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## Hollandsche Aannaming Maatschappij v. Ryan Leet (The), 1997 CanLII 5408 (FC)

Date: 1997-08-19

Docket: T-1661-97

Parallel citations: 135 FTR 67

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T-1661-97

BEFORE: THE HONOURABLE MR. JUSTICE ROTHSTEIN

BETWEEN:

HOLLANDSCHE AANNAMING MAATSCHAPPIJ,

b.v., a body corporate

Plaintiff

- and -

The owners and all others interested in the Ship

"RYAN LEET", and SECUNDA MARINE

SERVICES LIMITED, a body corporate

Defendants

### REASONS FOR ORDER

This is a motion by the defendants to set aside the Warrant of Arrest of the "RYAN LEET", to reduce bail and for security for costs.

The Ryan Leet was arrested pursuant to [subsection 43\(8\)](#) of the [Federal Court Act R.S.C. 1985 C. F7](#) (the sister ship provision).

"The jurisdiction conferred on the Court by section 22 may be exercised *in rem* against any ship that, at the time the action is brought, is beneficially owned by the person who is the owner of the ship that is the subject of the action."

The evidence is that the registered and beneficial owner of the ship which is the subject of the action, the Terra Nova Sea, is Kenworthy Limited; that the Ryan Leet, the arrested ship is owned by Secunda Marine Services Limited; that Kenworthy Limited is wholly owned by Secunda Marine Services Limited; and that Kenworthy Limited has no interest beneficial or otherwise in the Ryan Leet.

The defendants say that "owner" as that term is used in [subsection 43\(8\)](#) of the [Federal Court Act](#) means registered owner. They say that since Kenworthy Limited the registered owner of the Terra Nova Sea is not the beneficial owner of the Ryan Leet, [subsection 43\(8\)](#) has no application and that the Warrant of Arrest must be set aside.

The plaintiff says that the term "owner" in [subsection 43\(8\)](#) should be liberally construed to include beneficial owner in that Secunda, by reason of its ownership of Kenworthy Limited, is the beneficial owner of the Terra Nova Sea. They also say that it was represented by Secunda in the charter party agreement between the plaintiff and Secunda that Secunda was the owner of the Terra Nova Sea.

The term "owner" is not defined in the [Federal Court Act](#). *Prima facie* when different terminology is used in the same provision different meanings must have been intended. In the "*Evpo Agnic*" [1988] Lloyd's L. R. 411 at 414, Lord Donaldson states the principle with respect to the contrast between the term owner and the beneficial owner, the very terms at issue here:

"..it is a basic rule of construction that where a statute employs different terminology in different provisions, prima facie a different meaning is intended and this is particularly the case if the differing terminology occurs within a single subsection. "Owner" in par. (b) thus falls to be contrasted with "beneficial owner" in pars. (i) and (ii)."

Applying this principle here, the term "owner" in [subsection 43\(8\)](#) must have a different meaning than "beneficially owned" in the same subsection. I am confident in this conclusion, having regard to [subsection 43\(3\)](#) of the [Federal Court Act](#) dealing with the arrest of the ship that is the subject of the action:

"Notwithstanding subsection (2), the jurisdiction conferred on the Court by section 22 shall not be exercised *in rem* with respect to a claim mentioned in paragraph 22(2)(e), (f), (g), (h), (i), (k), (m), (n), (p) or (r) unless, at the time of the commencement of the action, the ship, aircraft or other property that is the subject of the action is beneficially owned by the person who was the beneficial owner at the time when the cause of action arose." (emphasis added).

It is obvious that when Parliament intended to qualify the term owner it did so. Parliament did not do so in [subsection 43\(8\)](#), which supports the conclusion that the term "owner" with respect to the ship that is the subject of the action in [subsection 43\(8\)](#) does not mean beneficial owner.

What then is the meaning to be given to the term "owner" of the ship that is the subject of the action in [subsection 43\(8\)](#)? The defendants say that by reason of [paragraph 15\(2\)\(b\)](#) of the [Interpretation Act R.S.C. 1985 C. I-21](#), the definition of owner in the [Canada Shipping Act R.S.C. 1985 C. S-9](#) is applicable to [subsection 43\(8\)](#) of the [Federal Court Act](#). [Paragraph 15\(2\)\(b\)](#) of the [Interpretation Act](#) provides:

"15 (2) Where an enactment contains an interpretation section or provision, it shall be read and construed

...

(b) as being applicable to all other enactments relating to the same subject-matter unless a contrary intention appears."

"Owner" is defined in [section 2](#) of the [Canada Shipping Act](#) as:

" "owner", except in Parts XV and XVI,

(a) means

(i) as applied to unregistered ships, the actual owner and as applied to registered ships, the registered owner only, and

(ii)...

(b) includes for the purposes of Part IX the lessee or charter of any vessel who is responsible for the navigation thereof and includes for the purposes specified in [section 75](#) beneficial owner."

[Subsection 43\(8\)](#) is a provision relating to shipping. The [Canada Shipping Act](#) refers to the Federal Court as the Admiralty Court. Plaintiff's counsel has not suggested any reason why [subsection 43\(8\)](#) of the [Federal Court Act](#) is not a provision relating to the same subject matter as the [Canada Shipping Act](#), although he does argue that a contrary intention appears in [subsection 43\(8\)](#), which argument I will deal with shortly.

