

Date: 20070719

Docket: T-2033-06

Citation: 2007 FC 757

[ENGLISH TRANSLATION]

ADMIRALTY ACTION *IN REM*

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Plaintiff

and

CARAPEC NO. 1

Defendant

REASONS FOR ORDER

PROTHONOTARY MORNEAU

[1] This is a motion by the plaintiff under Rules 298 and 490 et seq. of the *Federal Courts Rules* (the Rules) to have this Court order authorizing the sale of the vessel “Carapec No. 1” (the Vessel)

to a bidder, accepted by the plaintiff following a bidding process, with the stated goal of dismantling the Vessel so that the Port of Matane is rid of it.

Essential background

[2] It appears that the Vessel has been moored at the Port of Matane since January 4, 2001, i.e. for more than six (6) years, with no crew aboard.

[3] Since the Vessel has been moored at the Port of Matane, its owners have never paid the mooring charges owed, and apparently owe the plaintiff more than \$40,000 for that purpose.

[4] Furthermore, Transport Canada authorities have ordered the representatives and owners of the Vessel to move it outside the Port of Matane on several occasions. This removal never took place.

[5] The Vessel has been seized since November 21, 2006, without any security for its release having been posted with this Court.

[6] In her motion, the plaintiff argues that the Vessel constitutes a nuisance and risk to the environment and marine safety in the Port of Matane. According to the plaintiff, since the Vessel has not been maintained for many years, its condition is deteriorating quickly, raising fears that an incident involving it will occur.

[7] Moreover, it appears that, despite the many undertakings by the representatives and individuals who are apparently responsible for the Vessel to move it outside the Port of Matane, the Vessel is still, as mentioned above, moored at the Port of Matane as of the date hereof.

[8] According to an assessment of the Vessel's market value, which was conducted on behalf of the plaintiff by Mr. Richard Breton, marine expert, on August 21, 2006 (the Breton report), the Vessel has a market value of \$0.

[9] The defendant challenges this motion by the plaintiff, highlighting that it does not acknowledge owing mooring fees to the plaintiff, and that it is false to consider the plaintiff's claims regarding the various risks posed by the Vessel to be founded, as it has been moored at the Port of Matane for over six (6) years and nothing has happened. Furthermore, it filed part of an assessment conducted in November 2003 by a naval architect, who assessed the hull of the Vessel to be worth around \$400,000.

[10] The defendant also points out, through Mr. Gaston Langlais, who appears as the authorized representative of the Vessel's owner, the company Figaro Transport Inc., that it is currently seeking funding to convert the Vessel into a ferry and that, in addition, it was just recently in talks with a potential buyer, where a sum of \$100,000 was discussed.

[11] Finally, Mr. Langlais indicates to the Court that he has already undertaken to rid the Matane wharf of the Vessel by September 30, 2007. Thus, even if the Court decided to allow this motion by

the plaintiff, the Vessel would have already left the Port of Matane wharf before the conclusions sought could be enforced.

Analysis

[12] There are no doubts that this Court has jurisdiction over all aspects of the case and that it can, under Rule 490(1)(a) and this Court's case law, order the private sale of a vessel, even though the main dispute is not finished.

[13] Here, I do not believe that it is the plaintiff's likely well-founded right to her past mooring fees that would lead us to side with the plaintiff. The removal and dismantling operation that she proposes will bring it nothing in terms of money, but rather cost her a certain amount of money. However, removing the Vessel would put an end to the growing invoice for those Vessel fees and maintenance charges that she appears to have incurred in the past.

[14] As for the risk to the environment, strictly speaking, I do not believe that the Breton report or Mr. Bélanger's affidavit, which was submitted by the plaintiff in support of her motion, establish a short- or medium-term risk that an environmental incident will occur due to the Vessel's presence. Although each passing week adds to the time that the Vessel is left to deteriorate, there does not appear to be an imminent risk under this strict aspect.

[15] However, it appears that the defendant, Mr. Langlais, was called upon by the authorities in question on at least two previous occasions to move the Vessel outside the port. The defendant never complied, despite Mr. Langlais' undertaking in that regard.

[16] In his affidavit dated May 28, 2007, Mr. Bélanger indicates, inter alia, that on November 3, 2005, he ordered Mr. Langlais, under the statutory powers available to him, to move the Vessel outside the Port of Matane. At paragraphs 12 to 15 of his affidavit, he indicates that he ordered this measure due to the following context:

[TRANSLATION]

12. I deemed then that the vessel *Carapec No. 1* presented a risk to the Matane port facilities and presented a risk to marine safety due to its lamentable condition;
13. Through that same order, I also informed Mr. Gaston Langlais that unless he complied with that order, actions would be taken to rectify the situation at the expense of the owner and anyone responsible for the vessel;
14. Following a meeting between Mr. Gaston Langlais and myself, Mr. Langlais undertook to take the necessary measures to secure the vessel for the winter of 2005-2006 and to move it outside the Port of Matane no later than June 1, 2006, all as it appears from a copy of a letter by Mr. Gaston Langlais dated November 5, 2005, which is enclosed with my affidavit as **Exhibit "D"**;
15. However, despite this undertaking, the vessel *Carapec No. 1* is still moored at the Port of Matane as of the date hereof;

(Emphasis added)

[17] This order was never challenged in judicial review. Its appropriateness, reasonableness, and validity have therefore been in place since it was issued. We must therefore hold that this perception by the plaintiff regarding the risks associated with port facilities and marine safety are in fact still present, that they are of some importance, and that the defendant paid absolutely no heed to them, given, on the one hand, the time that has passed since the order to move in November 2005 and, on the other hand, the non-compliance with the undertaking to move the Vessel. In this regard, we cannot give any weight to the defendant's new undertaking to move the Vessel by September 30, 2007. Likewise, the sales or funding steps raised by the defendant are far too vague and recent for the Court to be able to accept them to avoid moving the Vessel.

[18] Finally, with respect to the Vessel's current value, the defendant's partial filing of a study dating to 2003 for special purposes cannot prevail over the filing and contents of the Breton report. Thus, this Court accepts the latter report with respect to the Vessel's complete lack of market value and the sales process of the Vessel proposed by the plaintiff.

[19] In sum, the mooring and maintenance fees that will still be incurred if nothing is done with the Vessel, the established risk that the Vessel poses to the port facilities and marine safety, and the fact that the Vessel is not maintained are all good reasons to authorize the sale of the Vessel at this time. (See, *inter alia*, *Brotchie v. Ship Karey T* (1994), 83 F.T.R. 262 and *Canada v. Horizons Unbound Rehabilitation & Training Society*) (1996), 125 F.T.R. 81). Moreover, the Vessel's lack of market value fully justifies the process suggested by the plaintiff.

[20] Accordingly, this motion by the plaintiff will be allowed, with costs, and the Court will give way in the order accompanying these reasons to the conclusions sought by the plaintiff.

“Richard Morneau”

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2033-06

STYLE OF CAUSE: HER MAJESTY THE QUEEN IN RIGHT OF
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Plaintiff
and
CARAPEC NO. 1
Defendant

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: July 19, 2007

REASONS FOR ORDER: PROTHONOTARY MORNEAU

DATED: July 19, 2007

APPEARANCES:

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