Federal Court  Cour fédérale

Date: 20190111

Docket: T-237-17

Citation: 2019 FC 35

Ottawa, Ontario, January 11, 2019

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

THE ADMINISTRATOR OF THE SHIP-SOURCE OIL POLLUTION FUND

Plaintiff

and

DR. JIM HALVORSON MEDICAL SERVICES LTD. AND DR. JIM HALVORSON

Defendants

and

FRED ADAMS

Third Party

JUDGMENT AND REASONS

[1] On September 27, 2014, a barge called the Crown Forest 84-6 sank off of the west coast of Vancouver Island, near the village of Zeballos. As it sank, it leaked fuel and other

contaminants into the surrounding waters. The issue in this summary trial is who is responsible for the costs of cleaning up the spill: the professional medical corporation that is the registered owner of the vessel, the principle shareholder of the corporation, or the person that had allegedly purchased the vessel from the corporation prior to it sinking?

[2] For the reasons that follow, I have concluded that the corporate Defendant was not the legal owner of the vessel when it sank on September 27, 2014, and was not therefore liable for the clean-up costs associated with the oil spill. Consequently, the action will be dismissed.

I. The Parties

[3] The Plaintiff is the Administrator of the Ship-source Oil Pollution Fund. Established under Part 7 of the *Marine Liability Act*, S.C. 2001, c. 6, the Fund was created to pay claims for damage caused by oil pollution in Canadian waters.

[4] Ship owners are primarily responsible for the cost of remediating oil pollution damage caused by their vessels. However, the Fund will reimburse others who may have incurred costs or expenses in cleaning up oil pollution. The Fund will then, as in this case, seek to recover the clean-up costs from the owner of the vessel in question through a subrogated claim.

[5] The corporate Defendant, Dr. Jim Halvorson Medical Services Ltd., is a professional medical corporation ("PMC") incorporated pursuant to the laws of British Columbia, and is the registered owner of the vessel. The individual Defendant, Dr. Jim Halvorson, is the sole director and officer of the PMC.

[6] In addition to defending the Administrator's action, the Defendants also commenced a Third Party Claim against Fred Adams. Mr. Adams, who was a former Chief of the Ehattesaht First Nation, had allegedly purchased the vessel from the PMC in September of 2012. Although he was served with the Third Party Claim, Mr. Adams did not respond to it, and it appears that he is now deceased.

II. Background

[7] The following are the uncontradicted facts giving rise to this action.

[8] The PMC purchased the Crown Forest in December of 2011 or January of 2012. The vendor was the trustee in bankruptcy of a logging company that had used the barge as accommodation for a logging camp. Dr. Halvorson received a Bill of Sale from the vendor, and the vendor registered the vessel in the name of the PMC with the Canadian Register of Vessels established under Part 2 of the *Canada Shipping Act, 2001*, S.C. 2001, c. 26

[9] Although a valuation survey reviewed by Dr. Halvorson prior to the purchase described the vessel as being in "good condition", it often had a pronounced list, which explains why it was known locally as the "Tiltin' Hilton". There was a large fuel tank on the deck of the barge, as well as eight Atco trailers, a number of propane tanks, two 5.9 litre Cummins diesel engines and internal fuel tanks.

[10] At the time that the PMC acquired the vessel, it was moored in Zeballos on a water lot lease held by Western Forest Products Ltd. After the purchase, Western Forest Products wrote to

Dr. Halvorson asking that the vessel be moved. The Ehattesaht First Nation also wanted the vessel relocated, as they viewed it as being an environmental hazard.

[11] Dr. Halvorson had originally intended to move the vessel to his property in Queen's Cove, which was also on the territory of the First Nation. Shortly after he acquired the vessel, he made arrangements for it to be towed. However, the attempt was aborted on the morning that the tow was scheduled to take place, when ice in the harbour made towing the vessel impossible.

[12] Dr. Halvorson was subsequently advised by both the Provincial Ministry of the Environment and the Ehattesaht First Nation that the vessel could not be moved to Queen's Cove because of environmental concerns. As a result, he decided to sell the vessel.

