

Federal Court



Cour fédérale

Date: 20110719

Docket: T-1226-10

Citation: 2011 FC 904

Vancouver, British Columbia, July 19, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

**ADMIRALTY ACTION *IN REM* AGAINST THE VESSEL "QE014226C010"
AND *IN PERSONAM***

BETWEEN:

OFFSHORE INTERIORS INC.

Plaintiff

and

**WORLDSPAN MARINE INC.,
CRESCENT CUSTOM YACHTS INC.,
THE OWNERS AND ALL OTHERS
INTERESTED IN THE VESSEL
"QE014226C010"**

Defendants

REASONS FOR ORDER AND ORDER

I. Overview

[1] The Defendants appeal a decision of Prothonotary Lafrenière granting the Plaintiff, Offshore Interiors Inc., default judgment and denying the Defendants an extension of time to file a Statement of Defence.

[2] The Defendants argue that the learned Prothonotary erred in his findings that a valid contract existed between the Plaintiff and the Defendants, that the Defendant Crescent Custom Yachts Inc. was an agent of the Defendant Worldspan Marine Inc., and that the Defendants had failed to show that their defence to Offshore's action had merit.

[3] I am not persuaded that the Prothonotary erred in respect of any of his findings and must, therefore, dismiss this appeal.

II. Factual Background

[4] Offshore Interiors Inc. builds and installs custom cabinetry on yachts. Offshore was hired by the Defendant Crescent Custom Yachts Inc. to build and install cabinetry on a 144-foot yacht that Crescent had been engaged by Worldspan Marine Inc. to build on behalf of a client of Worldspan. Crescent is a wholly-owned subsidiary of Worldspan.

[5] At a certain point in the construction of the yacht, Worldspan's client ceased making instalment payments. At that point, Offshore had already installed interior woodworking, some of which was paid for and some of which was not. Offshore commenced an action for the outstanding amounts against Crescent and Worldspan by way of a Statement of Claim served in August 2010. By that time, Offshore had already arrested the vessel. However, Offshore informed Worldspan that it would be holding off on its action and that it was not yet necessary to file a Statement of Defence. Eight months later, Offshore informed Worldspan that a statement of defence was now required, but the person who received that information apparently failed to notify others at Worldspan. Soon

thereafter, that person left the company. In due course, Crescent and Worldspan applied for an extension of time to file a statement of defence.

III. Prothonotary Lafrenière's Decision

[6] Prothonotary Lafrenière noted that the main issue was whether there was any merit to the defence put forward by the Defendants. He observed that the Defendants had conceded that there was a verbal agreement between Offshore and Crescent, that Offshore had provided services and materials pursuant to that agreement, that there was no dispute about the amount or the quality of the work, and that some invoices remain unpaid. However, the Defendants disputed whether the agreement constituted a valid contract, and questioned whether Crescent could be regarded as an agent of Worldspan.

[7] Prothonotary Lafrenière concluded there was overwhelming evidence that Worldspan owned the vessel and had absolute control over Crescent. He acknowledged that some minor terms of the contract between Offshore and Crescent might be in doubt, but was satisfied that judgment should nevertheless issue in Offshore's favour.

IV. Did Prothonotary Lafrenière Err?

[8] The main issues before the Prothonotary were questions of mixed fact and law: Did the evidence support Offshore's contention that it had a valid contract with Crescent? Did the evidence show that Crescent was an agent of Worldspan? Because the Prothonotary's decision was vital to a final issue in the case, the very outcome of Offshore's action, I must decide these questions anew.

[9] Regarding the contract, it is clear that there was a verbal agreement between Crescent and Offshore, and that at least some terms of the agreement were reduced to writing. The most important matters – the work to be done, the amounts to be billed, the deposits to be paid, the time frame for payments, interest on outstanding accounts – were clear. There were no disputes over these issues between Crescent and Offshore from June 2009 to the end of March 2010. Work was done; invoices arrived; payments were made.

[10] In support of its contention that a contract existed between it and Crescent, Offshore relied on the affidavit of its President, Mr. Robert Ruzzi. Mr. Ruzzi states that discussions on the work to be done and the amounts to be charged began in the spring of 2009. A document Offshore sent to Crescent on May 29, 2009 sets out the particulars. Work on the vessel began shortly thereafter. Obviously, there were no significant disputes on the main terms of their agreement.

[11] The Defendants have not offered any evidence to contradict the existence of a contract. They contend that the contract was not valid because not all of its terms were expressly agreed to. But their submissions do not seriously cast doubt on the existence of a valid contract for materials and services during the relevant time frame.

[12] On the question of agency, Offshore presented evidence showing that Worldspan was the owner of the vessel under construction, that Worldspan and Crescent shared a business address, that Worldspan and Crescent had a common director in Mr. James Hawkins (whose email address included the domain name “worldspanmarine”), that Worldspan used Crescent as a brand name, that Crescent engaged suppliers and trades for the construction of a vessel on behalf of a client of

Worldspan, and that payments to Worldspan from its client were distributed to Crescent without the need for invoices.

[13] The Defendants dispute that Worldspan and Crescent had an agency relationship, but have not offered evidence to support their position. While it is clear that the two companies are separate, and that Crescent is a subsidiary of Worldspan, this does not defeat the evidence put forward by Offshore establishing that Crescent was acting on Worldspan's behalf in building the vessel and engaging the services, such as those provided by Offshore, that were necessary to complete the work.

IV. Conclusion and Disposition

[14] Based on the evidence before Prothonotary Lafrenière and the submissions made to me, I am satisfied that the learned Prothonotary did not err in finding on the balance of probabilities that there was a valid contract between Offshore and Crescent and an agency relationship between Crescent and Worldspan. Accordingly, he did not err in finding that the Defendants had not presented evidence that their defence to the action was meritorious. It follows that he did not err in refusing to grant the Defendants an extension of time to file their statement of defence.

[15] The Defendants' appeal, therefore, is dismissed with costs.

ORDER

THIS COURT ORDERS that the Defendants' appeal is dismissed with costs.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1226-10

STYLE OF CAUSE: OFFSHORE INTERIORS INC. v.
THE VESSEL "QE014226C010) et al.

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: July 18, 2011

**REASONS FOR ORDER
AND ORDER:** O'REILLY J.

DATED: July 19, 2011

APPEARANCES:

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Dean P. Davison FOR THE DEFENDANTS

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