

Date: 20070621

Docket: T-1723-06

Citation: 2007 FC 679

BETWEEN:

Labrador Sea Products, Incorporated, Dorset Fisheries Limited and Gulf Shrimp Limited

Plaintiffs

and

**The Ship m/v "Northern Auk", Kirby Brown, Mike Brown, High Wave Fisheries Limited
and all others interested in the ship**

Defendants

REASONS FOR ORDER

HUGHES J.

[1] I find the Defendants guilty of contempt. I assess a fine in the sum of \$5,000.00 jointly and severely against the Defendants, together with cost in the sum of \$15,000.00.

[2] The reasons for this are as follows. First of all, the case of *Merck Co. v. Apotex Inc.* (2003) 25 CPR 4th 289 is a decision of the Federal Court of Appeal. It says that the reason for applications for contempt are to prevent that disobeying of a process or court order or acting in a such a way as to interfere with the orderly administration of justice. Any lack of intent only goes to the question of penalty and not to the finding of contempt.

[3] The case of *Louis Vuitton Malletier, S.A. v. Bags O'Fun Inc.* (2003) 242 FTR 75 sets out four basis for contempt. The first is, the party alleging contempt has the burden of proving it; secondly, the elements must be proved beyond a reasonable doubt, thirdly, what must be established is knowledge of the existence of the Order and knowing disobedience; and fourthly, mens rea or good faith is relevant only as to mitigation.

[4] In this case, counsel had advised that the question of knowledge of the Order in Service is not an issue. I find nonetheless by reason of evidence of Mr. Kirby Brown that he had knowledge of the Order. The Order of Prothonotary Morneau, which is the show cause Order, speaks of actions both after the arrest on September 29, 2006 and after the Order of December 11, 2006. It's not restricted to just the Order of December 11, 2006. I find that on the evidence, that after September 29 and on or about December 6, 2006, Kirby Brown together with his son, Michael Brown, and others under their instruction, removed a considerable amount of gear normally used for mackerel fishing and replaced it with gear normally for shrimp fishing or seal fishing. They did so knowing of the Order and knowing that to do so was in violation of that Order. I find, on the authorities handed to me by counsel for the Defendants, namely the case of *Whyte v. "Edward Maskall"* 2002 FCT 271 and *Pacific Tractor Rentals (VI) Ltd. V. The Ship "Palaquin"* (1997), 115 FTR 224, that all gear normally put into the ship as of the time of the arrest is subject to the arrest. I find that when that gear is on the ship, it should not have been removed. Here it was removed from the vessel and moved to another place. There seems to have been no effort to identify this equipment as having been removed or to move it with the vessel or at some time reasonably thereafter, so that it would remain continuously with the vessel or clearly within the notice of the Sherriff or other person dealing with the arrest.

[5] With respect to the CSI inspection, there is some doubt in my mind whether that would be considered to be reasonably necessary to keep the vessel insured and in some form of order for purposes of resale. I do not put much emphasis on that. In all, I find that it is appropriate to fine the Defendants \$5,000.00 jointly and severally and that the Plaintiffs shall have their costs which I fix at \$15,000.00.

“Roger T. Hughes”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-1723-06
STYLE OF CAUSE:	LABRADOR SEA PRODUCTS INCORPORATED, ET AL v. THE SHIP M/V “NORTHERN AUK” ET AL..
PLACE OF HEARING:	ST. JOHN’S, NEWFOUNDLAND AND LABRADOR
DATE OF HEARING:	JUNE 21, 2007
REASONS FOR ORDER OF THE COURT BY:	HUGHES, J.
<u>APPEARANCES:</u>	
Mr. John Mate	FOR THE PLAINTIFF
Mr. Owen Myers	FOR THE DEFENDANT
<u>SOLICITORS OF RECORD:</u>	
Cox Palmer St. John’s, NL	FOR THE PLAINTIFF
Owen Myers Barrister & Solicitor St. John’s, NL	FOR THE DEFENDANT