[13] Dr. Halvorson subsequently entered into discussions with Mr. Adams, who was interested in purchasing the vessel to use it as a wellness or youth centre for the benefit of the local community. After he became aware of Mr. Adams' plans, Dr. Halvorson agreed on behalf of the PMC to convey the vessel to Mr. Adams for the sum of $1. There is some debate as to whether it was intended to be a donation or a sale, but neither side has suggested that anything turns on the characterization of the transaction.

[14] Dr. Halvorson then drafted a document dated September 20, 2012, which was originally entitled "Bill of Sale". After Mr. Adams advised Dr. Halvorson that he needed some time to consider the purchase, Dr. Halvorson struck out the words "Bill of Sale" in the title of the

document, replacing them with “Intent to Purchase”. A copy of the document prepared by Dr. Halvorson is attached as an appendix to these reasons.

[15] As originally drafted, the document contemplated that Mr. Adams would acquire the vessel with a second purchaser. However, Mr. Adams subsequently decided to acquire the vessel on his own. Consequently, the name of the second individual was struck out, and he had no further involvement in this matter.

[16] Amongst others things, the document provides that Dr. Halvorson’s PMC “sells/transfers” the vessel to the purchaser for the sum of $1. It goes on to state that “[u]pon payment of the purchase price the purchasers shall have possession of the asset and bear legal responsibility for the asset”. After noting that the vessel was being sold on an “as is, where is” basis, the document goes on to state that “[t]he purchasers agree and acknowledge that the assets are currently on a Western Forest Products foreshore lease in Zeballos and must be moved forthwith”. The document further notes that the purchase price did not include the ramp and dock that were attached to the vessel. Finally, there is a handwritten entry at the bottom of the document that states that “[t]he purchaser must complete the terms above by September 26th, 2012”.

[17] Mr. Adams subsequently confirmed that he wished to complete the transaction. In an e-mail to Dr. Halvorson dated September 25, 2012, Mr. Adams stated “I accept the responsibilities that come with the Barge”. He went on to advise Dr. Halvorson that he would be “looking for insurance coverage and towing barge into location”. Dr. Halvorson responded to

Mr. Adams stating "I acknowledge your statement today that you have proceeded with your intent to purchase agreement (*sic*) of September 20, 2012". Dr. Halvorson went on to state "I acknowledge my acceptance of your offer and receipt of the purchase price of $1 for the 1944 accommodation barge – Crown Forest 84.6". Dr. Halvorson concluded by advising Mr. Adams of the name of an individual who would be available to tow the barge to a new location at the end of the week.

[18] That same day, Dr. Halvorson informed a representative of the British Columbia Ministry of Environment that Mr. Adams had purchased the barge, confirming that Mr. Adams was aware of "the pressing need to move the barge". The MOE representative asked Dr. Halvorson to provide her with a copy of the purchase agreement for the Ministry's files, and he subsequently provided the Ministry with a copy of the "Intent to Purchase" document, as well as Mr. Adams' September 25, 2012 email.

[19] Dr. Halvorson has stated that he was not aware that any other steps had to be taken with respect to the transfer of title to the vessel, and at no time did either Mr. Adams or Dr. Halvorson register the barge in Mr. Adams' name with the Canadian Register of Vessels. The vessel thus continued to be registered in the name of Dr. Halvorson's PMC.

[20] Mr. Adams never did have the vessel towed to another location, and on September 27, 2014, it sank, leaking fuel and other contaminants into the waters near Zeballos. This was a matter of great concern, as the Zeballos area is a highly sensitive wetland - one that has herring

and salmon spawning in the immediate area, and shellfish living in the intertidal zone that are harvested by the Ehattesaht First Nation.

[21] Dr. Halvorson did make some inquiries as to what might be done to alleviate the situation, and he attended a meeting of the town council at which the issue of the sinking of the vessel was discussed. However, neither Dr. Halvorson nor Mr. Adams did anything to clean up the spill. As a consequence, in order to minimize damage from the oil pollution, representatives of the Canadian Coast Guard took steps to remediate the spill.

[22] The Coast Guard placed a containment boom around the vessel to limit the spread of the pollutants, using absorbent pads to soak up the leaking oil. It also removed some of the loose pollutants that were found in cans and drums aboard the barge, and pumped out some 600 litres of hydrocarbons that had been found in a tank on the deck of the vessel. The total cost of the clean-up came to $67,348.81.