The definition of owner, as applied to registered ships, which the Ryan Leet and Terra Nova Sea are, means the registered owner only. It is true that another definition of owner for purposes of Part IX of the [Canada Shipping Act](#) includes lessees and charterers but a review of Part IX indicates that the intention is to enable lessees and charterers to avail themselves of the limitation of liability provision of that Part. Parts XV and XVI of the Act deal with pollution prevention and response and civil liability and compensation for pollution. Each Part contains its own definition of owner. It is obvious that Parliament intended a broader scope for the term owner in those Parts than generally under the Act.

Owner also includes beneficial owner for purposes of [section 75](#) of the Act dealing with liability for penalties under the Act. Thus for the enforcement of penalties, "owner" is extended to include beneficial owner.

It would appear that when Parliament so intended, it qualified the term owner for specific purposes. The indication is that where no specific qualification is stated none is intended and in particular beneficial ownership is not intended.

This conclusion is consistent with the dicta of Marceau J.A. in *Mount Royal v. "Jensen Star"* (1989) 99 N.R. 42 (F.C.A.) at 47 in reference to [subsection 43\(3\)](#) of the [Federal Court Act](#):

"Whatever be the meaning of the qualifying term "beneficial", the word owner can only normally be used in reference to title in the *res* itself, a title characterized essentially by the right to dispose of the *res*."

In the case of registered ships, when no qualification is stated, "owner" means the registered owner only.

May this definition of owner be applied to [subsection 43\(8\)](#) of the [Federal Court Act](#) or does a contrary intention appear? Plaintiff's counsel argues that owner is left unqualified with the intention that it be construed broadly to include ownership other than just registered ownership and specifically to include beneficial ownership. I cannot agree. "Owner" will mean the registered or legal owner unless something in the words or context of [section 43](#) of the [Federal Court Act](#) indicates the contrary. I see no such indication. Indeed as I pointed out, where Parliament intended to refer to beneficial ownership it used express words. In the [Canada Shipping Act](#) where owner was not to mean registered owner, the definition expressly so stated. That Parliament did not qualify the word owner in [subsection 43\(8\)](#) in respect of the ship that is the subject of the action indicates that it intended to restrict ownership to registered ownership.

[Subsection 43\(8\)](#) was enacted to enable plaintiffs to have sisterships arrested as security for a claim. This is indeed an extraordinary remedy. However the basis of the extended remedy is potential liability by the registered owner of the ship which is the subject of the action. To interpret the term owner more broadly would be to impute to Parliament an intent to "pierce the corporate veil" in respect of the ownership of vessels incurring potential liability. I would think that if such a radical departure from ordinary principles of corporate law were intended by Parliament with respect to an already extraordinary remedy provided in [subsection 43\(8\)](#), the intention would have been explicitly stated.<sup>1</sup>

Plaintiff's counsel submits that it is premature to decide this motion. However there is no evidence filed that contradicts the evidence that the registered owner of the ship which is the subject of the action, the *Terra Nova Sea*, is Kenworthy Limited and not *Secunda* and that Kenworthy is not the beneficial owner of the *Ryan Leet*. Counsel was not able to suggest what additional evidence might be forthcoming to alter the facts as already known. That *Secunda* represented it was the owner of the *Terra Nova Sea* in the charter party agreement changes nothing. The charter party agreement contains a definition of "owner" and, representations in the charter party agreement are referable to that definition and not to the meaning of owner in [subsection 43\(8\)](#) of the [Federal Court Act](#). *Secunda* is not the registered owner of the *Terra Nova Sea* and representations cannot change that fact.

For these reasons the application to set aside the Warrant of Arrest of the *Ryan Leet* is allowed. It follows there is no further requirement for bail or security with respect to the *Ryan Leet* and the *Ryan Leet* should not remain in the style of cause.

The parties agree that the plaintiff is outside the jurisdiction and that security for costs in the sum of \$25,700 is appropriate. Until this sum is paid into Court the Plaintiff may take no further steps in this action. If the said sum is not paid into Court on or before September 15, 1997 the defendants may apply to the Court to strike the action. Upon payment in, the Plaintiff may apply to the Court to fix a schedule for the conduct of proceedings.

If the parties are unable to agree as to costs respecting the motion, an application may be made to the Court to fix costs.

Marshall Rothstein

Judge

FEDERAL COURT OF CANADA

TRIAL DIVISION

Names of Counsel and Solicitors of Record

COURT NUMBER: T-1661-97

STYLE OF CAUSE: Hollandsche Aannaming Maatschappij

v.

The Ship "Ryan Leet" et al

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: August 19, 1997

REASONS FOR ORDER RENDERED BY: ROTHSTEIN, J.

APPEARANCES:

Mr. Mark Beliveau for Plaintiff

Mr. Wylie Spicer for Defendants

SOLICITORS OF RECORD:

Cox Downie

Halifax, NS for Plaintiff

McInnes, Cooper & Robertson for Defendants

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<sup>1</sup>Perhaps if separate corporate ownership of ships was seen to be a fraud or a sham, a court might be prepared to bridge the gap between the two companies. There is no evidence of fraud or sham here.

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