

Federal Court



Cour fédérale

Date: 20190430

Docket: T-358-18

Citation: 2019 FC 536

Ottawa, Ontario, April 30, 2019

PRESENT: The Honourable Mr. Justice Bell

ADMIRALTY ACTION *IN REM* AGAINST THE SHIP “F/V STELIE II” AND *IN PERSONAM* AGAINST THE OWNERS, CHARTERS, AND ALL OTHERS INTERESTED IN THE VESSEL “F/V STELIE II”

BETWEEN:

BAFFIN FISHERIES 2000 LIMITED

Plaintiff

and

THE VESSEL "F/V STELIE II" AND THE OWNERS, CHARTERS AND ALL OTHERS INTERESTED IN THE VESSEL F/V STELIE II, CLARENCE CABOT and FUNK ISLAND BANKER LIMITED

Defendants

ORDER AND REASONS

(Delivered from the Bench at St. John’s, Newfoundland, on March 21, 2019 and edited for syntax and grammar with added references to the relevant case law)

UPON motion brought by a non-party, the Attorney General of Canada [AGC], made on February 22, 2018, for an order vacating the arrest warrant for the vessel, F/V Stelie II;

UPON the Plaintiff and the AGC having appeared before me on March 21, 2019 and the Defendants not having appeared;

UPON this Court having granted an Order, with the consent of the Plaintiff, vacating the arrest warrant and providing other ancillary relief on March 21, 2019;

UPON the Court having ordered that the issue of costs be dealt with in a separate order and reasons;

UPON HEARING counsel for the Plaintiff and the AGC wherein counsel for the AGC seeks costs in the amount of \$4,000.00 and counsel for the Plaintiff requests no costs be payable;

UPON IT APPEARING that the principal issue facing the Court as a result of the motion brought by the AGC raised complex issues surrounding the interpretation of the *Canada Shipping Act*, 2001 S.C. 2001, c. 26, ss. 180, 183; the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, s. 14; and the *Marine Liability Act*, S.C. 2001, c. 6 all of which could have resulted in lengthy litigation had the Plaintiff chosen not to consent to the order sought;

UPON IT APPEARING that the Plaintiff, the AGC and the Court employed different terms to define the nature of the Crown's interest in the F/V Stelie II, namely: "lien", "priority", "super-priority" and "possessory title", to name a few;

UPON CONSIDERING that the AGC has been in de facto possession of the vessel, F/V Stelie II since in and around March, 2016;

UPON hearing the testimony of Captain John Cabot and finding no bad faith in the timing of the Application for lead warrant in February, 2018 or the arrest of the ship in March, 2018 and upon accepting Captain Cabot's testimony that he was absent and unable to respond to the motion filed by the AGC until approximately November, 2018 and upon noting that the Plaintiff did not file a reply to the motion within the period contemplated by the *Federal Courts Rules*, SOR/98-106 and only filed a Motion Record on March 15, 2019, six (6) days before the hearing date by which it expressed its consent to the order sought and considering that the consent although not timely, did conserve judicial economy and limit legal fees to all parties;

CONSIDERING THAT the Canadian taxpayers have been paying significant fees on vessel F/V Stelie II since March, 2016 and that the Plaintiff could have consented earlier to the relief sought;

CONSIDERING that pursuant to Rule 400 of the *Federal Courts Rules*, the Court has discretion as to whether costs are payable by one party to another and the amount of those costs. In making that decision, the Court may consider any of the 14 factors listed in subsection 400(3) of the Rules (*Francosteel Canada Inc. v. African Cape (The)*, [2003] 4 FC 284, 2003 FCA 119, at para. 15);

HAVING CONSIDERED all relevant factors in the circumstances before me, I am of the view that an award of costs is necessary given the moving party's success on the motion and

to demonstrate the Court's encouragement of early discussions between the parties. The need for an order of costs against the Plaintiff is mitigated by its consent to the motion sought.

THIS COURT THEREFORE ORDERS that the Plaintiff, Baffin Fisheries 2000 Limited, pay to the Attorney General of Canada, costs in the amount of \$500.00, all-inclusive of disbursements and HST.

ORDER in T-358-18

THIS COURT ORDERS that Baffin Fisheries 2000 Limited pay to the Attorney General of Canada, costs in the amount of \$500.00, all-inclusive of disbursements and HST.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-358-18

STYLE OF CAUSE: BAFFIN FISHERIES 2000 LIMITED v. THE VESSEL "F/V STELIE II" AND THE OWNERS, CHARTERS AND ALL OTHERS INTERESTED IN THE VESSEL "F/V STELIE II, CLARENCE CABOT and FUNK ISLAND BANKER LIMITED

PLACE OF HEARING: ST. JOHN'S, NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: MARCH 21, 2019

ORDER AND REASONS: BELL J.

DATED: APRIL 30, 2019

APPEARANCES:

Michael Cabot FOR THE PLAINTIFF

Corrine Bedford FOR THE APPLICANT ON MOTION

SOLICITORS OF RECORD:

Gittens & Associates FOR THE PLAINTIFF
St. John's, Newfoundland

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Halifax, Nova Scotia