[23] Pursuant to sections 101 and 103 of the *Marine Liability Act*, the Coast Guard presented its claim for pollution abatement expenses to the Administrator on September 14, 2016. After the claim was investigated and assessed, the Administrator accepted the Coast Guard's claim in the full amount of $67,348.81, and a total of $71,698.27 was paid to the Coast Guard by the Administrator on January 3, 2017. Under section 116 of the *Marine Liability Act*, this amount included interest at the rate of 4% *per annum*.

[24] In accordance with paragraph 106(3)(c) and (d) of the *Marine Liability Act*, the Administrator is subrogated to all of the rights held by the Coast Guard, and is required by law to recover any amounts paid for the alleviation of oil pollution from the owners of the polluting vessel.

[25] A demand that the PMC pay the amount of $71,698.27 plus interest did not result in payment. As a consequence, the Administrator commenced this action against the PMC as the registered owner of the vessel. Dr. Halvorson was also named as a Defendant in his personal capacity, as the Administrator is seeking to "pierce the corporate veil", and have Dr. Halvorson found personally liable for the costs incurred in cleaning-up the oil spill. As was noted earlier, the Defendants then joined Mr. Adams as a Third Party to this action, and he failed to respond to the claim.

[26] The Administrator has now brought a motion asking to have the action dealt with by way of a summary trial. The first question, then, is whether the case is appropriate for resolution by way of a summary trial.

III. Is the Case Appropriate for a Summary Trial?

[27] I agree with the parties that this case is appropriate for determination by way of a summary trial. There are no material facts in dispute, nor are there any questions of credibility that require resolution on the basis of *viva voce* evidence.

[28] What is at issue in this proceeding are the legal consequences that flow from the uncontroverted facts of the case. Although somewhat novel, these issues can be dealt with as easily through the summary trial process as through a full trial: *0871768 BC Ltd v Aestival (Vessel)*, 2014 FC 1047 at para. 58, [2014] F.C.J. No. 1155. I am further satisfied that I can find the facts necessary to resolve the issues in this case on the basis of the record before me.

[29] A summary trial is, moreover, a proportionate process to follow in light of the amount of money at issue in this matter, and the potential cost of taking the case forward to a conventional trial: *Premium Sports Broadcasting Inc. v. 9005-5906 Québec Inc. (c.o.b. Resto-bar Mirabel)*, 2017 FC 590 at para. 54, [2017] F.C.J. No. 672.

IV. Issues

[30] Although they frame the issues somewhat differently, I understand the parties to agree that the following issues require resolution in this case:

1. Was title to the vessel conveyed from the PMC to Mr. Adams prior to the pollution damage occurring, or is the PMC liable for the cost of the clean-up as the registered owner of the vessel?

2. If the PMC is liable to the Administrator for the pollution abatement expense, is Dr. Halvorson also personally liable to the Administrator for the pollution abatement expense? and

3. Depending on the answers to the above questions, the issue of Mr. Adams' liability may also have to be addressed.

V. Was Title to the Crown Forest Conveyed to Mr. Adams Prior to the Pollution Damage Occurring or is the PMC Liable for the Cost of the Clean-up as the Registered Owner of the Vessel?

[31] The Defendants assert that the PMC is not liable to the Administrator for the pollution abatement expenses incurred in relation to the Crown Forest as it was not the owner of the vessel on September 27, 2014, the date that it sank causing the pollution damage. The Defendants submit that title to the vessel had passed to Mr. Adams some two years earlier, with the result that it is Mr. Adams (or, presumably, his estate) that is liable to the Administrator for the pollution abatement expenses, and not the PMC or Dr. Halvorson.

[32] The Plaintiff contends that as the registered owner of the Crown Forest, the PMC is strictly liable for the expenses incurred in dealing with the pollution emanating from the vessel.

A. *The Statutory Regime*

[33] Part Six of the *Marine Liability Act* deals with liability and compensation for loss or damage caused by contamination resulting from the discharge of pollutants from ships.

