

Federal Court



Cour fédérale

Date: 20170210

Docket: T-2249-16

Citation: 2017 FC 174

Vancouver, British Columbia, February 10, 2017

PRESENT: The Honourable Mr. Justice Shore

**ADMIRALTY ACTION *IN REM*
AGAINST THE CONTAINERS LISTED IN APPENDIX “A”
AND *IN PERSONAM***

BETWEEN:

DP WORLD (CANADA) INC.

Plaintiff

and

**The CONTAINERS LISTED IN APPENDIX “A”
and the Owners and all Others Interested in the
CONTAINERS LISTED IN APPENDIX “A”,
SEACUBE CONTAINER LEASING LTD.,
DONG FANG INTERNATIONAL ASSET
MANAGEMENT LTD., FLORENS ASSET
MANAGEMENT COMPANY LIMITED,
SEACO KOREA LTD.
TEXTAINER GROUP HOLDINGS LIMITED,
THE KOREAN DEVELOPMENT BANK
and JOHN DOE LTD.**

Defendants

ORDER

UPON MOTION dated January 4, 2017, on behalf of the Plaintiff, for, *inter alia*, an

Order:

1. Pursuant to Rule 490(1)(a) of the *Federal Courts Rules* that the Defendant Containers be sold without appraisal by private contract and as more particularly described as follows before judgment is granted:
 - (a) The Defendant Containers shall be sold by conduct of DP World without advertising, with all existing faults, without any allowance for deficiencies or errors of description whatsoever and without any legal or contractual representations or warranties whatsoever, but free and clear of all liens and encumbrances under Canadian Maritime Law;
 - (b) Any sale of the Defendant Containers shall not require advance Court approval, but DP World may seek Court approval if it chooses to do so;
 - (c) In the event of a sale, DP World be hereby authorized to sign a bill of sale transferring ownership and title of the Defendant Containers to the purchaser free and clear of any liens and encumbrances;
 - (d) Possession, risk and title to the Defendant Containers shall pass to the purchaser on delivery by DP World of a signed bill of sale to the purchaser or as otherwise agreed between DP World and the purchaser;
 - (e) The following shall be deemed to be expenses of sale, and shall rank first in priority from the proceeds of sale of the Defendant Containers over all other claims:
 - i. amounts expended or incurred by DP World that pertain directly to the Defendant Containers, including but not limited to any amounts

expended or incurred by DP World for storage fees and any other maintenance fees; and,

- ii. all reasonable expenses of advertisement of the sale, costs, disbursement and other expenses necessary or inherent to giving effect to this Order;

- (f) Proceeds of the Sale shall be directed to be paid to DP World to cover the cost of recovering sums due from the Defendants and for storage fees and related charges for the Defendant Containers.

AND UPON the Motion in respect of the Defendant Containers owned by Dong Fang International Asset Management Ltd, Florens Asset Management Company Limited, Textainer Group Holdings Limited, The Korean Development Bank and John Doe Ltd. being granted on Tuesday, February 7, 2017;

AND UPON reading the motion record filed on behalf of the Plaintiff and upon the consent of counsel for the Plaintiff and counsel for Seacube Container Leasing Ltd., Seaco Korea Ltd. and Seaco Global (UK) Ltd. as owners of the Defendant Containers listed in Schedule 1 hereto;

THIS COURT ORDERS that:

1. The Defendant Containers owned by Seacube Container Leasing Ltd., Seaco Korea Ltd. and Seaco Global (UK) Ltd. currently located at the Terminal operated by the Plaintiff in the Port of Vancouver as listed in Schedule "1" hereto shall be sold by DP World without advertising, with all existing faults,

without any allowance for deficiencies or errors of description whatsoever and without any legal or contractual representations or warranties whatsoever, but free and clear of all liens and encumbrances under Canadian Maritime Law;

2. DP World is hereby authorized to sign a bill of sale transferring ownership and title of the Defendant Containers listed in Schedule “1” to the purchaser free and clear of any liens and encumbrances;
3. Possession, risk and title to the Defendant Containers listed in Schedule “1” shall pass to the purchaser on delivery by DP World of a signed bill of sale to the purchaser or as otherwise agreed between DP World and the purchaser;
4. The following shall be deemed to be expenses of sale, and shall rank first in priority from the proceeds of sale of the Defendant Containers listed in Schedule “1” over all other claims:
 - (a) amounts expended or incurred by DP World that pertain directly to the Defendant Containers, including but not limited to any amounts expended or incurred by DP World for storage fees and any other maintenance fees; and,
 - (b) all reasonable expenses of advertisement of the sale, costs, disbursement and other expenses necessary or inherent to giving effect to this Order;
5. The proceeds of the sale of the Defendant Containers listed in Schedule “1” shall initially be paid to “Bernard LLP, In Trust” and Bernard LLP shall thereafter distribute the proceeds of sale in accordance with a joint direction

by DP World, Seacube Container Leasing Ltd., Seaco Korea Ltd. and Seaco Global (UK) Ltd. or, failing agreement by those parties, in accordance with a further order of this court.

