

Federal Court



Cour fédérale

**Date: 20130107**

**Dockets: T-484-11  
T-1-12**

**Citation: 2013 FC 9**

**Ottawa, Ontario, January 7, 2013**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**CAMECO CORPORATION  
CAMECO INC. AND  
CAMECO EUROPE LTD.**

**Plaintiffs**

**and**

**THE OWNERS AND ALL OTHERS  
INTERESTED IN THE SHIP "MCP  
ALTONA", THE SHIP "MCP ALTONA",  
MS MCP ALTONA GMBH & CO KG,  
HARTMANN SCHIFFAHRTS GMBH & CO,  
HARTMANN SHIPPING ASIA PTE LTD.,  
FRASER SURREY DOCKS LP AND  
PACIFIC RIM STEVEDORING LTD.**

**Defendants**

**ORDER REGARDING MARSHAL'S COSTS**

**UPON** motion on behalf of Caveator HSH Nordbank AG pursuant to Rule 414 of the *Federal Courts Rules* for an order reviewing and varying the Certificate of Assessment issued by Assessment Officer Johanne Parent on 3 October 2012, in which she disallowed portions of the costs incurred by the Bank on behalf of the acting marshal with regard to manning of the MCP

Altona and the renewal of her flag registration, having concluded that they were not reasonable marshal's costs.

**UPON REVIEWING** the records and the written and oral representations of counsel for the parties;

**WHEREAS** the Court should not intervene in an assessment officer's decision absent an error in principle or the award of an amount so unreasonable as to suggest such an error (*Aidan Butterfield v Attorney General of Canada*, 2008 FCA 385);

**THIS COURT ORDERS that** the motion is dismissed, with costs fixed in the amount of \$500, all inclusive.

#### **ENDORSEMENT**

The onus was on the Bank to provide evidence that the costs incurred of behalf of the acting marshal were reasonable and should therefore be allowed. The assessment officer was not under a duty to make inquiries or to request additional evidence that would justify allowing the expenses. She was, however, solely responsible for assessing the reasonableness of these costs (*Abbott Laboratories Ltd V Canada (Health)*, 2009 FC 399, [2009] FCJ No 494 (QL)).

As noted by the Federal Court of Appeal in *Merck & Co v Apotex Inc* 2008 FCA 371, [2008] FCJ No 1656 (QL), at para 14: “[i]n view of the limited material available to assessment

officers, determining what expenses are "reasonable" is often likely to do no more than rough justice between the parties and inevitably involves the exercise of a substantial degree of discretion on the part of assessment officers." In a further discussion on that issue, in *Madell v Canada*, 2011 FCA 105, [2011] FCJ No 432 (QL), at para 15, the Court observed that "a paucity of evidence may result in conservative allowances".

With regard to the manning of the ship, Assessment Officer Parent's decision to allow expenditures for only 13 of the 15 crew members should stand. She considered the evidence submitted by the Bank, *i.e.* Hartmann's policy regarding extra crew members, but found that these requirements regarded the crewing of ocean-going vessels, and that no evidence was submitted as to the minimum crew during anchorage.

As for the bareboat charterparty and registry renewal, she found that the expenses were necessary to maintain the ship in class and therefore keep her insurance in place pending sale, but allowed only 1/24th of the cost, as the renewal was extended for a period of 23 months beyond the date on which the ship was sold. Her decision to allow the expenses only up until the date of sale does not reflect an error in principle, considering that she was provided with no evidence that the registration could not be renewed for a shorter term or that the Bank could obtain no reimbursement for the remaining portion.

"Sean Harrington"

---

Judge