Date: 20081216

Docket: T-1793-08

Citation: 2008 FC 1376

Montréal, Quebec, December 16, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

RIO TINTO SHIPPING (ASIA) PTE LTD.

Applicant

and

KOREA LINE CORPORATION
and
GLORY WEALTH PTE LTD.

Respondents

REASONS FOR ORDER AND ORDER

I. Overview

[1] This is a situation where Rio Tinto, the Applicant, is facing conflicting claims from the Respondents with respect to the payment of freight for the carriage of cargo. Should Rio Tinto pay either Glory Wealth Pte Ltd. or Korea Line Corporation, Rio Tinto would be doing so at its own peril. In *G. & N. Angelakis Shipping Co. S.A. v. Compagnie National Algerienne de Navigation (The "Attika Hope")*, [1988] 1 Lloyd's Rep. 439 (Comm. Ct.), a voyage charterer was facing competing claims for the payment of the freight between two parties. The owner of the vessel

sought to exercise his lien on the sub-freight while the assignee in the rights of the time charterer sought to enforce his rights to payment. Justice Steyn determined, however, that the assignee had been entitled to the freight. The voyage charterer had paid the owner of the vessel at his peril and was bound to make a second payment to the assignee.

[2] In order to avoid any liability for multiple payments, Rio Tinto seeks to extricate itself from the competing claims of Korea Line and Glory Wealth. For this reason, Rio Tinto claims no interest in the freight. In any case, Rio Tinto recognizes its obligation to pay the freight under the terms of the voyage charterparty. Moreover, it has shown its willingness to place the disputed portion of the freight in escrow for the Respondents. Given that the Respondents have failed to agree to such an in escrow payment, Rio Tinto is now willing to deposit the disputed amount with this Court or dispose of it as this Court directs.

[3] Rio Tinto meets the requirements of Rule 108.(1) of the *Federal Courts Rules*, SOR/98-106 and thus properly brings this *ex parte* motion.

[4] [37] … it should be said for clarity and completeness, because the issue of the availability of a court injunction and other judicial remedies was ever present in the arguments presented by the parties to this Court, that the initial process in injunction undertaken by the court in these proceedings was within the jurisdiction of the court, and that this jurisdiction has not been reduced by the labour relations statute or indeed by the presence of the collective agreement and its provision for arbitration.

(*St. Anne Nackawic Pulp & Paper v. CPU*, [1986] 1 S.C.R. 704).

II. Introduction

[5] In this *ex parte* motion, the Applicant, Rio Tinto, seeks by way of interpleader directions under Rule 108.(1) of the *Federal Courts Rules* and an Order directing that US$1,576,246.79 be deposited with the Court, at which time any and all liability of Rio Tinto will be extinguished.

III. Background

The Charterparty

[6] On October 16, 2008, Rio Tinto entered into a voyage charterparty (Voyage Charterparty) with Respondent Glory Wealth for the use of the vessel M/V Ermis to carry a load of Carol Lake iron ore pellets (Cargo) from Sept-Îles, Québec, to Whyalla, Australia. Under this agreement, Rio Tinto is the “Charterer” and Glory Wealth is the “Owner”.

[7] The parties agreed to a Voyage Charterparty on the same terms as an earlier voyage charterparty (Master Charterparty) with any modifications and amendments provided for in the Fixture Recap, which is a summary of terms of a charterparty. The Voyage Charterparty provided, both in the Fixture Recap and at Clause 21 of the Master Charterparty, that Rio Tinto would pay the fee for transporting the Cargo (freight) to Glory Wealth's nominated bank account within 10 banking days of the Bill of Lading date.

The Contract of Sale

[8] The shipper of the Cargo, Iron Ore Company of Canada (IOC), of whom Rio Tinto is the majority shareholder, entered into a contract of sale with OneSteel Manufacturing Pty Ltd.

(OneSteel) for the Carol Lake iron ore pellets. This contract of sale stipulated that IOC would sell and ship the Cargo to OneSteel in consideration for an irrevocable letter of credit negotiable by IOC upon presentation of, *inter alia*, a clean on board bill of lading to the paying bank (the Letter of Credit). On October 22, 2008, the Letter of Credit, with a November 30, 2008 expiry date, was issued and transmitted to IOC.

[9] The Cargo, consisting of 43,964 mts of Carol lake iron ore pellets, was loaded on the M/V Ermis in Sept-Îles, on November 7, 2008, and the ship sailed soon thereafter bound for Whyalla, Australia. On that same day, a bill of lading was prepared according to the instructions of Rio Tinto. This bill of lading was signed by Iron Ore Company of Canada, Marine Services (IOC (Marine)), which is the agent nominated by Rio Tinto and appointed by Glory Wealth.

[10] In accordance with the Voyage Charterparty, the freight, in the amount of US$1,576,246.79, is now (as extended to December 17, 2008) payable to Glory Wealth.

The Notice of Lien on Sub-Freight

[11] On November 4, 2008, Rio Tinto received a notice from Respondent Korea Line purporting to exercise a lien upon the freight due under the Voyage Charterparty (Notice of Lien). Korea Line indicated in the Notice of Lien that the M/V Ermis was the subject of a time charterparty, dated August 7, 2007, (Time Charterparty) between Parkroad Corporation (Parkroad) as deponent owner and Glory Wealth as time charterer. The Notice of Lien further indicated that by an assignment, dated October 24, 2008, and a notice of assignment dated October 27, 2008, Parkroad had assigned

the benefit of the Time Charterparty to Korea Line. Finally, the Notice of Lien also included a statement of account showing that Glory Wealth failed to pay US$1,206,823.18 for hire payable under the Time Charterparty.

