

Federal Court



Cour fédérale

**Date: 20170207**

**Docket: T-2249-16**

**Citation: 2017 FC 168**

**Vancouver, British Columbia, February 7, 2017**

**PRESENT: The Honourable Mr. Justice Shore**

**ADMIRALTY ACTION *IN REM*  
AGAINST THE CONTAINERS LISTED IN APPENDIX “A”  
AND *IN PERSONAM***

**BETWEEN:**

**DP WORLD (CANADA) INC.**

**Plaintiff**

**and**

**The CONTAINERS LISTED IN APPENDIX “A”  
and the Owners and all Others Interested in the  
CONTAINERS LISTED IN APPENDIX “A”,  
SEACUBE CONTAINER LEASING LTD.,  
DONG FANG INTERNATIONAL ASSET  
MANAGEMENT LTD., FLORENS ASSET  
MANAGEMENT COMPANY LIMITED,  
SEACO KOREA LTD.  
TEXTAINER GROUP HOLDINGS LIMITED,  
THE KOREAN DEVELOPMENT BANK  
and JOHN DOE LTD.**

**Defendants**

**ORDER**

**UPON MOTION** dated January 4, 2017, on behalf of the Plaintiff, for an Order:

1. Pursuant to Rule 147 of the *Federal Courts Rules* (Rules) validating service of the Statement of Claim, Warrant, Affidavit to Lead Warrant and this Motion on the Containers listed in Appendix “A” to the Statement of Claim (hereinafter the “Defendant Containers”) by placement of a single copy of the Statement of Claim, Warrant, Affidavit to Lead Warrant and the Motion Record on each of 11 blocks of the Defendant Containers as located at Centerm Terminal in the Port of Vancouver, British Columbia;
2. Pursuant to Rule 147 of the *Rules* validating service of this Motion on the *in personam* Defendants by electronic mail at the last known electronic mail address of the Defendants;
3. Pursuant to Rule 490(1)(a) of the *Rules* that the Defendant Containers be sold without appraisal by private contract and as more particularly described as follows before judgment is granted:
  - a. The Defendant Containers shall be sold by conduct of DP World without advertising, with all existing faults, without any allowance for deficiencies or errors of description whatsoever and without any legal or contractual representations or warranties whatsoever, but free and clear of all liens and encumbrances under Canadian Maritime Law;
  - b. Any sale of the Defendant Containers shall not require advance Court approval, but DP World may seek Court approval if it chooses to do so;

- c. In the event of a sale, DP World be hereby authorized to sign a bill of sale transferring ownership and title of the Defendant Containers to the purchaser free and clear of any liens and encumbrances;
  - d. Possession, risk and title to the Defendant Containers shall pass to the purchaser on delivery by DP World of a signed bill of sale to the purchaser or as otherwise agreed between DP World and the purchaser;
  - e. The following shall be deemed to be expenses of sale, and shall rank first in priority from the proceeds of sale of the Defendant Containers over all other claims:
    - i. amounts expended or incurred by DP World that pertain directly to the Defendant Containers, including but not limited to any amounts expended or incurred by DP World for storage fees and any other maintenance fees; and,
    - ii. all reasonable expenses of advertisement of the sale, costs, disbursement and other expenses necessary or inherent to giving effect to this Order;
  - f. Proceeds of the Sale shall be directed to be paid to DP World to cover the cost of recovering sums due from the Defendants and for storage fees and related charges for the Defendant Containers.
4. Pursuant to Rule 400 of the *Rules* costs of this Motion, payable by the Defendants to DP World;

**AND UPON** reading the motion record filed on behalf of the Plaintiff and upon Paragraph 1 of the Motion having been previously addressed by the Court, and upon hearing from counsel for the Plaintiff and upon no Statements of Defence being filed on behalf of the Containers listed in Appendix “A”;

**THIS COURT ORDERS that:**

1. Pursuant to Rule 147 of the *Rules* that the Defendant Containers Listed in Appendix “A” (excluding those owned by Seacube Container Leasing Ltd and Seaco Korea Ltd) owned or controlled by Dong Fang International Asset Management Ltd., Florens Asset Management Company Limited, Textainer Group Holdings Limited, The Korean Development Bank And John Doe Ltd., be sold without appraisal by private contract and as more particularly described as follows before judgment is granted:
  - (a) The Defendant Containers shall be sold by conduct of DP World without advertising, with all existing faults, without any allowance for deficiencies or errors of description whatsoever and without any legal or contractual representations or warranties whatsoever, but free and clear of all liens and encumbrances under Canadian Maritime Law;
  - (b) Any sale of the Defendant Containers shall not require advance Court approval, but DP World may seek Court approval if it chooses to do so;

(c) In the event of a sale, DP World be hereby authorized to sign a bill of sale transferring ownership and title of the Defendant Containers to the purchaser free and clear of any liens and encumbrances;

(d) Possession, risk and title to the Defendant Containers shall pass to the purchaser on delivery by DP World of a signed bill of sale to the purchaser or as otherwise agreed between DP World and the purchaser;

(e) The following shall be deemed to be expenses of sale, and shall rank first in priority from the proceeds of sale of the Defendant Containers over all other claims:

i. amounts expended or incurred by DP World that pertain directly to the Defendant Containers, including but not limited to any amounts expended or incurred by DP World for storage fees and any other maintenance fees; and,

ii. all reasonable expenses of advertisement of the sale, costs, disbursement and other expenses necessary or inherent to giving effect to this Order;

(f) Proceeds of the Sale shall be directed to be paid to DP World to cover the cost of recovering sums due from the Defendants and for storage fees and related charges for the Defendant Containers.

2. Pursuant to Rule 400 of the *Rules* costs of this Motion, payable by the Defendant Containers Listed In Appendix “A” (excluding those owned by Seacube

Container Leasing Ltd and Seaco Korea Ltd) and Dong Fang International Asset Management Ltd., Florens Asset Management Company Limited, Textainer Group Holdings Limited, The Korean Development Bank and John Doe Ltd., to the Plaintiff, DP World.

“Michel M.J. Shore”

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Judge