, they not only provide evidence of the character and quality of goods shipped, but also operate as a receipt and a contract.

Formal bills of lading will usually be treated as containing the entire contract of carriage, including limitation of liability clauses, subject to specific facts and circumstances and any applicable federal or provincial legislation governing the contract of carriage. They are very powerful documents.

In Pro Transport Ltd v Day & Ross Inc, the Court of Appeal of New Brunswick recently reaffirmed the primacy of a bill of lading and the effectiveness of the limitation of liability clause contained in it.

The facts of the case

In August of 2008, Pro Transport Ltd contracted Day & Ross Inc to transport two pallets from Bathurst, New Brunswick to Edmonton, Alberta. The Bill of Lading indicates that one pallet weighed 2251lb and the other pallet weighed 564lb. The bill of lading on the front page of the document specified the following: "Maximum liability of $2/lb or $4.41/kg computed on the total actual weight unless declared valuation states otherwise. Please see additional terms and conditions on reverse."

The court found there was no declared value on the reverse of the bill of lading for the value of the goods being shipped. It also noted the reverse of the bill of lading had the following terms and conditions indicated:

"This contract for carriage of goods includes all uniform terms of carriage enacted for the carriage of general freight pursuant to any statute, regulation or by any lawful authority, which is in force and effect in the jurisdiction of origin of this contract at the time of shipment."

Questions about the value of the goods being shipped and the bill of lading came about after Day & Ross only delivered one pallet to the final destination. The second pallet went missing. Stored on the missing pallet was a hydraulic pump.

According to a Pro Transport official, "...it was important that the pump be located because we were leaving Edmonton and going to another project in the Northwest Territories, and [we] needed the pump to carry out that job. We remained in Edmonton for three extra days hoping that the pump would be located. Finally, we had to leave and we rented a replacement pump but it was impossible to rent a pump with the same capacity as the one on the missing pallet."

The trial judgment

The trial judge held the carrier (Day & Ross), who lost the appellant's hydraulic pump, liable to pay the amount fixed in accordance with the bill of lading.

The bill of lading provided that the carrier's liability for non-delivery was limited to $2 per pound, unless the consigner declared the value of the goods on the face of the bill of lading. Since the consignor failed to do so, the carrier argued that its liability should be based on the weight of the pump—1,277kg (2,815lb)—and not the value of the new replacement pump ($18,785) as claimed by the appellant.

The trial judge agreed with the carrier, and fixed damages at $5,630, while provisionally assessing the appellant's damages at $5,910, should the limitation of liability clause be declared inapplicable.

The appellant argued that the limitation of liability clause should be determined to be inapplicable because once the pump arrived in Edmonton, Alberta, from Bathurst, New Brunswick, and was mistakenly transported to another consignor, the contractual relationship between the parties was now governed by law of bailment and the New Brunswick Warehouse Receipts Act and not by the bill of lading, and therefore the carrier could no longer rely on the limitation clause contained in the bill of lading.

The trial judge rejected this argument and concluded that the pump was lost in transit. The appellant appealed, insisting that the trial judge made a palpable and overriding error in concluding, as a matter of fact, that the pump was lost in transit.

The appeal court's decision

The Court of Appeal dismissed the appeal, writing:

"In our view, however, it makes no difference whether the pump was lost in transit or lost after it arrived in Edmonton. In either case, the bill of lading prevails. There is no logical reason or legal support for the proposition that the contractual relationship between the parties was transformed from a contract for the carriage of goods to a bailment contract once the goods arrived in Edmonton. The reality is that the bill of lading placed an express limitation on the carrier's liability with respect to the non-delivery of the goods to the consignor (the appellant). The law of bailment simply has no application and nothing found in the provincial limitation alters this legal reality. Hence, this case comes squarely within the legal framework governing bills of lading and limitation of liability clauses, outlined in Day & Ross v Beaulieu."

Lessons learned

Never underestimate the importance of a well-drafted bill of lading, which—minus compelling reasons againt it—will ordinarily prevail. If the parties wish to include special agreements, or to limit or alter the liability of a party, they should clearly and expressly do so after obtaining competent legal and other professional advice. Otherwise, the bill of lading will likely prevail. MM&D

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