[34] As the British Columbia Supreme Court has observed, Parliament's purpose in enacting the *Marine Liability Act* was to impose liability on individuals who have the right to possession and use of a ship: *British Columbia v. The Administrator of the Ship-source Oil Pollution Fund*, 2018 BCSC 793 at para. 43, 292 A.C.W.S. (3d) 311.

[35] There are two components to Part Six. The parties agree that Division One, which applies to tankers, does not apply here, and that this case is governed by Division Two of Part Six of the Act.

[36] Section 77 of the *Marine Liability Act* provides that the owner of a ship is liable for costs incurred in remedying damage caused by oil pollution emanating from the ship. Subsection 77(3) states that an owner's liability under section 77 of the Act "does not depend upon proof of fault or negligence", making owners strictly liable for damages caused by oil pollution emanating from their vessels.

[37] The question, then, is who was the "owner" of the Crown Forest on September 27, 2014 – the PMC or Mr. Adams?

[38] Section 75 is the definition section governing Division Two of Part Six of the *Marine Liability Act*. It defines the term "owner" as meaning "the person who has for the time being, either by law or by contract, the rights of the owner of the ship with respect to its possession and use".

[39] For reasons that will be set out below, I find as a fact that Mr. Adams and not the PMC was the "owner" of the Crown Forest on September 27, 2014 for the purpose of Division Two of Part Six of the *Marine Liability Act*. As a consequence, the PMC is not liable for the pollution abatement expenses incurred by the Administrator.

[40] In coming to this conclusion, I would start by observing that nothing in section 75 of the *Marine Liability Act* ties ownership of a vessel to the registration of title to the vessel in the Canadian Register of Vessels in accordance with the provisions of the *Canada Shipping Act, 2001*.

[41] The registry system for vessels is established under section 43 in Part 2 of the *Canada Shipping Act, 2001*. Subsection 46(1) of the Act provides that unless it is exempted under the regulations, a vessel must be registered under Part 2 of the Act if it is not a pleasure craft, is wholly owned by qualified persons and is not registered, listed or otherwise recorded in a foreign state.

[42] Subsection 46(2) of the *Canada Shipping Act, 2001* imposes an obligation on the owner of a vessel to ensure that it is so registered. I understand the parties to agree that section 46 of *the Canada Shipping Act, 2001* applied to the Crown Forest, and that the change of ownership of the vessel from the PMC to Mr. Adams should have been registered with the Canadian Register of Vessels.

[43] Paragraph 58(1)(b) of the Act states that the authorized representative of a Canadian vessel is required to notify the Chief Registrar within 30 days after there being a change in ownership of the vessel. Subject to certain exceptions that do not apply here, the "authorized representative" of Canadian vessel is generally the owner of the vessel: subsection 14(1) of the *Canada Shipping Act, 2001*.

[44] Subsection 51(1) of the Act stipulates that an application for the registration of a vessel must be made in the form and manner specified by the Chief Registrar, and must include the information and be accompanied by the documents identified by the Chief Registrar. The statute does not, however, set out any formalities that must be complied with before title to a vessel will pass to a new owner.

[45] The Plaintiff concedes that rights to a vessel can be conveyed by contract, whether or not the transaction is registered in the Canadian Register of Vessels. The Plaintiff asserts, however, that for title to fully pass from a previous owner to a new owner, the change in ownership must be registered in the Canadian Register of Vessels. Given that no formal bill of sale was ever delivered to Mr. Adams, the Plaintiff says that the PMC continues to be the legal owner of the vessel and as such is liable for the costs of the clean-up.

[46] In support of this contention, the Plaintiff points to the "Form 6" document published by Transport Canada under the authority of the *Canada Shipping Act, 2001*. This document is a "Bill of Sale" template that is evidently to be used in relation to the registration of transfers of ownership of vessels. In addition to requiring that certain information be provided, the document contains a "Note to Purchasers", which states that "[a] purchase of a registered vessel does not obtain complete title until the Bill of Sale has been recorded in the Canadian Register of Vessels by a Registrar".

