

**Date: 20070501**

**Docket: T-1927-06**

**Citation: 2007 FC 467**

[ENGLISH TRANSLATION]

**Montréal, Quebec, May 1, 2007**

**PRESENT: Richard Morneau, Esq., Prothonotary**

***ADMIRALTY ACTION IN PERSONAM***

**BETWEEN:**

**A.P. MOLLER - MAERSK A/S TRADING AS MAERSK SEALAND**

**Plaintiff**

**and**

**MARITIME-ONTARIO FREIGHT LINES LIMITED**

**Defendant**

**REASONS FOR ORDER AND ORDER**

[1] **GIVEN** this motion by the defendant (hereinafter Maritime-Ontario) under Rule 105(b) of the *Federal Court Rules* (the Rules) to have a stay ordered in this case until the outcome of the action in docket T-2143-04 is determined;

[2] **GIVEN** that the relationship between this docket, T-1927-06 and docket T-2143-04 has thus been summarized by the Court in its decision on February 7, 2007, when it refused to consolidate the two dockets:

[2] In this docket, T-1927-06, Maersk is acting as a plaintiff and commenced an action against Maritime-Ontario on November 3, 2006, so that the latter corporation would ultimately be held responsible for damages that Maersk might suffer due the action commenced by Lagoon Seafood in docket T-2143-04.

[3] In docket T-2143-04, it should essentially be known that Lagoon Seafood accuses Maersk of ultimately having delivered a shipment of fish in a damaged state. Maersk considers that it is because of the shipment inspection conducted by Maritime-Ontario that that shipment deteriorated. Hence Maersk's action in T-1927-06.

[3] **GIVEN** that the consolidation of the two dockets was dismissed because, among other things, docket T-2143-04 was virtually ready for trial (and was in fact held on June 18, 2007), the application to combine the dockets was filed late and this docket, T-1927-06, had to develop normally;

[4] **GIVEN** that, at the hearing for the motion by Maersk regarding the consolidation of the two files, Maritime-Ontario did not indicate its intent to appeal under Rule 105(b) and did not submit its motion record under review until April 11, 2007;

[5] **GIVEN**, therefore, that this motion by Maritime-Ontario is essentially late and that the Court cannot retain any valid and serious reasons that would explain why this motion was not filed earlier;

[6] **GIVEN** that a stay in this docket would prevent this docket from proceeding to its current stage, i.e. examination for discovery;

[7] **GIVEN** that avoiding examination on discovery of the Maritime-Ontario representative would essentially represent financial savings if this action were not pursued as a result of the outcome of the action in docket T-2143-04;

[8] **GIVEN** that the Court cannot see here that Maritime-Ontario would be prejudiced to the extent of an injustice or oppression (see the criteria retained by this Court in situations presenting aspects similar to this case, in *Compulife Software Inc. v. Compuoffice Software Inc.* (1997), 143 F.T.R. 19, at para 15; *Mon-Oil Ltd. v. R.* 1989 CarswellNat 153, at para 4), if it were to comply now — before the proceedings in docket T-2143-04 — at the stage of examination for discovery;

[9] **GIVEN** the reasons above, the following order is issued:

**ORDER**

1. The motion by Maritime-Ontario under Rule 105(b) is dismissed, with costs.
2. Maritime-Ontario shall submit its representative to examination for discovery at a location in Montréal and on a date to be decided on consent between the parties, but that must nonetheless be on or before May 11, 2007.

**“Richard Morneau”**

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Prothonotary

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1927-06

**STYLE OF CAUSE:** A.P. MOLLER - MAERSK A/S TRADING AS  
MAERSK SEALAND  
MARITIME-ONTARIO FREIGHT LINES LIMITED  
Plaintiff  
Defendant

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** April 23, 2007

**REASONS FOR ORDER  
AND ORDER:** PROTHONOTARY RICHARD MORNEAU

**DATED:** May 1, 2007

**APPEARANCES:**

Jean-Marie Fontaine FOR THE PLAINTIFF

Alberto Martinez FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

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