

Federal Court of Canada
Tribunal Fédéral



Section des procédures judiciaires
Judicial Proceedings Section

Date: 19971219

Docket: T-1041-95

98 236 023

**ACTION *IN REM* AGAINST THE SHIP "KRISTINA LOGOS" AND
IN PERSONAM AGAINST ULYBEL ENTERPRISES LIMITED, JOSE
PRATAS, and THE OWNERS, CHARTERERS AND OTHERS
INTERESTED IN THE SHIP "KRISTINA LOGOS"**

BETWEEN:

MARIO NEVES AND CARLOS NEVES,

Plaintiffs,

AND

**THE SHIP "KRISTINA LOGOS",
ULYBEL ENTERPRISES LIMITED,
JOSE PRATAS, and THE OWNERS,
CHARTERERS AND OTHERS INTERESTED
IN THE SHIP "KRISTINA LOGOS",**

Defendants,

AND

HER MAJESTY THE QUEEN,

Intervenor.

REASONS FOR ORDER

RICHARD MORNEAU, PROTHONOTARY

[1] There are two motions before the Court, one by the intervenor for directions under Rule 1008 of the *Federal Court Rules* (the Rules) and the other by the defendants to modify or stay the granting of the intervenor's motion.

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[2] The purpose of these reasons is to dispose of these two motions.

Background

[3] On December 18, 1996, Her Majesty the Queen (the Crown), who had incurred substantial expenses since the seizure of the ship Kristina Logos on April 2, 1994, was granted intervenor status in this case in order to sell the ship (which order was affirmed on appeal on January 16, 1997; that decision is currently on appeal, file no. A-53-97).

[4] The sale took place on May 15, 1997, and brought in the sum of \$605,000.

[5] The directions the Crown is now seeking are in relation to how those moneys are to be distributed.

Analysis

[6] Counsel for the Crown informed the Court that her client was making her application for directions under Rule 1008 as a possible "claimant" to the proceeds of the sale, and not in her status as intervenor.

[7] In her view, any claimant to the proceeds of a sale may apply under Rule 1008, and accordingly, for the purposes of the directions sought, the focus should be not placed on the Crown's intervenor status, as the defendants have sought to do.

[8] I share that view and this largely disposes of the defendants' motion.

[9] However, the defendants also argued that the effect of the criminal proceedings commenced in the Newfoundland provincial courts under the *Fisheries Act*, R.S.C. 1985, c. F-14, following the seizure of the *Kristina Logos* and its cargo of fish, was to establish a *lis pendens* situation between the money sought by the Crown in the Newfoundland courts and the money it is seeking in this Court.

[10] However, it appears that the only result that can occur from the proceedings under the *Fisheries Act* is the forfeit of moneys to the Crown and not the final distribution thereof; the moneys can be distributed to the Crown, as to any other claimant, only under the aegis of this case in the Federal Court. There is therefore no reason to stay the Crown's motion for directions on that ground.

[11] The defendants also raise the fact that they should not be compelled to assert their rights, in defence, in a trial such as is suggested by the Crown, in which preference would be given to proving the claim on the basis of a record composed of written evidence. In their view, it is crucial that this case be conducted in the manner typical of an action, as should file

no. T-799-94 in which the defendants are also defendants and the Kristina Logos was also arrested.

[12] It should be noted that the plaintiffs in these two cases are not opposing the Crown's application for directions *per se*. In their written submissions, the plaintiffs argued a number of points with respect to the directions proposed by the Crown, and those points were accepted by the Court.

[13] The plaintiffs are the only ones seeking to have the actions in this case and in file no. T-799-94 heard by the procedure that normally governs the conduct of actions.

[14] The defendants' approach has some merit, and it must be considered. However, in my view, this does not mean that at this stage we must avoid giving any directions, at all costs, and wait for the two actions to come to a final conclusion. The plaintiffs appear to agree with proceeding under Rule 1008, and it is important that the Court be satisfied that the instructions it might give will enable it to rule equitably as to the rights of the parties and to give judgment on one or more claims seeking the moneys paid into Court.

[15] The directions set out in the order accompanying these reasons provide, *inter alia*, for a process of examinations for discovery and for the possibility of hearing the *viva voce* evidence of the witnesses in Court.

[16] It seems to me that these directions establish a satisfactory balance between the defendants' rights and the advantage of proceeding under Rule 1008 to secure an orderly distribution of the proceeds of the sale of the Kristina Logos.

[17] Accordingly, the Crown's motion is allowed and the defendants' motion is dismissed. Costs in both motions in the cause.

Richard Morneau

Prothonotary

MONTREAL, QUEBEC
December 19, 1997

Certified true translation


C. Deion, LL.L.

Federal Court of Canada

Court file no. T-1041-95

BETWEEN:

MARIO NEVES AND CARLOS NEVES,

Plaintiffs,

— and —

THE SHIP "KRISTINA LOGOS", ULYBEL
ENTERPRISES LIMITED, JOSE PRATAS, and
THE OWNERS, CHARTERERS AND OTHERS
INTERESTED IN THE SHIP "KRISTINA
LOGOS",

Defendants,

— and —

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REASONS FOR ORDER

**FEDERAL COURT OF CANADA
NAMES OF COUNSEL AND SOLICITORS OF RECORD**

COURT NO.: T-1041-95

STYLE OF CAUSE: MARIO NEVES AND CARLOS NEVES
Plaintiffs

AND

THE SHIP "KRISTINA LOGOS",
ULYBEL ENTERPRISES LIMITED,
JOSE PRATAS, and THE OWNERS,
CHARTERERS AND OTHERS INTERESTED
IN THE SHIP "KRISTINA LOGOS"
Defendants

AND
HER MAJESTY THE QUEEN
Intervenor

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: December 15, 1997

REASONS FOR ORDER BY RICHARD MORNEAU, ESQ., PROTHONOTARY

DATE OF REASONS FOR ORDER: December 19, 1997

APPEARANCES:

Mr. Laurent Debrun for Defendants Ulybel Enterprises Ltd. and Jose Pratas

Me Danièle Dion for the Intervenor

SOLICITORS OF RECORD:

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Mr Thomas E. Hart for Clearwater Atlantic Seafoods Inc.
McIner Cooper & Robertson
Halifax, Nova Scotia

**THE FEDERAL COURT
OF CANADA**

**LA COUR FÉDÉRALE
DU CANADA**

Court No.: T-1041-95

No. de la cause:

Let the attached certified translation of the following document in this cause be utilized to comply with Section 20 of the **Official Languages Act**.

Je requiers que la traduction ci-annexée du document suivant telle que certifiée par le traducteur soit utilisée pour satisfaire aux exigences de l'article 20 de la **Loi sur les langues officielles**.

Reasons for Order

August 10, 1998

Richard Morneau

DATE

Prothonotary

Protonotaire

Form T-4M

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