UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

OILMAR CO. LTD., PANAMA, Plaintiff, v. ENERGY TRANSPORT, LTD., and P.T. CABOT INDONESIA Defendants.	:	
THE INTERESTED UNDERWRITERS AT LLOYD'S and THAI PRODUCT CO., LTD. Plaintiffs, v. M/T SAN SEBASTIAN, et al. Defendants.	:	
P.T. CABOT INDONESIA, Plaintiff, v. M.V. SAN SEBASTIAN, et al. Defendants.	:	Civil Action No. 3:03CV1121 (CFD)
CARBON BLACK PUBLIC CO., LTD., Plaintiff, v. M/T SAN SEBASTIAN, et al. Defendants.	:	

RULING ON MOTION FOR RECONSIDERATION

The cases that have been consolidated in this action were brought after a fire on a cargo ship, the M/T San Sebastian, in the Red Sea on its voyage from the United States to Thailand. Through a previous order, the Court granted motions to compel defendant Oilmar Co., Ltd. ("Oilmar") to arbitrate certain plaintiffs' claims. Oilmar moved for reconsideration of that order. For the following reasons, Oilmar's motion for reconsideration is granted, and the original motions to compel arbitration by plaintiffs, the Interested Underwriters of Lloyd's/ Thai Tokai and Thai Carbon Black, are denied.

I. Background

Oilmar owns the ship M/T San Sebastian,[1] and entered into a charter party agreement ("Charter Party") on March 7, 2003 with Energy Transport Ltd. ("ETL"), a voyage charterer, for the San Sebastian to carry carbon black feedstock[2] from the United States to Thailand. ETL had agreed to pay a "freight rate" to Oilmar for the use of the San Sebastian in shipping the oil. Oilmar is a Panama corporation with the San Sebastian as its only asset. ETL is a United States corporation and a wholly owned subsidiary of the Cabot Corporation. Cabot Corporation is headquartered in Boston, Massachusetts, and distributes carbon black feedstock and other specialty chemicals and materials. P.T. Cabot Indonesia ("P.T. Cabot") was also part of the

[1]"M/T" means motor tank vessel. It is sometimes referred to as "M/V."

[2]Carbon black feedstock is "low grade fuel oil used for industrial purposes," such as the manufacture of tires, industrial rubber products and plastics. Energy Transport Ltd. and P.T. Cabot Indonesia v. M.V. San Sebastian, 348 F. Supp.2d 186, 190 (S.D.N.Y. 2004). It will also be referred to as oil in this opinion.

Cabot Corporation and owns two carbon black feedstock production facilities in Indonesia. ETL and Oilmar had agreed to ship the principal "parcel" of oil on board the San Sebastian to P.T. Cabot.

Additional space for oil was available on the San Sebastian, which ETL made available to two shipping companies, Pacific Oil and Adam Maritime, through sub-charter party agreements. Adam Maritime is the shipping arm of Glencore Ltd. Glencore Ltd. had sold carbon black feedstock to Thai Tokai Product Co., Ltd. ("Thai Tokai"), agreeing to deliver it to Thai Tokai in Thailand. The Interested Underwriters of Lloyd's ("Lloyd's") underwrote insurance for Thai Tokai,[3] and is subrogated to Thai Tokai for the purposes of this litigation. Pacific Oil is an Oklahoma corporation and had agreed to have its oil parcel delivered to Carbon Black Public Co., Ltd. ("Carbon Black") by the San Sebastian.

Three bills of lading were executed for the shipments of oil on the San Sebastian's voyage.[4] These agreements were entered between Oilmar and P.T. Cabot, between ETL and Carbon Black, and between ETL and Thai Tokai. Oilmar was not a signatory to the sub-charter agreements and bills of lading between ETL and Carbon Black and Thai Tokai. After the San Sebastian fire, P.T. Cabot, Carbon Black, and Thai Tokai (and Lloyd's as Thai Tokai's subrogee) sued the San Sebastian and Oilmar, seeking damages as a result of the fire and arguing, among

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[3] Lloyd's paid approximately $350,000 for salvage and about £9,000 for legal fee, which it is trying to recover.

[4] A bill of lading is a document of title acknowledging receipt of goods by a carrier or by the shipper's agent. See BLACK'S LAW DICTIONARY 159 (7th ed. 1999).

other things, that the San Sebastian had been unseaworthy.[5] At issue here is whether Lloyd's/Thai Tokai and Carbon Black may compel Oilmar to arbitrate their claims pursuant to the arbitration clause in the Charter Party between Oilmar and ETL.[6] That arbitration clause in the Charter Party between Oilmar and ETL stated, "Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration. . ." (Charter Party, ¶ 24).

II. Discussion

Lloyd's/Thai Tokai and Carbon Black argue that Oilmar should be compelled to arbitrate their claims on the principle of estoppel. Lloyd's/Thai Tokai and Carbon Black concede that Oilmar was not a party to their bills of lading, but rely on the Charter Party arbitration clause. Courts recognize a variety of bases to compel arbitration in the absence of an agreement to arbitrate between the parties. Those bases are: (1) incorporation by reference; (2) assumption; (3) agency; (4) veil piercing/alter ego; and (5) estoppel. Thomson-CSF, S.A v. American Arbitration Association, 64 F.3d 773, 776-780, (2d Cir. 1995).