[47] Counsel for the Plaintiff was asked to point to the legislative authority for the proposition that legal title to a vessel will not fully vest in a new owner until the transfer is registered in the

Canadian Register of Vessels. He was unable to do so. He did, however, refer to two authorities to support his position: the decision of the Exchequer Court in *Robillard v. St. Roch (The)*, 21 Ex. C.R. 132, 62 D.L.R. 145 and an extract from *Canadian Maritime Law*, 2d ed., (Aldo Chircop et al., (Toronto: Irwin Law Inc., 2016) at pages 315-321).

[48] Insofar as the extract from *Canadian Maritime Law* is concerned, the authors note that sales of ships are considered to be sales of chattels. As such, they are subject to general principles of contract law, including provincial laws relating to the sale of goods, as well as maritime law requirements for a bill of sale: at page 306. The application of principles of contract law to the facts of this case will be discussed further on in these reasons.

[49] The *Robillard* case is, in my view, clearly distinguishable from the present case, as the legislation in force at the time that the case was decided was different than the legislative regime governing this case.

[50] The statutory provisions applicable to the transfer of a registered ship that were in force at the time that *Robillard* was decided were found in the *Merchant Shipping Act, 1894* (U.K.) 57 & 58 Vict. 60. Section 24 of the Act prescribed certain formalities that had to be complied with in order for title to a vessel to pass from an owner to a new purchaser. Amongst other things, a registered ship had to be transferred by way of a Bill of Sale in a prescribed statutory form: *Robillard*, above at para. 18. The document also had to be executed by the transferor in the presence of, and be attested to by a witness or witnesses: *Robillard*, above at para. 14.

[51] The Exchequer Court held that it was "settled law" that a vessel could only be conveyed "in the manner provided by the Act and not otherwise": *Robillard*, above at para. 20.

[52] The Court found in *Robillard* that the statutory formalities had not been complied with in the transaction at issue in that case. Amongst other things, there was no witness or attestation with respect to the signature of one of the vendors in the Bill of Sale, and no evidence was provided to prove the execution of the Bill of Sale: at para. 18.

[53] As the Bill of Sale in *Robillard* had not been executed in the manner provided for by the *Merchant Shipping Act 1894*, it followed that title to the ship in issue was not transferred through the transaction.

[54] As was noted earlier, there are no statutory formalities identified in the *Canada Shipping Act, 2001* that have to be complied with in order for title to a vessel to pass from an owner to a new purchaser. All the Act says is that applications for the registration of a vessel must be made in the form and manner specified by the Chief Registrar, and must include the information and be accompanied by the documents identified by the Chief Registrar: subsection 51(1).

[55] The *Canada Shipping Act, 2001* does address the consequences that flow from the failure to register a change in ownership of a vessel. It does not, however, support the Plaintiff's claim that the registered owner of a vessel remains liable for pollution damages under Division Two of Part Six of the *Marine Liability Act* after a vessel has been sold to a third party.

[56] Subsection 79(1) of the *Canada Shipping Act, 2001* provides that every person commits an offence who contravenes certain provisions of the Act. One of these provisions is subsection 46(2), which obliges every owner of a vessel that is required to be registered under the Act to ensure that it is so registered.

[57] Subsection 79(2) of the *Canada Shipping Act, 2001* specifically addresses the sanctions that may by imposed where there is a failure to comply with the registration requirements of the Act. It states that "[e]very person who commits an offence under subsection [79](1) is liable on summary conviction to a fine of not more than $10,000". Subsection 79(3) of the Act addresses continuing offences, stating that "[i]f an offence under paragraph [79](1)(a) or (c) is committed or continued on more than one day, the person who committed it is liable to be convicted for a separate offence for each day on which it is committed or continued".

[58] Importantly, there is no suggestion in either the *Canada Shipping Act, 2001*, or the Regulations enacted thereunder, that title to a vessel will not pass to a purchaser if the transaction is not registered in the Canadian Register of Vessels. Nor is there any suggestion in the Act (or in the *Marine Liability Act* for that matter) that a prior owner of a vessel will continue to be responsible for damages caused by the vessel as long as that individual or entity is recorded in the Register as the owner of the vessel.

B. *Was there a Conveyance of Title to the Vessel in September of 2012?*

[59] As the Federal Court of Appeal has observed, one principle shared by both the common law and civil law is "the decisive effect of the intent of the parties in interpreting a contract

between them": *Canada v. Construction Bérou Inc.* (1999), 251 N.R. 115 at para. 68, [2000] 2 CTC 174, per Noël J.A. dissenting, but not on this point.

