Federal Court		Cour fédérale

Date: 20101026

Docket: T-531-03

Citation: 2010 FC 1053

Admiralty action *in rem*

BETWEEN:

JPMORGAN CHASE BANK
(formerly The Chase Manhattan Bank), a body corporate
and
J.P. MORGAN EUROPE LIMITED
(formerly Chase Manhattan International Limited), a body corporate

Plaintiffs

and

MYSTRAS MARITIME CORPORATION
a body corporate
and
THE OWNERS AND ALL OTHERS
INTERESTED IN THE SHIP "LANNER"
and
THE SHIP "LANNER"

Defendants

and

BORDEN LADNER GERVAIS LLP

Applicant

and

KENT TRADE & FINANCE INC.
and
GEORGE SAROGLOU
and
JOHN MICHAELIDES

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

TREMBLAY-LAMER J.

[1] This is an appeal from a decision of Prothonotary Richard Morneau, dated June 14, 2010, whereby the Court declined jurisdiction *ratione materiae* over determining, as between two former shareholders and directors of the judgment creditor, who was entitled to the proceeds of the *in rem* action ultimately decided in *Kent Trade and Finance Inc. v. JP Morgan Chase Bank*, 2008 FCA 399, [2009] 4 F.C.R. 109 (*Kent Trade*). For the reasons that follow, the appeal is dismissed.

1. Facts

[2] In 2003, JP Morgan Chase Bank took possession of the "LANNER" due to an unpaid mortgage. The Bank proceeded to sell the "LANNER" for $6.9 million (USD), of which $2.7 million became the subject of a dispute between various creditors. Kent Trade and Finance (Kent Trade), a British Virgin Islands corporation, claimed a portion of these proceeds as it had

provided fuel oil to the “LANNER” for which it had not been compensated. The disputed amount became the subject of an *in rem* action against the proceeds of the judicial sale in the Federal Court.

[3] Kent Trade was ultimately awarded a portion of the proceeds in a decision of the Federal Court of Appeal dated December 12, 2008 (*Kent Trade*, above). As of December 19, 2009, the sum awarded, including interest accrued, amounted to approximately $1.2 million. This amount was paid to Kent Trade’s counsel, Borden Ladner Gervais (BLG). Kent Trade, by this point, had ceased to exist. Thus, BLG was uncertain as to who was entitled to the money. As such, on December 21, 2009, BLG filed a Motion for Directions under Rule 108 of the *Federal Courts Rules*, SOR/98-106 (the *Rules*) to commence interpleader proceedings.

[4] Two former shareholders and directors of Kent Trade, Mr. George Saroglou (the “Appellant”) and Mr. John Michaelides, each indicated to the Court that they were entitled to the money. Both Mr. Saroglou and Mr. Michaelides referenced an agreement dated February 21, 2007 (the Agreement). In the Agreement, Mr. Saroglou agreed to transfer his shares in Kent Trade to Mr. Michaelides (in addition to agreeing to pay an outstanding loan owed by Kent Trade) in exchange for being assigned the right to certain proceeds that might arise from the fuel oil claim against the “LANNER”.

[5] On February 2, 2010 the Federal Court issued an order under Rule 108 accepting the $1.2 million being held by BLG. The Court ordered the parties to file a proposed process for determining the competing claims. However, at the same time, the Court raised the issue as to

whether it had jurisdiction to decide the matter. In the subsequent claim records submitted by the two parties, Mr. Saroglou and Mr. Michaelides disagreed on the question of jurisdiction. Mr. Saroglou argued that the Court did have jurisdiction, Mr. Michaelides disagreed. Mr. Michaelides declined to argue the substantive elements of his claim against the proceeds until the question of jurisdiction was determined.

[6] On June 14, 2010, Prothonotary Morneau issued an order whereby the Court declined jurisdiction *ratione materiae* over the dispute. The Prothonotary decided that the matter was, in pith and substance, a disagreement as to the interpretation or implementation of an agreement concerning a share transfer and its consequences. He referred to the Supreme Court of Canada's decision in *ITO - International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, 68 N.R. 241 (*ITO*) and found that the subject matter in dispute was not so integrally connected to maritime matters as to be considered a maritime law matter. Prothonotary Morneau indicated that the Court would hold the amount at issue until a competent authority provided instructions as to how it should be distributed.

