Federal Court Decision Highlights Importance of Proper Transportation Contract Terms

July 12, 2019

The recent decision of the Federal Court in the case *Labrador-Island Link General Partner Corporation et al. v. Panalpina Inc. et al.* reaffirms the effectiveness of contractual terms between transportation companies. The decision is an important industry reminder to ensure that the proper terms are included in transportation contracts.

The Facts

The plaintiffs retained Panalpina to provide general freight forwarding services for an electrical transmission project, and they signed a Freight Forwarding Service Agreement (FFSA) in 2013 outlining their roles and obligations towards one another.

Using the procedure outlined in the FFSA, Panalpina contracted two companies, Logistec Stevedoring Inc. and Desgagnés Transarctik Inc., to move the reels from Québec to Newfoundland. The first shipment arrived damaged on June 1, 2015. The plaintiffs put Panalpina on notice of their intent to claim for the first shipment on September 9, 2015. The second shipment arrived damaged on October 28, 2015. The plaintiffs put Panalpina on notice of their intent to claim for the second shipment on November 2, 2015.

The plaintiffs then commenced their action against Panalpina and the subcontractors in May 2017, suing them for $3,711,451.94 in damages allegedly caused during transit to two shipments of reels of aluminium conductor steel-reinforced cable for this electrical transmission project.

The defendants argued that the plaintiffs had waited too long to bring the claim. The dispute turned on whether the defendants could rely on the nine-month limitation period contained in the Canadian International Freight Forwards Association (CIFFA) Standard Trading Conditions as set out in some of Panalpina's shipping documents.

Court Decision

The Court found that the CIFFA terms, including the nine-month limitation period, applied. The plaintiffs argued that Panalpina had not told them about the CIFFA terms and that the terms contradicted the FFSA. The Court disagreed, noting that the plaintiffs' sophistication and significant knowledge of the shipping industry meant that they should have been aware that Panalpina was a member of CIFFA and would therefore have wanted to incorporate CIFFA terms into its contractual dealings. Furthermore, Panalpina had referenced the CIFFA terms in its quotes for the shipments, giving the plaintiffs the opportunity to take issue, which they did not. The Court also found that the Himalaya clause included in the CIFFA terms meant that the claim against Panalpina's subcontractors was time-barred as well.

Those involved in the transportation industry should take note by ensuring that their contracts reflect the true intentions of the parties, and that they pay due attention to all the governing agreements that may apply.

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