[60] While the "Intent to Purchase" document prepared by Dr. Halvorson may be far from a model of good drafting, its intent is clear: it was an offer by the PMC to convey title to the Crown Forest to Mr. Adams for the sum of $1.00. That offer was subsequently accepted by Mr. Adams, and his acceptance of the PMC's offer was confirmed in Dr. Halvorson's September 25, 2012 email to Mr. Adams in which Dr. Halvorson acknowledged that Mr. Adams intended to proceed with the transaction. Dr. Halvorson also acknowledged receipt of the consideration for the transaction.

[61] Further confirmation of the completion of the transaction is found in Mr. Adams' responding email of September 25, 2012. There Mr. Adams stated that he "accept[ed] the responsibilities that come with [the] Barge", advising Dr. Halvorson that he would be seeking insurance coverage and making arrangements to move the vessel.

[62] In other words, there was an offer to sell the vessel, that offer was accepted by the purchaser, and the agreed-upon consideration was paid to the vendor: all of the elements required to form a legally binding contract were thus present in this case. It was Mr. Adams, and not the PMC, who had the rights of the owner of the Crown Forest with respect to its possession and use after September 25, 2012.

C. *The Condition Precedent Argument*

[63] The Plaintiff argues that the transaction was never completed, as a term of the contract was never fulfilled. In support of this contention, the Plaintiff cites numbered paragraph 4 in the "Intent to Purchase" document prepared by Dr. Halvorson, which states "[t]he purchasers agree and acknowledge that the assets are currently on a Western Forest Products foreshore lease in Zeballos and must be moved forthwith".

[64] According to the Plaintiff, this provision constituted a condition precedent in the offer, and title in the vessel could not pass until such time as the vessel was moved away from Zeballos by Mr. Adams.

[65] I do not accept the Plaintiff's argument. Read in context, the provision is intended to be notice to Mr. Adams that he was going to have to move the vessel if he went ahead with the deal. It was clearly not intended to be a condition precedent to title to the vessel passing to Mr. Adams.

[66] This interpretation is confirmed when regard is had to the surrounding circumstances. Dr. Halvorson had been trying to move the vessel for some two years and had not been able to do so despite pressure having been exerted on him to do so by Western Forest Products, the Ehattesaht First Nation and the Ministry of the Environment. Indeed. Dr. Halvorson testified that his decision to transfer the vessel to Mr. Adams was motivated, at least in part, by his frustration at having been unable to move the barge.

[67] The "Intent to Purchase" document was dated September 20, 2012 and stated that "[t]he purchaser must complete the terms above by September 26th, 2012". In light of the difficulties that Dr. Halvorson had encountered in trying to move the vessel over a two-year period, it would have been totally unrealistic to think that Mr. Adams would be able to do so in six days.

[68] The emails exchanged by Mr. Adams and Dr. Halvorson on September 25, 2012 also confirm that the parties did not intend that the completion of the transaction be contingent on Mr. Adams first moving the vessel.

[69] As a consequence, I am not persuaded that there was a condition precedent in the "Intent to Purchase" document that prevented title to the vessel passing from the PMC to Mr. Adams until such time as the vessel was moved away from Zeballos.

D. *The Conduct of the Parties after September 25, 2012*

[70] The conduct of both Dr. Halvorson and Mr. Adams after September 25, 2012 is also consistent with title to the vessel having been conveyed to Mr. Adams by the PMC on that date.

[71] I have already referred to the fact that Dr. Halvorson informed a representative of the Ministry of Environment on September 25, 2012 that Mr. Adams had purchased the vessel, and that he was aware of "the pressing need to move the barge". This is consistent with title to the vessel having passed to Mr. Adams on that date.

[72] In addition, after the completion of the sale of the vessel, Dr. Halvorson arranged to have a skiff that was used to get to the vessel moved away from Zeballos, as he no longer needed to be able to access the vessel.