[7] On June 25, 2010, Mr. Saroglou filed a Notice of Appeal regarding this decision. The sole issue on appeal is whether this Court has jurisdiction over the dispute between Mr. Saroglou and Mr. Michaelides as to who, as between the two of them, is entitled to the proceeds awarded to Kent Trade as a result of the *in rem* action against the "LANNER".

2. Analysis

[8] The Appellant rightly points to the test outlined by the Supreme Court of Canada in *ITO*, above for the purposes of determining whether the Federal Court has jurisdiction over the current dispute. In *ITO* at para. 11, the Supreme Court of Canada indicated that in order to find that the Federal Court has jurisdiction, the following three requirements must be met:

1. There must be a statutory grant of jurisdiction by the federal Parliament.
2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.
3. The law on which the case is based must be "a law of Canada" as the phrase is used in s. 101 of the *Constitution Act*, 1867.

[9] The Appellant argues that the first requirement is met. He indicates that the judicial sale of the "LANNER" is captured by the statutory grant of jurisdiction found under s. 22(2)(a) of the *Federal Courts Act*, R.S. 1985, c. F-7 (*FCA*). Further, it points out that the maritime lien for the provision of fuel oil is captured by s. 22(2)(*m*) of the *FCA*. Finally, it argues that the dispute with respect to the assignment of a right *in rem* against the proceeds of the sale of the "LANNER" (which constitutes maritime property) in relation to a claim arising from fuel oil supply falls under s. 22(1) of the *FCA* by virtue of being a claim in which "a remedy is sought under or by virtue of Canadian maritime law".

[10] Finding that the current dispute constitutes a matter falling within the ambit of Canadian maritime law is sufficient to satisfy both the second and third requirement of the *ITO* test. As

Prothonotary Morneau correctly indicated in his reasons, the Supreme Court in *ITO* instructed that in order to determine whether a particular case involves a maritime or admiralty matter, it must be established that "the subject-matter under consideration… is so integrally connected to maritime matters as to be legitimate Canadian maritime law" [*ITO*, above at para. 20; emphasis added]. The Court was clear that although the words "maritime" and "admiralty" are to be interpreted within the modern context of commerce and shipping, the ambit of Canadian maritime law must nonetheless be limited by the constitutional division of powers. The Federal Court must "avoid encroachment on what is in 'pith and substance' a matter of local concern involving property and civil rights or any other matter which is in essence within exclusive provincial jurisdiction" (*ITO*, above at para. 20).

[11] Prothonotary Morneau decided that the subject matter under consideration was not integrally connected to maritime matters. Instead, he found that the subject matter was, in pith and substance, essentially a matter of local concern involving property and civil rights.

[12] The Appellant argues, however, that the requirement of integral connection has been broadly interpreted by subsequent jurisprudence such that the current dispute is captured. He argues that the Prothonotary erred by failing to consider the Supreme Court's decision in *Monk Corp. v. Island Fertilizers Ltd.*, [1991] 1 S.C.R. 779, 80 D.L.R. (4th) 58 (*Monk*) whereby the Court determined that contracts which are not maritime in nature may, nonetheless, fall within the jurisdiction of the Federal Court as being integrally connected to maritime matters. The Appellant argues that the Prothonotary ended his analysis after determining that the contract was not maritime

in nature. The Appellant suggests that the Prothonotary failed to evaluate whether, despite not being a maritime contract, the claim itself was nonetheless integrally connected to maritime matters.

[13] I do not see how this case is of assistance to the Appellant in the current context. The claim in *Monk* directly involved resolving a dispute as to the parties' maritime obligations – specifically, obligations relating to the discharge of cargo. However, in this case, the dispute with respect to the maritime obligations (i.e. the claim re: payment for the supply of fuel oil) has been resolved. What remains is a dispute over the interpretation of an agreement between shareholders as to the right to the funds resulting from a successful claim. While the decision in *Monk* does indicate that parties can assume maritime obligations even if they are not parties to a formal maritime agreement, it does not assist the Appellant in arguing that the agreement currently before the Court, in which no maritime obligations are assumed, is nonetheless integrally connected to maritime matters.