“Michel M.J. Shore”

Judge

Schedule 1:

	Owner	Container Number
1.	Seaco	CXDU2206990
2.	Seaco	CXDU2316853
3.	Seaco	CXRU1616146
4.	Seacube	HJCU1337030
5.	Seaco	HJCU1341236
6.	Seacube	HJCU1356339
7.	Seacube	HJCU1357850
8.	Seaco	HJCU1425980
9.	Seaco	HJCU1429076
10.	Seaco	HJCU1505915
11.	Seaco	HJCU1508215
12.	Seaco	HJCU1508621
13.	Seaco	HJCU1514970
14.	Seaco	HJCU1516329
15.	Seaco	HJCU1521201
16.	Seaco	HJCU1527642
17.	Seaco	HJCU1532510
18.	Seaco	HJCU1536135
19.	Seaco	HJCU1540618
20.	Seaco	HJCU1544969
21.	Seaco	HJCU1550766
22.	Seaco	HJCU1590624
23.	Seaco	HJCU1591744
24.	Seaco	HJCU1915400
25.	Seaco	HJCU1934566
26.	Seaco	HJCU1939911
27.	Seaco	HJCU1939927
28.	Seaco	HJCU1951460
29.	Seaco	HJCU1954330
30.	Seaco	HJCU2102663
31.	Seacube	HJCU4074431
32.	Seacube	HJCU4076584
33.	Seacube	HJCU4078946
34.	Seacube	HJCU4089473
35.	Seacube	HJCU4098665
36.	Seacube	HJCU4116748
37.	Seacube	HJCU4120727
38.	Seaco	HJCU4273304
39.	Seaco	HJCU4273460
40.	Seaco	HJCU4281383

41.	Seacube	HJCU4363840
42.	Seacube	HJCU4373197
43.	Seacube	HJCU4380365
44.	Seacube	HJCU4385032
45.	Seacube	HJCU4388561
46.	Seacube	HJCU4391800
47.	Seacube	HJCU4392242
48.	Seacube	HJCU4401391
49.	Seacube	HJCU4408550
50.	Seaco	HJCU4423636
51.	Seaco	HJCU4424329
52.	Seaco	HJCU4426321
53.	Seaco	HJCU4914542
54.	Seaco	HJCU4919164
55.	Seaco	HJCU4919565
56.	Seaco	HJCU4926780
57.	Seaco	HJCU4928314
58.	Seaco	HJCU4937039
59.	Seaco	HJCU4941532
60.	Seaco	HJCU4964435
61.	Seaco	HJCU4978887
62.	Seaco	HJCU4985314
63.	Seaco	HJCU4988226
64.	Seaco	HJCU4990120
65.	Seaco	HJCU4991214
66.	Seaco	HJCU4991298
67.	Seaco	HJCU6096152
68.	Seacube	HJCU9014219
69.	Seacube	HJCU9015560
70.	Seacube	HJCU9018298
71.	Seacube	HJCU9019479
72.	Seacube	HJCU9020090
73.	Seacube	HJCU9020398
74.	Seacube	HJCU9021141
75.	Seacube	HJCU9021537
76.	Seacube	HJCU9025785
77.	Seacube	HJCU9026117
78.	Seacube	HJCU9028260
79.	Seacube	HJCU9028470
80.	Seacube	HJCU9029796
81.	Seacube	HJCU9032974
82.	Seacube	HJCU9036917
83.	Seacube	HJCU9037153
84.	Seacube	HJCU9038925
85.	Seacube	HJCU9040814

86.	Seacube	HJCU9040943
87.	Seacube	HJCU9041322
88.	Seacube	HJCU9045797
89.	Seacube	HJCU9050134
90.	Seacube	HJCU9050999
91.	Seacube	HJCU9051676
92.	Seacube	HJCU9054464
93.	Seacube	HJCU9057041
94.	Seacube	HJCU9058412
95.	Seacube	HJCU9061397
96.	Seacube	HJCU9062156
97.	Seacube	HJCU9063640
98.	Seacube	HJCU9064457
99.	Seaco	HJCU9900304
100.	Seaco	HJCU9900686
101.	Seaco	HJCU9901065
102.	Seaco	HJCU9901682
103.	Seaco	HJCU9901830
104.	Seaco	HJCU9902966
105.	Seaco	SEGU4963570
106.	Seaco	SEGU5141253
107.	Seacube	SENU4250032
108.	Seacube	SENU4253258
109.	Seacube	SENU4254697
110.	Seacube	SENU4255585
111.	Seacube	SENU4265557
112.	Seacube	SENU4270867
113.	Seacube	SENU4271312
114.	Seacube	SENU4277199
115.	Seacube	SENU4280150
116.	Seacube	SENU4281590
117.	Seacube	SENU4286380
118.	Seacube	SENU4292254
119.	Seacube	SENU4293055
120.	Seacube	SENU5004440
121.	Seacube	SENU5022989
122.	Seacube	SENU5023326
123.	Seacube	SENU5037253
124.	Seacube	SENU5037952
125.	Seacube	SENU5044139
126.	Seacube	SENU5065553
127.	Seacube	SENU5073672