

Federal Court



Cour fédérale

Date: 20190204

Docket: T-1664-16

Citation: 2019 FC 144

Ottawa, Ontario, February 4, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**THE ADMINISTRATOR OF THE
SHIP-SOURCE OIL POLLUTION FUND**

Plaintiff

and

TRACY DONALD DODDS

Defendant

JUDGMENT AND REASONS

I. INTRODUCTION

[1] The Administrator (the “Administrator”) of the Ship Source Oil Pollution Fund (the “Fund” or the “Plaintiff”) seeks summary judgment, pursuant to the *Federal Courts Rules*, SOR/98-106 (the “Rules”), against Tracy Donald Dodds (the “Defendant”).

[2] By statement of claim issued on October 4, 2016 the Plaintiff commenced an action against the Defendant seeking judgment in the amount of \$382,353.33, together with interest at the Admiralty rate and costs. The claim relates to the costs of repairing, remedying, minimizing and preventing pollution damage resulting from the sinking of and discharge of oil from the Ship “RYAN ATLANTIC II”, formerly named “CAPE ROUGE” (the “Involved Ship”).

II. BACKGROUND

[3] In the statement of claim the Plaintiff alleges that the Involved Ship sank at her berth at Bridgewater, Nova Scotia between March 10 and March 12, 2014. It alleges that oil was discharged as a result and that clean-up work and work to prevent further pollution was conducted until on or about April 7, 2014.

[4] The Statement of Claim describes the Defendant as a “registered owner” of the Involved Ship.

[5] The Defendant filed a statement of defence on November 28, 2016, denying all the allegations set out in the statement of claim. Paragraph 4 of the statement of defence provides as follows:

4. The defendant states the allegation in paragraph 3 and 10 is untrue as the defendant did not own the vessel Ryan Atlantic II upon payment on the 25 January 2010, and did not participate in any involvement with the vessel after the 30 January 2010. The vessel was sold to Earl Bisson Enfield N S [sic] 25 January 2010 and he was in possession immediately. The defendant has proof of payment from the lawyers trust account by way of bank drafts as per the purchasers [sic] request.

[6] The motion record filed by the Plaintiff in support of the motion for summary judgment includes the affidavit of Anne Legars, currently the Administrator of the Fund, setting out the evidentiary basis of the Plaintiff's claim. Her affidavit runs from page 3 to page 478 and includes 23 exhibits. The exhibits outline clean-up steps and related work undertaken by the Canadian Coast Guard (the "CCG"), as well as invoices related to the costs of those undertakings.

[7] The Plaintiff also filed a memorandum of fact and law, setting out its legal arguments with reference to the *Marine Liability Act*, S.C. 2001, c. 6 (the "Act") and the *International Convention on Civil Liability for Bunker Oil Pollution Damage* (the "BC"). The BC has the force of law in Canada pursuant to sections 69 and 70 of the Act.

[8] The Defendant participated in the hearing of the Plaintiff's motion for summary judgment and made oral submissions. However, he did not file any evidence by way of affidavit.

III. SUBMISSIONS

[9] The Plaintiff relies on the information contained on the website for ship registration, maintained by the Department of Transport Canada, to plead that the Defendant is the owner of the Involved Ship. Two versions of the transcript are attached as exhibits to the affidavit of Ms. Legars, the first dated November 4, 2014 showing the owner to be "Tracey Donald Dobbs" and the second, dated December 1, 2016, showing the owner to be "Tracey Donald Dodds".

[10] The Plaintiff submits that the Court should accept that the first record shows a spelling mistake and that the Court should accept that the Defendant is the registered owner since the mailing address is the same on each transcript.

[11] The Plaintiff notes that section 105 of the Act authorizes payment by the Fund of the “reasonable” costs of cleaning up oil pollution damage. It claims recovery of clean-up costs and related expenses in the amount of \$382,353.33, together with interest at the Admiralty rate, pre-judgment interest, and costs.

[12] According to the affidavit of the Administrator, the accounts presented by the CCG were carefully reviewed, including a review by a third party, that is by Mr. M.J. Fegan, Surveyor to Fulcrum Marine Consultancy Ltd., engaged by the Fund to assess the reasonableness of the charges.

[13] Payment of a claim by the Fund gives rise to a subrogated claim for recovery, pursuant to subsection 106(3) of the Act.

[14] The Administrator, by letter dated March 19, 2015, approved payment of the amount of \$358,117.79 and offered to pay that amount to the CCG. By letter dated April 24, 2015, the offer was accepted.

[15] In his Statement of Defence, the Defendant makes a blanket denial of all allegations in the statement of claim.

