

Federal Court



Cour fédérale

Date: 20110926

Docket: T-105-11

Citation: 2011 FC 1101

Vancouver, British Columbia, September 26, 2011

PRESENT: Roger R. Lafrenière, Esquire
Prothonotary

SIMPLIFIED ACTION

BETWEEN:

CF BOATWORKS INC.

Plaintiff

and

**ASHLEY R. JAMES AND
ASHLEY R. JAMES CARRYING ON
BUSINESS AS A SOLE PROPRIETORSHIP
UNDER THE NAME AND STYLE OF
CLASSIC YACHT SERVICES**

Defendants

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Plaintiff, CF Boatworks Inc. (CF Boatworks), has brought a motion pursuant to Rule 97 of the *Federal Courts Rules* for the following relief:

- (a) an order that the Court give judgment by default in favour of the Plaintiff due to the failure of the Defendant to answer a proper question, or produce a document

or other material required to be produced pursuant to Federal Courts Rule 97, in accordance with the claims and relief set out in the Statement of Claim; and

- (b) an order that the costs of this action and this motion be paid by the Defendants to the Plaintiff pursuant to Federal Courts Rule 401.

[2] In support of its motion, the Plaintiff adduced evidence that the Defendants have not served their List of Documents in compliance with Rules 223 and 295, and have failed to provide answers to the written examination questions pursuant to Rule 99(4). In order to allow the Plaintiff to seek relief pursuant to Rule 97, leave was granted removing the simplified action from the operation of the Rules 294 and 299.

[3] In the absence of any response from the Defendants to the Plaintiff's inquiries or to the present motion, the Defendants' silence must be treated as a refusal. In light of the Defendant's failure to abide with their discovery obligations, the Statement of Defence was struck out by Order dated September 19, 2011.

Motion for Default Judgment

[4] On a motion for default judgment, the Court has two questions before it; first, is the defendant in default, and second, is there evidence to support the plaintiff's claim: *Chase Manhattan Corp v 3133559 Canada Inc* 2001 FCT 895.

[5] With respect to the first question, the effect of striking a statement of defence is tantamount to no defence having been filed on a defendant's behalf: *LS Entertainment Group Inc v Formosa Video (Canada) Ltd* 2005 FC 1347 at para 50. Default Judgment is therefore available against the Defendants under Rules 97(d) and 210.

[6] With regard to the second part of the test, it is well established that, in this Court, allegations which are not admitted are deemed to be denied. Therefore, proof of the Plaintiff's claim must be put forth by way of affidavit.

[7] I am satisfied, on the basis of the affidavit evidence adduced by the Plaintiff, that a contract was entered into between the parties for the purchase and sale of lumber on or about August 11, 2011. The parties agreed that the lumber was to be delivered within 30 days from receipt of the initial funds.

[8] The lumber was to be used in the construction of a mast, and in the following quantities and specifications:

- (a) 8 boards @ 14" width, 3 ½" thickness, and 30' length;
- (b) 8 boards @ 14" width, 2 ½" thickness, and 30' length;
- (c) 5 boards @ 8" width, 2 ¼" thickness, and 30' lengths; and
- (d) 5 boards @ 8" width, 1 ½" thickness, 30' lengths.

[9] The purchase price of \$32,210.28 U.S. was paid by the Plaintiff to the Defendants in three installments: the first for \$10,000.00 on August 18, 2010, the second for \$10,000.00 on September 9, 2010, and the third for the outstanding balance of \$12,210.28 when the lumber was ready for shipment.

[10] The lumber was delivered late on November 15, 2010. It was also not wrapped, despite the fact the Defendant had paid an additional \$720.00 U.S. for the packaging. Further, the wood contained many deficiencies that rendered much of it unusable for building a mast, the ostensible purpose of the purchase.

[11] The Plaintiff requested wood of the quality contracted for, or a refund of the purchase price with regard to the lumber that was determined unfit for its purpose and not of spar grade. Neither wood of the quality contracted for, nor any refund was delivered to the Plaintiff.

[12] In order to make up for the deficient lumber, the Plaintiff was forced to order a second lot of Sitka spruce. The Plaintiff sourced the lumber from Maurice L. Condon Co. Inc., a company out of White Plains, New York, at a cost \$14,875.00 U.S. However, the wood available from Condon was only available in 15' and 20' lengths. Using the shortened lumber salvaged from the wood delivered to the Plaintiff, and the shorter lengths provided by Condon, the Plaintiff was forced to make twice as many grafts, called scarf joints, as anticipated in making the mast.

[13] The Plaintiff was required to hire two labourers for two weeks to make the extra scarf joints required in the construction of the mast. The cost of the two weeks of additional labour required was \$2,000.00 per labourer for a total additional cost of \$4,000.00 U.S.

[14] The Plaintiff has established, on a balance of probabilities, that the Defendants delivered lumber that was not reasonably fit for the purpose of building a mast for a sailboat, in breach of contract. The Plaintiff has also established that reasonable costs and expenses were incurred to salvage and make use of portions of the lumber, in mitigation of the Plaintiff's damages.

[15] In the circumstances, I conclude that judgment should be granted against the Defendants as requested in the prayer for relief.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The Plaintiff is granted judgment against the Defendants in the amount of \$19,935.96, calculated as follows:
 - (a) \$15,133.83, equivalent to \$14,875.00 U.S., for the cost of replacing the deficient lumber delivered to the Plaintiff by the Defendant;
 - (b) \$4,069.60, equivalent to \$4,000.00 U.S., for the cost of extra labour required to complete the mast with smaller pieces of lumber; and
 - (c) \$732.53, equivalent to \$720.00 U.S., or due to the failure to individually wrap the lumber as per the contract.
2. The Defendants shall pay to the Plaintiff pre-judgment interest in the amount of \$598.00.
3. Costs in the amount of \$1,000.00 shall be paid by the Defendants to the Plaintiff for the conduct of this action and this motion.

“Roger R. Lafrenière”
Prothonotary

Federal Court



Cour fédérale

SOLICITORS OF RECORD

DOCKET: T-105-11

STYLE OF CAUSE: CF BOATWORKS INC. v.
ASHLEY R. JAMES AND
ASHLEY R. JAMES CARRYING
ON BUSINESS AS A SOLE
PROPRIETORSHIP UNDER THE
NAME AND STYLE OF
CLASSIC YACHT SERVICES

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 26, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** LAFRENIÈRE P.

DATED: September 26, 2011

APPEARANCES:

Thomas S. Hawkins
Mark Tinmouth

FOR THE PLAINTIFF

N/A

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Bernard & Partners
Barristers and Solicitors
Vancouver, British Columbia

FOR THE PLAINTIFF

N/A

FOR THE DEFENDANTS