[73] It will also be recalled that the "Intent to Purchase" document provided that the sale price did not include the ramp and dock (or float) that were attached to the vessel. Dr. Halvorson later arranged for the removal of the ramp and float from the vessel, first requesting permission from Mr. Adams to complete this work. Permission from Mr. Adams would not, of course, have been necessary had the PMC continued to own the vessel.

[74] Finally, Mr. Adams contacted Dr. Halvorson in May of 2013, seeking information with respect to an individual who might have been interested in purchasing the vessel from Mr. Adams. Dr. Halvorson responded to Mr. Adams' email, copying the individual in question, stating "I have now brought the two of you together. Good luck!" Mr. Adams subsequently emailed the prospective purchaser, stating that he "got [the] barge off Jim Halverson. If he still has appraisal papers, feel free to get copy from him". It is clear from these emails that both Dr. Halvorson and Mr. Adams viewed Mr. Adams to be the owner of the vessel.

E. *The Sale of Goods Act Argument*

[75] The Defendants also rely on the British Columbia *Sale of Goods Act*, R.S.B.C. 1996, c. 410 in support of their argument that title to the Crown Forest passed from the PMC to Mr. Adams on September 25, 2012.

[76] In particular, the Defendants rely on subsection 22(1) of the Act which provides that where there is a contract for the sale of specified goods, "the property in them is transferred to the buyer at the time that the parties to the contract intend it to be transferred". Subsection 22(2) of the Act provides guidance in ascertaining the intent of the parties, stating that in order to do so "regard must be had to the terms of the contract, the conduct of the parties and the circumstances of the case".

[77] Citing the decision of the Supreme Court of Canada in *Ordon Estate v. Grail*, [1998] 3 S.C.R. 437, [1998] S.C.J. No. 84, the Plaintiff submits that the British Columbia *Sale of Goods Act* has no application to this case. According to the Plaintiff, Part 2 of the *Canada Shipping Act* is a complete mandatory code insofar as the registration, listing and recording of vessels are concerned, and as such there is no room for the application of a conflicting provincial statute such as the *Sale of Goods Act*.

[78] The Supreme Court of Canada has, however, cast doubt on the continuing authority of its decision in *Ordon Estate v. Grail*: *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44 at para. 64, [2013] 3 S.C.R. 53. While recognizing that the concept of interjurisdictional immunity will apply where a provincial statute of general application has the effect of indirectly regulating a maritime negligence law issue, the Supreme Court nevertheless noted that decisions rendered after *Ordon Estate* had clarified the two-step test for interjurisdictional immunity: *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536.

[79] While the British Columbia *Sale of Goods Act* is a provincial statute, the Supreme Court of Canada has confirmed that the Federal Court may apply provincial law that is incidentally necessary to resolve the issues presented by the parties: *ITO-International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752 at para. 30, 28 D.L.R. (4th) 741 ("*ITO*"); *Kellogg Co. v. Kellogg*, [1941] S.C.R. 242. Provincial sale of goods legislation has, moreover, been applied by this Court in maritime law cases: see, for example, *Governor and Company of the Bank of Scotland v. Nel (The)*, [1999] 2 F.C. 578, 161 F.T.R. 303.

[80] While it disputes the applicability of the British Columbia *Sale of Goods Act* to this case, I understand the Plaintiff to accept that the sale of goods legislation in effect in the United Kingdom in 1934 has been imported into Canadian maritime law*: National Bank of Canada v. Rogers*, 2015 FC 1207 at para. 43, [2015] F.C.J. No. 1267; *Wärtsilä Canada inc. c. Transport Desgagnés inc.*, 2017 QCCA 1471 at para. 87, [2017] J.Q. no 13424, leave to appeal to S.C.C. granted; *ITO*, above at pp. 771 and 774. That law included the *Sale of Goods Act, 1893* (U.K.), (56 & 57 Vict., c.71).

[81] It is not necessary to resolve which sale of goods legislation governs this case as the British *Sale of Goods Act, 1893* is in fact very similar to the British Columbia *Sale of Goods Act*. Indeed, section 17 of the U.K. legislation is almost identical to section 22 of the British Columbia *Sale of Goods Act*, providing in subsection 17(1) that "[w]here there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred". Like subsection 22(2) of the British Columbia legislation, subsection 17(2) of the U.K. Act further provides that "[f]or the purpose of

ascertaining the intent of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case".