[16] In his oral submissions made at the hearing of the motion, the Defendant said that he sold the Involved Ship in 2010 to a Mr. Bisson. He referred to a bill of sale and a bank draft. He said that the sale was not registered due to a mistake by Mr. Bisson in completing the documents.

IV. ISSUES

[17] The Plaintiff seeks summary judgment. This Court may dispose of an action summarily where there is “no genuine issue for trial”, pursuant to Rule 215 of the Rules.

[18] In this matter, the question is whether there is a genuine issue for trial relating the status of the Defendant as the “owner” of the Involved Ship and his liability for the amount claimed by the Plaintiff.

V. DISCUSSION

[19] A motion for summary judgment in the Federal Court is governed by Rules 213 to 218 of the Rules. Rule 214 is important and provides as follows:

Summary Judgment

Facts and evidence required

214 A response to a motion for summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.

Jugement sommaire

Faits et éléments de preuve nécessaires

214 La réponse à une requête en jugement sommaire ne peut être fondée sur un élément qui pourrait être produit ultérieurement en preuve dans l’instance. Elle doit énoncer les faits précis et produire les éléments de preuve démontrant l’existence d’une véritable question litigieuse.

[20] Rule 215 spells out the circumstances when a motion for summary judgment will be granted and provides as follows :

If no genuine issue for trial

215 (1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

Genuine issue of amount or question of law

(2) If the Court is satisfied that the only genuine issue is

(a) the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or

(b) a question of law, the Court may determine the question and grant summary judgment accordingly.

Powers of Court

(3) If the Court is satisfied that there is a genuine issue of fact or law for trial with respect to a claim or a defence, the Court may

Absence de véritable question litigieuse

215 (1) Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.

Somme d'argent ou point de droit

(2) Si la Cour est convaincue que la seule véritable question litigieuse est :

a) la somme à laquelle le requérant a droit, elle peut ordonner l'instruction de cette question ou rendre un jugement sommaire assorti d'un renvoi pour détermination de la somme conformément à la règle 153;

b) un point de droit, elle peut statuer sur celui-ci et rendre un jugement sommaire en conséquence.

Pouvoirs de la Cour

(3) Si la Cour est convaincue qu'il existe une véritable question de fait ou de droit litigieuse à l'égard d'une déclaration ou d'une défense,

elle peut :

(a) nevertheless determine that issue by way of summary trial and make any order necessary for the conduct of the summary trial; or

(b) dismiss the motion in whole or in part and order that the action, or the issues in the action not disposed of by summary judgment, proceed to trial or that the action be conducted as a specially managed proceeding.

a) néanmoins trancher cette question par voie de procès sommaire et rendre toute ordonnance nécessaire pour le déroulement de ce procès;

b) rejeter la requête en tout ou en partie et ordonner que l'action ou toute question litigieuse non tranchée par jugement sommaire soit instruite ou que l'action se poursuive à titre d'instance à gestion spéciale.

[21] According to the decision in *Moroccanoil Israel Ltd. v. Lipton*, 2013 FC 667, in a motion for summary judgment each party bears the burden of putting their “best foot forward”.

[22] In this case, the only evidence before the Court has been filed by the Plaintiff. Evidence on a motion can only be submitted by way of an affidavit; see Rule 363 which provides as follows :

Evidence on motion

363 A party to a motion shall set out in an affidavit any facts to be relied on by that party in the motion that do not appear on the Court file.

Preuve

363 Une partie présente sa preuve par affidavit, relatant tous les faits sur lesquels elle fonde sa requête qui ne figurent pas au dossier de la Cour.

[23] The statement of defence filed by the Defendant is a pleading; it is not evidence. His oral submissions are oral argument and not evidence. The documents presented by the Defendant consist of an unsigned bill of sale on a Transport Canada form, another bill of sale dated January 30, 2010 and a transaction record from the Bank of Montreal dated January 25, 2010.

[24] These documents are not attached to an affidavit as exhibits. They have no present evidentiary value. In these circumstances, the only evidence before the Court is the evidence submitted on behalf of the Plaintiff.

[25] The burden of proof in this matter is the civil burden of proof on the balance of probabilities.

[26] The first question is whether a genuine issue for trial arises with respect to the Defendant's ownership of the Involved Ship.

[27] There is no evidence from the Defendant to answer the claim that he is the owner of the Involved Ship, whether pursuant to the Act or under the BC.