[12] On this basis, Korea Line purports to exercise a lien on all sub-freights pursuant to Clause 18 of the Time Charterparty, which provides that Parkroad shall have a lien upon all cargoes and all sub-freights and all sub-hires for any amounts due under the Time Charterparty. Accordingly, Korea Line thereby demanded that the freight owing to Glory Wealth under the Voyage Charterparty, US$1,576,246.79, be paid directly to it.

The Failure of the Respondents to Resolve the Dispute over the payment of the freight

[13] Glory Wealth directed that Rio Tinto not pay any portion of the freight to Korea Line. It denied owing Parkroad any outstanding payments and contested the validity of the assignment made by Parkroad in favour of Korea Line.

[14] Rio Tinto responded to both parties by indicating that, while its intention was to pay the freight, it was not for Rio Tinto to determine who was entitled to the freight since it had conflicting obligations under the Voyage Charterparty and the Notice of Lien. Accordingly, Rio Tinto suggested that the parties agree that the contested amount be deposited in escrow pending the resolution of their dispute, failing which, Rio Tinto would seek the assistance of the Court.

[15] To date, Glory Wealth and Korea Line have failed to resolve their dispute or to reach an agreement with respect to the payment of freight into escrow.

IV. Issues

[16] (1) Does the Applicant meet the requirements of Rule 108.(1) of the *Federal Courts Rules*?

(2) Should the freight be deposited with this Court?

V. Analysis

[17] The interpleader rule of the *Federal Courts Rules* provides as follows:

108. (1) Where two or more persons make conflicting claims against another person in respect of property in the possession of that person and that person	**108.** (1) Lorsque deux ou plusieurs personnes font valoir des réclamations contradictoires contre une autre personne à l'égard de biens qui sont en la possession de celle-ci, cette dernière peut, par voie de requête *ex parte*, demander des directives sur la façon de trancher ces réclamations, si :
(*a*) claims no interest in the property, and	*a*) d'une part, elle ne revendique aucun droit sur ces biens;
(*b*) is willing to deposit the property with the Court or dispose of it as the Court directs,	*b*) d'autre part, elle accepte de remettre les biens à la Cour ou d'en disposer selon les directives de celle-ci.
that person may bring an *ex parte* motion for directions as to how the claims are to be decided	

(1) Does the Applicant meet the requirements of Rule 108.(1) of the *Federal Courts Rules*?

[18] This is a situation where two parties, the Respondents, are making conflicting claims against the freight, which is property in possession of Rio Tinto. Should Rio Tinto pay either Glory Wealth or Korea Line, Rio Tinto would be doing so at its own peril. In *G. & N. Angelakis Shipping Co. S.A. v. Compagnie National Algerienne de Navigation (The Attika Hope)*, [1988] 1 Lloyd's Rep. 439 (Comm. Ct.), a voyage charterer was facing competing claims for the payment of the freight between two parties. The owner of the vessel sought to exercise his lien on the sub-freight while the assignee in the rights of the time charterer sought to enforce his rights to payment. Justice Steyn determined, however, that the assignee had been entitled to the freight. The voyage charterer had paid the owner of the vessel at his peril and was bound to make a second payment to the assignee.

[19] In order to avoid any liability for multiple payments, Rio Tinto seeks to extricate itself from the competing claims of Korea Line and Glory Wealth. For this reason, Rio Tinto claims no interest in the freight. In any case, Rio Tinto recognizes its obligation to pay the freight under the terms of the Voyage Charterparty. Moreover, it has shown its willingness to place the disputed portion of the freight in escrow for the Respondents. Given that the Respondents have failed to agree to such an in escrow payment, Rio Tinto is now willing to deposit the disputed amount with this Court or dispose of it as this Court directs.

[20] Rio Tinto meets the requirements of Rule 108.(1) of the *Federal Courts Rules* and thus properly brings this *ex parte* motion.

(2) Should the freight be deposited with this Court?

[21] Rio Tinto is to deposit US$1,576,246.79 with this Court. Recognizing the lack of information, however, the Court is unable to evaluate the exact amount subject to competing claims. As further evidence is required, by which all that could be attributed to any entity or appropriated therefrom or thereto is substantiated in light of any and all evidence to be made available in proceedings on the merits of the issues, the Court presently concludes that the entire amount of the freight, that is, US$1,576,246.79, be deposited with the Court. Upon depositing the full amount with this Court, any and all liability of Rio Tinto (Asia) Pte Ltd. in respect of the payment of such portion of the freight be extinguished.

ORDER

THIS COURT ORDERS

1. The freight payable under the voyage charterparty, dated October 16, 2008, between Rio Tinto Shipping (Asia) Pte. Ltd. and Glory Wealth Pte Ltd., up to the amount of US$1,576,246.79 be deposited with the Court;

2. Upon payment of US$1,576,246.79, any and all liability of Rio Tinto Shipping (Asia) Pte Ltd. in respect of the payment of such portion of the freight be extinguished;

3. The whole with costs against Glory Wealth Pte Ltd. and Korea Line Corporation;

4. It will be for the parties, Glory Wealth Pte Ltd. and Korea Line Corporation, in and of themselves, to decide any further procedures in their regard; they may want to put into motion subsequently.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1793-08
STYLE OF CAUSE:	RIO TINTO SHIPPING (ASIA) PTE LTD. v. KOREA LINE CORPORATION and GLORY WEALTH PTE LTD.
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APPEARANCES:

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Jean-Marie Fontaine	FOR THE RESPONDENT GLORY WEALTH PTE LTD.

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