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[5]Similar suits were also filed in U.S. District Court in the Northern District of Georgia and the Southern District of New York. P.T. Cabot litigated its motion to compel arbitration in the Southern District of New York. In that case, Judge Leisure held that the bill of lading between Oilmar and P.T. Cabot incorporated by reference the arbitration provision of the Charter Party, and ordered arbitration. Energy Transport, Ltd., and P.T. Cabot Indonesia v. M.V. San Sebastian, 348 F. Supp. 2d 186, 204-206 (S.D.N.Y., Dec. 2004). Thai Tokai/Lloyd's and Carbon Black do not argue that their bills of lading incorporated the arbitration provision of the Charter Party.

[6]Lloyd's/Thai Tokai and Carbon Black do not argue that their bills of lading incorporated the arbitration clause in the Charter Party, as was argued successfully by P.T. Cabot in Energy Transport, Ltd. and P.T. Cabot Indonesia v. M.V. San Sebastian, 348 F. Supp. 2d at 204-206.

The U.S. Court of Appeals for the Second Circuit has recognized estoppel as a basis to compel arbitration between parties who were not all signatories to an arbitration agreement. A signatory "is estopped from avoiding arbitration with a non-signatory 'when the issues the non-signatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.'" Choctaw Generation Limited Partnership v. American Home Assurance Company, 271 F.3d 403, 404 (2d Cir. 2001) quoting Smith/Enron Cogeneration Ltd. Partnership, Inc. v. Smith Cogeneration Int'l, Inc. 198 F.3d 88, 98 (2d Cir. 1999). In order to determine how intertwined the parties are, the Court must engage in a detailed factual inquiry and provide "careful justification." Choctaw 271 F.3d at 406. In Astra Oil, the Second Circuit stated that, "Although Choctaw Generation did not specify the degree of 'intertwined-ness' that would be required to support an estoppel theory, we made clear that such a finding should only be made after careful review of the relationship between the parties, the contracts they signed, and the issues that arose between them." Astra Oil Co., Inc. v. Rover Navigation, 344 F.3d 276, 279 (2d. Cir. 2003). In that case, Rover Navigation, Ltd., ("Rover") was the owner of the M/V Emerald and had executed a charter party with AOT Trading AG ("AOT"). The charter party had an arbitration clause. Astra Oil, Inc. ("Astra") shipped oil on the Emerald. The Emerald was delayed in its voyage and Astra incurred late delivery charges with its purchaser. The Second Circuit determined that the close corporate and operational relationship between the Astra and AOT weighed in favor of compelling arbitration: Astra and AOT were affiliated companies owned by the same parent. Additionally, the court found that Rover treated Astra as if it were subject to the charter party, including accepting instructions from Astra during the voyage. Finally the Court pointed out that the claim arose out of the charter party agreement in that it was

based on the express warranty of seaworthiness. Id. at 281. In JLM Industries v. Stolt-Nielsen, 387 F.3d 163 (2d Cir. 2004), the Second Circuit also determined that signatory JLM could be compelled to arbitrate with the non-signatory defendants. The court noted that, "the questions the [defendants] seek to arbitrate are undeniably intertwined with the charters, since . . . it is the fact of JLM's entry into the charters containing allegedly inflated price terms that gives rise to the claimed injury." Id. at 178. The JLM court also noted that "[t]he principles of estoppel . . . are not limited to relationships among corporate parents and their subsidiaries." 387 F.3d at 178 n.7.

The plaintiffs here, however, have not established a sufficient degree of "intertwined-ness" for the Court to compel arbitration. Although this litigation arose out of a fire on the San Sebastian's May 2003 voyage, and Carbon Black and Lloyd's/Thai Tokai base their claims on the warranty of seaworthiness set forth in the Oilmar/ETL Charter Party,[7] those factors are outweighed by the lack of any corporate or operational relationship between the parties such as was present in Astra Oil. Neither Carbon Black nor Thai Tokai has a corporate affiliation with ETL or Oilmar. Also, unlike the situation in Astra Oil, neither Oilmar nor ETL treated Carbon Black or Thai Tokai as a party to the Charter Party by, for example, accepting direction from them during the voyage. See Astra Oil, 344 F.2d at 281. Although the claims relate to the warranty of seaworthiness in the Charter Party, that is not sufficient.[8] Because there has been an

[7]It is also worth noting that the Sub-Charter Party between ETL and Glencore (for Thai Tokai) also contains the same broad arbitration clause that is contained in the original Charter Party between Oilmar and ETL.

[8]The fact that Oilmar asserted a General Average demand against Carbon Black and accepted a General Average bond from its insurer also does not alter the Court's conclusion as to "intertwinedness;" unlike Aster Oil, 344 F.2d at 280, the circumstances of the demand do not show that Oilmar treated Carbon Black and ETL as related.

inadequate showing of an intertwined relationship with the Charter Party or its signatories, the motion for reconsideration [doc. # 115] is granted, plaintiffs' motions to compel arbitration [doc. # 72 and doc. # 88] are denied, and the stay pending arbitration is lifted. Counsel are directed to submit proposed scheduling orders by June 15, 2006.[9]

SO ORDERED this _31st__ day of May 2006, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

[9]That portion of the motion for reconsideration that requests certification is denied as a result of the orders here.