

WALLACE INVESTMENTS LTD V THE SHIP "BLACK BART"

IN THE HIGH COURT OF NEW ZEALAND
IN ADMIRALTY
AUCKLAND REGISTRY
ADMIRALTY ACTION IN REM
AD12/02
BETWEEN WALLACE INVESTMENTS LIMITED
First Plaintiff
AND THE SHIP *BLACK BART*
First Defendant
AD21/02
BETWEEN MARGARITA SANTES AGULTO
Plaintiff
AND THE SHIP *BLACK BART*
Defendant
AD22/02
BETWEEN HELMUT LOHMANN
First Plaintiff
HEIKO EBELING
Second Plaintiff
GUENTER SCHULDT
Third Plaintiff
AND THE SHIP *BLACK BART*
Defendant

Hearing: 9 September 2002

Counsel: Mr A N Tetley and Mr T Greenwood for Wallace Investments Ltd, BB Shipping New Zealand Ltd, Pacific Tiger Line Ltd
Mr M W M McCarthy for Sutherland Shipping Ltd and Chatham Fuels Ltd
Mr C Lucas for Aimecs Ltd
Mr M C Black for Favelle Favco Equipment Ltd
Mr J R Gresson for Master, Chief Engineer and Chief Mate of Vessel and for the Mortgagee
Mr A Mortimer, Deputy Registrar, High Court (in person)

Judgment: 9 September 2002

(ORAL) JUDGMENT OF HEATH J

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[1] These three proceedings relate to the vessel "*Black Bart*". In some proceedings judgment has been obtained *in personam*; some claimants still seek judgment. Other parties have filed caveats without taking steps to seek judgment. It appears that no appearance has been entered by the owner of the vessel as the shareholders of the company which owns the vessel are in dispute.

[2] An auction date has been set for 25 October 2002. The auction of the vessel is being supervised by the Registrar of this Court.

[3] It is likely from the information made available to me today (and set out in Mr Tetley's helpful memorandum of 6 September 2002) that there will be a significant shortfall and parties will need to decide whether to contest priority claims in respect of the funds available for distribution after sale of the vessel or to reach a commercial compromise in respect of claimed rights.

[4] A further issue arises in relation to cargo on the ship. The Registrar has sought a direction from me under r795 of the High Court Rules in that regard.

[5] After hearing from counsel I allowed some further time for counsel to discuss suitable practical arrangements to maintain the *status quo* while the sale of the vessel was proceeding. As a result, counsel are agreed as to the process which should be followed and have left some issues for my determination. I deal with the issues raised in turn.

[6] The first issue concerns the need to flush out any further claimants and to require those who have entered caveats in the three Admiralty proceedings to file Statements of Claim. I make a direction that caveators who have not yet filed a Statement of Claim, file and serve a Statement of Claim by 5 pm on 27 September 2002. I also grant leave for the existing caveators to intervene in the respective proceedings. All other parties who may wish to make claims shall file and serve Statements of Claim by 5 pm on 27 September 2002. I direct the Registrar to advertise that direction in the following newspapers:

- *The New Zealand Herald*
- *The Dominion Post*
- *The Press*
- *The Otago Daily Times*

Such advertisement shall be made within 7 days of today's date. In that way all of those parties who intend to bring claims can be before the Court well before the vessel is sold and the amount available from the sale of the vessel is known.

[7] The second issue concerns the need for further steps to be taken in the proceedings by way of defence. The interests for whom Mr Tetley acts are required by the terms of the Rules, unless there is a direction to the contrary, to file and serve Statements of Defence by 16 September 2002. Some discussion has taken place today as to the merits of such Statements of Defence being filed given the need for an economic appraisal of various claims once the amount obtained from the sale of the vessel is known. To some extent the defences are foreshadowed in Mr Tetley's memorandum of 6 September 2002.

[8] I am satisfied that it is preferable for Statements of Defence to be filed. However, I extend the time for filing and service of Statements of Defence until 5 pm on 23 September 2002. Thereafter, it is intended that there be a moratorium on existing claims while the outcome of the sale is known.

[9] Statements of Defence will still need to be filed in terms of the Rules to any future claims which are made either by existing caveators or by fresh parties.

[10] The next issue concerns the question of cargo. There is a substantial quantity of fuel on the vessel owned by the party for whom Mr McCarthy acts. It is from a practical point of view desirable that any sale of the vessel be contemporaneous with sale of the fuel. Nevertheless, there is a need, should the two items be sold separately and the terms of sale of the vessel excludes the fuel, for there to be a mechanism for removal of the fuel from the vessel promptly upon sale being effected so that the vessel can be delivered up by the Registrar to the purchaser pursuant to the terms and conditions of sale.

[11] The intention of the parties is that Mr McCarthy circulate a memorandum which will identify an order which could be made on the Registrar's application under r795 of the High Court Rules. If all counsel are in agreement with that, they should advise the Registrar by midday on Friday, 13 September 2002. The Registrar can then advise me of that and I will make an order on the papers. If there is no agreement then the application by the Registrar will need to be brought on for a hearing next week.

[12] If agreement is not reached, I direct that Memoranda be filed by counsel stating their position in respect of the matters raised in the Registrar's to me of 6 September 2002. Those Memoranda shall be filed and served by 5 pm on 13 September 2002.

[13] All three proceedings are adjourned for mention in the Duty Judge List at 10 am on 16 September 2002. If there is a need for the Registrar's application to be dealt with, it will need to be given hearing time next week. Should the parties reach agreement and a consent order be made, I will make an order

on receipt of the Memoranda indicating consent dispensing with the need for an appearance on 16 September 2002.

[14] Under r791 of the High Court Rules the Court is entitled to make orders determining when the order of priority of claims shall be determined. Pursuant to r791(2)(a) of the Rules, I make an order that the order of priority not be determined until after the expiration of 30 days from the date on which the proceeds of sale of the vessel are paid into Court. Within 7 days after the date of payment into Court of the proceeds of sale, the Registrar must send for publication in the *Gazette*, the *New Zealand Herald*, the *Dominion Post*, the *Press* and the *Otago Daily Times* a notice in Form 82 which sets out the time for determination of the order of priorities. That order is made under r791(2)(c) of the Rules.

[15] Leave is reserved for any party to apply further should urgent directions be required.