

Federal Court



Cour fédérale

Date: 20170831

Docket: T-453-17

Citation: 2017 FC 796

Vancouver, British Columbia, August 31, 2017

PRESENT: Madam Prothonotary Mandy Ayles

BETWEEN:

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

Plaintiff

and

**PATRICIA A. WILSON DOING BUSINESS AS
JACOBSEN MARINE & INDUSTRIAL AND
STEEN LARSEN**

Defendants

JUDGMENT AND REASONS FOR JUDGMENT

[1] The Plaintiff, the Administrator of the Ship-source Oil Pollution Fund, has brought an *ex parte* motion pursuant to Rules 210(2) and 369 of the *Federal Courts Rules* for default judgment against the Defendants.

[2] On a motion for default judgment, the Court has two questions before it: (i) is the Defendant in default; and (ii) is there evidence to support the Plaintiff's claim [see *Chase Manhattan Corp v 3133559 Canada Inc.*, 2001 FCT 895].

[3] With respect to the first question, the Plaintiff must establish that the Defendants were personally served with the Statement of Claim and that the deadline for service and filing of a Statement of Defence has expired. The Plaintiff has provided the Court with an affidavit of personal service attesting to the service of the Statement of Claim on Steen Larsen on April 2, 2017. I find that the Defendant, Steen Larsen, was properly served with the Statement of Claim on April 2, 2017.

[4] The Plaintiff obtained an Order from the Court dated May 12, 2017 permitting substituted service on the Defendant, Patricia A. Wilson doing business as Jacobsen Marine & Industrial Design. The Plaintiff has provided the Court with an affidavit of substitutional service attesting to the service of the Statement of Claim in accordance with the Court's Order on Patricia A. Wilson on June 14, 2017. I find that the Defendant, Patricia A. Wilson, was properly service with the Statement of Claim on June 14, 2017.

[5] There is no record of a Statement of Defence being filed by either of the Defendants within the time provided in Rule 204, nor any request for an extension of time. Accordingly, I conclude that the Defendants are in default.

[6] With regard to the second question, the Plaintiffs have provided the Court with the affidavit of Anne Legars of the Administrator of the Ship-source Oil Pollution Fund sworn August 2, 2017 and the affidavit of Jeffrey Brady, a Pollution Response Officer of the Canadian Coast Guard, sworn August 11, 2017.

[7] I find that the evidence submitted on this motion establishes that:

- A. In November 2014, the Canadian Coast Guard was advised that the barge Spudnik was adrift in Howe Sound in high winds and in danger of grounding and causing oil pollution.
- B. The Canadian Coast Guard was advised by the Defendant, Steen Larsen, who is one of the owners of the barge, that they were unable or unwilling to provide the resources to respond to the situation and secure the barge.
- C. As a result, the Canadian Coast Guard retained a contractor, Seaspan ULC, to salvage the barge by securing her and towing her to a safe moorage in the Fraser River, and then hired contractors to clean out all hydrocarbons from the barge.
- D. On April 28, 2016, the Canadian Coast Guard presented a claim to the Plaintiff, pursuant to section 77(1), 101 and 103 of the *Marine Liability Act*, for

compensation for expenses incurred to control and eliminate pollution in the amount of \$149,043.60.

- E. The Plaintiff found the appropriate amount for compensation to be paid to the Canadian Coast Guard in satisfaction of its claim was \$137,747.51, comprised of \$131,064.45 in principal and \$6,683.06 in interest. This amount was accepted by the Canadian Coast Guard and paid by the Plaintiff to the Canadian Coast Guard on October 17, 2016.
- F. On December 9, 2016, the Plaintiff demanded payment from the Defendants of the claim made by the Canadian Coast Guard in the amount of \$137,747.51 plus interest. The Defendants have failed to make any payment to the Plaintiff to date in satisfaction of the principal or the interest accrued thereon.
- G. Interest has accrued on the amount of \$137,747.51 pursuant to section 116 of the *Marine Liability Act* in the amount of \$3,563.18 to August 1, 2017. Thereafter, interest has continued to accrue at the rate of \$11.31 per day.

[8] I find that, pursuant to section 77 of the *Marine Liability Act*, the Defendants are liable, as the owners of the barge, to the Plaintiff for the reasonable expenses incurred by the Canadian Coast Guard to prevent, repair, remedy or minimize the oil pollution association with the barge, which the Plaintiff has paid to the Canadian Coast Guard plus interest thereon calculated in

accordance with section 116 of the *Marine Liability Act*. I am satisfied that the Defendants are liable to the Plaintiff for such expenses totalling \$137,747.51 together with interest accrued thereon to the date of this Judgment in the amount of \$3,891.17.

[9] 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 \$137,747.51.
2. The Defendants shall pay to the Plaintiff pre-judgment interests in the amount of \$3,891.17.
3. This Judgment shall bear interest at the rate of 3.0% per annum from its date in accordance with section 116 of the *Marine Liability Act*.

“Mandy Ayles”

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-453-17

STYLE OF CAUSE: THE ADMINISTRATOR OF THE SHIP-SOURCE OIL
POLLUTION FUND v PATRICIA A. WILSON DOING
BUSINESS AS JACOBSEN MARINE & INDUSTRIAL
AND STEEN LARSEN

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: AUGUST 30, 2017

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

DATED: AUGUST 31, 2017

APPEARANCES:

David F. McEwen, Q.C.

FOR THE PLAINTIFF

SOLICITORS OF RECORD:

Alexander Holburn Beaudin +
Lang LLP
Barristers and Solicitors
Vancouver, British Columbia

FOR THE PLAINTIFF