[14] The Appellant also looks to the *Global Cruises S.A. v. Naftiko Apomahico Tameio* (1991), 48 F.T.R. 13, 28 A.C.W.S. (3d) 1020 (F.C.T.D.) (*Global Cruises*) decision for assistance. The Appellant argues that *Global Cruises* stands for the proposition that when a cause of action flows from the judicial sale of a ship, and cannot be separated therefrom, the cause of action is integrally connected to maritime matters for the purposes of the *ITO* test.

[15] In *Global Cruises*, the Federal Court ordered a vessel to be sold by way of public auction. The plaintiff submitted the highest bid. However, the defendant held a lien on the vessel. In order to facilitate the sale of the ship to the plaintiff, the Court ordered the defendant to release its lien. The defendant indicated that it would comply, but ultimately failed to honour that representation. The

plaintiffs brought an action in the Federal Court asserting that their rights arising from the sale proceedings were invaded by the negligent misrepresentation of the defendant. The defendant questioned the Court's jurisdiction to entertain the matter. The Court found that the cause of action asserted by the plaintiff flowed from, and could not be separated from, the judicial sale of the ship in question. Since the misrepresentations of the defendant were made in the course of the sale proceedings, the Court found that the action was founded in maritime law.

[16] Unlike the dispute in *Global Cruises*, the current dispute *can be separated* from the central maritime aspect. The maritime aspect, in this case, was the claim over compensation for the supply of fuel oil. This aspect has been determined in Kent Trade's favour. Although the current dispute, as between Mr. Saroglou and Mr. Michaelides, can be said to "flow from" the award to Kent Trade - in the sense that if there were no award to Kent Trade, there would be no dispute as to who is entitled to it – the current dispute, nonetheless, is completely separable from the maritime aspect.

[17] Ultimately, there is no basis for finding that the dispute under consideration in the current matter is integrally connected to maritime matters. As such, the second and third requirements of the *ITO* test are not satisfied. It is, thus, unnecessary to consider the first requirement.

[18] The Appellant further argues that the Court has jurisdiction to determine who is entitled to a sum awarded in one of its judgments. Since Kent Trade no longer exists, the Appellant argues that it is incumbent upon the Court to ensure the transfer of the proceeds arrives at its rightful owner. In this regard, the Appellant points to two decisions which indicate that the Court has jurisdiction over

the enforcement of its judgments. It cites *Trans-Pacific Shipping Co. v. Atlantic & Orient Trust Co.*, 2005 FC 311, 137 A.C.W.S. (3d) 1083 (*Trans-Pacific*) and *MacDonald v. Swecan International Ltée* (1990), 40 F.T.R. 272, 25 A.C.W.S. (3d) 276 (*MacDonald*).

[19] Both the *Trans-Pacific* and *MacDonald* cases stand for the proposition that the Federal Court, once it has issued a judgment, has the jurisdiction necessary to ensure effective enforcement of that judgment against the judgment debtor involved. In *Trans-Pacific*, the Court found that it had the jurisdiction necessary to make certain corporate law-related determinations in order for an arbitral award that had been registered in the Federal Court to be effectively enforced against the debtor corporation involved. In *MacDonald*, Justice Pinard, discussing the Federal Court's ability to enforce one of its judgments against a judgment debtor, indicated:

> I therefore conclude that in a case where the Federal Court of Canada is recognized as having full jurisdiction, such jurisdiction is not automatically extinguished when judgment is given in the main action, but rather it subsists in any proceedings relating to the enforcement of that judgment.

[20] This case is different from both *Trans-Pacific* and *MacDonald*. Here, the Court's judgment does not need to be "enforced" as the proceeds of the sale of the "LANNER" have already been collected and paid out to Kent Trade. The fact that Kent Trade is no longer a going concern does raise a new question as to whom, amongst the corporation's shareholders (or presumably even its creditors), is entitled to the proceeds. However, this can hardly be considered a matter of enforcement of the original judgment.

[21] For the foregoing reasons, it is plain and obvious that this Court lacks jurisdiction with respect to the current dispute between Mr. Saroglou and Mr. Michaelides. Consequently, the appeal is dismissed with costs.

JUDGMENT

THIS COURT ORDERS that the appeal be dismissed with costs.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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