[28] Section 91 of the Act defines "owner" as follows:

owner

(a) in relation to a ship subject to the Civil Liability Convention, has the same meaning as in Article I of that Convention;

propriétaire

a) S'agissant d'un navire assujetti à la Convention sur la responsabilité civile, s'entend au sens de l'article premier de cette

	convention;
(b) in relation to a ship subject to the Bunkers Convention, has the same meaning as the definition Shipowner in Article 1 of that Convention; and	b) s’agissant d’un navire assujetti à la Convention sur les hydrocarbures de soute, s’entend au sens de propriétaire du navire à l’article 1 de cette convention;
(c) in relation to any other ship, means 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. (propriétaire)	c) s’agissant de tout autre navire, s’entend de la personne qui a, au moment considéré, en vertu de la loi ou d’un contrat, les droits du propriétaire du navire en ce qui a trait à la possession et à l’usage de celui-ci. (owner)

[29] The Defendant argued that he was not the owner of the Involved Ship at the time of the spill and clean-up.

[30] As noted above, the Plaintiff relies on the transcripts of registry to plead that the Defendant is the “owner” of the Involved Ship for the purposes of this motion. The question is whether there is a genuine issue for trial arising in respect of ownership of the “RYAN ATLANTIC II”.

[31] The Canadian Register of Vessels exists pursuant to section 43 of the *Canada Shipping Act*, S.C. 2001, c. 26, which provides as follows:

Duties and powers of Chief Registrar

43 (1) The Chief Registrar is responsible for establishing and maintaining a register to be known as the Canadian Register of Vessels. The Chief Registrar is to divide the Register into parts, including a small vessel register, for the classes of vessels that the Chief Registrar specifies.

Records

(2) The Register is to contain records of the information and documents specified by the Chief Registrar in respect of a Canadian vessel or a fleet that is registered under this Part, including its description, its official number, the name and address of its owner and, in the case of a vessel that is not registered in the small vessel register, details of all mortgages registered in respect of it.

Attributions

43 (1) Le registraire en chef est responsable de l'établissement et de la tenue du Registre canadien d'immatriculation des bâtiments. Il divise le Registre en parties pour les catégories de bâtiments qu'il précise, notamment les petits bâtiments.

Contenu du Registre

(2) Doivent être consignés sur le Registre les renseignements et la documentation que le registraire en chef précise à l'égard d'un bâtiment canadien ou d'une flotte immatriculée sous le régime de la présente partie, notamment sa description et son numéro matricule, les nom et adresse du propriétaire et, dans le cas d'un bâtiment qui n'est pas immatriculé dans la partie du Registre sur les petits bâtiments, le détail de toutes les hypothèques enregistrées à son égard.

[32] In spite of the mistake in the spelling of the name on the transcript of registry dated November 4, 2014, I am satisfied that the Plaintiff has shown that the Defendant is the owner of the Involved Ship on the basis of the transcripts of registry dated December 1, 2016. It follows that there is no genuine issue for trial arising about the ownership of the involved ship.

[33] The next question is whether a genuine issue for trial arises with respect to the amount claimed by the Plaintiff.

[34] The Fund is created pursuant to Part 7 of the Act. The Act authorizes the CCG to respond to pending or actual pollution incidents and to present a claim to the Fund for repayment of the costs incurred in doing so.

[35] Paragraphs 77(1)(a) and (b) and subsection 77(2) of the Act are relevant and provide as follows:

Liability for pollution and related costs

77 (1) The owner of a ship is liable

(a) for oil pollution damage from the ship;

(b) for the costs and expenses incurred by the Minister of Fisheries and Oceans, a response organization within the meaning of section 165 of the Canada Shipping Act, 2001 or any other person in Canada in respect of measures taken to prevent, repair, remedy or minimize oil pollution damage from the ship, including measures taken in anticipation of a discharge of oil from it,

Responsabilité en matière de pollution et frais connexes

77 (1) Le propriétaire d'un navire est responsable :

a) des dommages dus à la pollution par les hydrocarbures causée par le navire;

b) des frais supportés par le ministre des Pêches et des Océans, un organisme d'intervention au sens de l'article 165 de la Loi de 2001 sur la marine marchande du Canada ou toute autre personne au Canada pour la prise de mesures visant à prévenir, contrer, réparer ou réduire au minimum les dommages dus à la pollution par les hydrocarbures causée par le navire, y compris

to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures; and

des mesures en prévision de rejets d'hydrocarbures causés par le navire, pour autant que ces frais et ces mesures soient raisonnables, de même que des pertes ou dommages causés par ces mesures;

Liability for environmental damage

Responsabilité: dommage à l'environnement

(2) If oil pollution damage from a ship results in impairment to the environment, the owner of the ship is liable for the costs of reasonable measures of reinstatement undertaken or to be undertaken.

(2) Lorsque des dommages dus à la pollution par les hydrocarbures causée par un navire ont des conséquences néfastes pour l'environnement, le propriétaire du navire est responsable des frais occasionnés par les mesures raisonnables de remise en état qui sont prises ou qui le seront.