[82] While I have concluded that title to the Crown Forest passed from the PMC to Mr. Adams on September 25, 2012 based on common law contractual principles, I am satisfied that this conclusion is also consistent with the provisions of both the British Columbia *Sale of Goods Act* and the British *Sale of Goods Act, 1893*.

VI. Conclusion

[83] For these reasons I have concluded that Fred Adams was the legal owner of the Crown Forest when it sank on September 27, 2014, and not the Defendant Dr. Jim Halvorson Medical Services Ltd. The PMC is therefore not liable to the Administrator for the clean-up costs associated with the oil spill. As a consequence, the Plaintiff's action is dismissed.

[84] Given my finding that the PMC is not liable for the clean-up costs, it follows that it is not necessary to determine whether the corporate veil should be pierced to impose liability for the costs of the clean-up on Dr. Halvorson personally, in addition to the PMC.

[85] The Plaintiff did not name Mr. Adams as a Defendant in the main action, and the Defendants' Third Party Claim is dependent upon liability being found on the part of one or both of the Defendants. Given that I have concluded that the Defendants are not liable for the costs of the clean-up, it follows that the Third Party Claim should also be dismissed.

VII. Costs

[86] In accordance with the agreement of the parties, the Defendants shall have their costs fixed in the amount of $15,000, inclusive of disbursements and GST.

JUDGMENT IN T-237-17

THIS COURT'S JUDGMENT is that the action is dismissed, with costs to the Defendants fixed in the amount of $15,000.00, inclusive of disbursements and GST.

"Anne L. Mactavish"
Judge

APPENDIX "A"

SANDRA BAAN

~~Bill of Sale~~ Intent to Purchase

This agreement is dated effective the 20th day of September, 2012.

By:

Dr. Jim Halvorson Medical Services Ltd.
1246 Bazett Road
Duncan BC, V9L 5S8
(The "seller")

This is Exhibit " B " referred to in the affidavit of Jim Halvorson
Sworn before me at Courtenay
this 25 day of October 20 18

Commissioner for taking Affidavits for British Columbia

In favor of:

Fred Adams
Zeballos BC
~~and~~
~~Felix Harry~~
~~Queen Cove BC~~

(The "purchasers")

The parties agree as follows:

1. The seller hereby sells/transfers the 1944 Accommodation Barge – Crown Forest 84.6 ON 0393220, Port of Nanaimo; BC (the asset) to the purchasers for the sum of $1. (The purchase price.)
2. Upon payment of the purchase price the purchasers shall have possession of the asset and bear legal responsibility for the asset.
3. The purchasers agrees and acknowledges that the sale of the asset is on an "as is, where is" basis with no warranty and representation of whatever kind, either explicit or implicit, as to condition, fitness for use and merchantability.
4. The purchasers agree and acknowledge that the assets are currently on a Western Forest Products foreshore lease in Zeballos and must be moved forthwith.
5. The purchaser agrees that the purchase price does not include the ramp and dock currently attached to the barge.

Executed to be effective the date set out above.

Seller	Purchasers
Dr Jim Halvorson Medical Services Ltd	Fred Adams
	~~Felix Harry~~

The purchaser must complete the terms above by Sept 26th, 2012

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-237-17
STYLE OF CAUSE:	THE ADMINISTRATOR OF THE SHIP-SOURCE OIL POLLUTION FUND v DR. JIM HALVORSON MEDICAL SERVICES LTD. AND DR, JIM HALVORSON AND FRED ADAMS
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	NOVEMBER 29, 2018
JUDGMENT AND REASONS:	MACTAVISH J.
DATED:	JANUARY 11, 2019

APPEARANCES:

David F. McEwen, Q.C. and Mathew Crowe	FOR THE PLAINTIFF
David Jarrett and Glen Krueger	FOR THE DEFENDANTS
No one appearing	FOR THE THIRD PARTY

SOLICITORS OF RECORD:

Alexander Holburn Beaudin + Lang LLP Barristers and Solicitors Vancouver, British Columbia	FOR THE PLAINTIFF
Bernard LLP Barristers and Solicitors Vancouver, British Columbia	FOR THE DEFENDANTS