[36] Subsection 71(a) and paragraph 71(b)(i) of the Act are also relevant and provide as follows:

Liability for pollution and related costs

Responsabilité en matière de pollution et frais connexes

71 The liability of the owner of a ship in relation to preventive measures, for the purposes of the Bunkers Convention, also includes

71 La responsabilité du propriétaire d'un navire à l'égard des mesures de sauvegarde prévue par la Convention sur les hydrocarbures de soute vise également :

(a) the costs and expenses incurred by the Minister of Fisheries and Oceans, a response organization within the

a) les frais supportés par le ministre des Pêches et des Océans, un organisme d'intervention au sens

meaning of section 165 of the Canada Shipping Act, 2001, any other person in Canada or any person in a state, other than Canada, that is a party to that Convention in respect of measures taken to prevent, repair, remedy or minimize pollution damage from the ship, including measures taken in anticipation of a discharge of bunker oil from it, to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures; and

(b) in relation to bunker oil, the costs and expenses incurred by

de l'article 165 de la Loi de 2001 sur la marine marchande du Canada, toute autre personne au Canada ou toute personne d'un État étranger partie à cette convention pour la prise de mesures visant à prévenir, contrer, réparer ou réduire au minimum les dommages dus à la pollution causée par le navire, y compris les mesures en prévision de rejets d'hydrocarbures de soute causés par le navire, pour autant que ces frais et ces mesures soient raisonnables, de même que les pertes ou dommages causés par ces mesures;

b) s'agissant des hydrocarbures de soute, les frais supportés par le ministre des Pêches et des Océans à l'égard des mesures visées à l'alinéa 180(1)a) de la Loi de 2001 sur la marine marchande du Canada, de la surveillance prévue à l'alinéa 180(1)b) de cette loi ou des ordres visés à l'alinéa 180(1)c) de la même loi et les frais supportés par toute autre personne à l'égard des mesures qu'il lui a été ordonné ou interdit de prendre aux termes de ce même alinéa, pour autant que ces frais et ces mesures soient raisonnables, de même

que les pertes ou
dommages causés par
ces mesures.

(i) the Minister of
Fisheries and Oceans
in respect of measures
taken under paragraph
180(1)(a) of the
Canada Shipping Act,
2001, in respect of
any monitoring under
paragraph 180(1)(b)
of that Act or in
relation to any
direction given under
paragraph 180(1)(c)
of that Act to the
extent that the
measures taken and
the costs and
expenses are
reasonable, and for
any loss or damage
caused by those
measures, or

[...]

[37] The Defendant did not respond to the claim. In oral submissions, he did not challenge the amount but simply said that he was not the owner of the Involved Ship.

[38] The Act allows the Fund to recover the “reasonable” costs that it has paid out relative to oil pollution incidents. There is evidence before me that the Administrator considered the amount of \$358,117.79 to be reasonable, in respect of the March 2014 incident, together with interest in the amount of \$24, 235.54.

[39] The Act mandates the Court to assess the reasonableness of the amounts paid out by the Plaintiff.

[40] The Defendant did not provide any evidence to oppose the amounts claimed by the Plaintiff. He did not cross-examine Ms. Legars nor question any of the exhibits attached to her affidavit, including invoices.

[41] In these circumstances, I am satisfied that the Plaintiff has shown that there is no genuine issue for trial with respect to the amount claimed and judgment will issue accordingly.

JUDGMENT in T-1664-16

THIS COURT'S JUDGMENT is that

1. Summary judgment is granted in favour of the Plaintiff, The Administrator of the Ship-Source Oil Pollution Fund, against the Defendant, Tracy Donald Dodds.
2. The Defendant, Tracy Donald Dodds, shall forthwith pay to the Plaintiff, The Administrator of the Ship-Source Oil Pollution Fund, damages in the amount of \$382,353.33, plus pre-judgment interest in the amount of \$12,426.48, for a total sum of \$394,779.81.
3. The Plaintiff shall be at liberty to make brief submissions on costs by February 28, 2019.

“E. Heneghan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1664-16

STYLE OF CAUSE: THE ADMINISTRATOR OF THE SHIP-SOURCE OIL
POLLUTION FUND v. TRACY DONALD DODDS

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: DECEMBER 20, 2017

JUDGMENT AND REASONS: HENEGHAN J.

DATED: FEBRUARY 4, 2019

APPEARANCES:

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Michael J.E. MacIssac

FOR THE PLAINTIFF

Tracy Donald Dodds

FOR THE DEFENDANT
(ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

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FOR THE PLAINTIFF