

Federal Court



Cour fédérale

Date: 20140410

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

Citation: 2014 FC 355

Vancouver, British Columbia, April 10, 2014

PRESENT: The Honourable Mr. Justice Harrington

ADMIRALTY ACTION *IN REM* AND *IN PERSONAM*

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

REASONS FOR ORDER AND ORDER

[1] H.S.H. Nordbank A.G., a caveator, and the mortgage creditor of the ship “MCP Altona”, has moved on its own behalf, and on behalf of the acting marshal, Nicholas Bailey, for a review

of the assessment of their respective costs by the assessment officer. She concluded that she did not have jurisdiction to assess the costs submitted on behalf of the Sheriff. She assessed the Bank's costs at \$28,827.12. The Bank submits that the assessment was unreasonable and should have been higher and that she indeed had jurisdiction to assess the Sheriff's costs which were the costs incurred on the debate as to whether certain expenses he incurred were contemplated by the order for the sale of the ship.

I. The Sheriff's Costs

[2] Very intricate arguments, pro and con, were submitted on behalf of the Sheriff and by Cameco Corporation as to the effect of the order for the sale of the ship and subsequent orders and directions I issued. As interesting as these submissions are, it is not necessary to reach any conclusion as to their merit. The fact remains that Cameco challenged some \$341,000 of the disbursements submitted by the Sheriff. The owners had remained in possession of the "MCP Altona" during her arrest, and were funded by the Bank. Cameco succeeded in having approximately \$174,000 of that amount struck as being outside the terms of the order for sale.

[3] Mr. Bailey, as Acting Sheriff, was an officer of the Court and had a duty to take care that disbursements he was submitting to the Court fell within the terms of the order for sale. He appears simply to have left matters to the Bank and to the owners.

[4] Counsel for the Bank, who took up his cause, proposes that fees on the taxation be fixed at \$15,000 all inclusive. This is a truly a case of divided success. Rather than send the matter

back to the assessment officer on the jurisdiction point, I shall tax the fees myself. I award nothing.

II. The Bank's Fees and Disbursements

[5] There are two points in issue. I had, by Order dated 20 February 2013, awarded the Bank fees on the priorities motion “at the low-end of Column IV” of Tariff B. Thereafter, the Bank requested that I reconsider that order on the grounds I did not address Item 24, being fees “as distinct from disbursements” for Counsel to travel to Saskatoon from Vancouver and return for the purposes of cross-examinations. I declined to do so.

[6] The assessment officer seems to take this as meaning that I awarded no disbursements for counsel for the Bank to travel from Vancouver to Saskatoon and back. That is clearly wrong. Item 24 of the Tariff deals with “fees” not “disbursements”.

[7] Subsection 1(3) of Tariff B provides that disbursements are not allowed unless they are reasonable. Attendance at Saskatoon was reasonable. The amount claimed of \$2,688.94 is reasonable, and so is to be awarded.

[8] The assessment officer erred in principle by considering the low-end of Column IV to be the lowest end. She drew a distinction between the “low-end” and the “lower-end”. There are a great many directions of this Court for costs at the “low-end” or “high-end” or “mid-range”. It is clear from my order of 20 February 2013 that I was ordering enhanced costs. I referred to the reasons in *Universal Sales Ltd v Edinburgh Assurance Co*, 2012 FC 1192, [2012] FCJ No 1292

(QL), and to the jurisprudence cited therein. By consistently applying the lowest end of Column IV we end up with an absurd result. The fees awarded are less than had the mid-range of the default column, Column III, been taken. After giving some examples to counsel at the hearing, I suggested that they try to reach an agreement as to the number of additional units to be awarded based on the “low-end” of Column IV. They came up with a reasonable number, 34 units. They shall be awarded, at \$130 per unit.

[9] Given that both motions were heard as one, and given divided success, and in order to finally bring the saga of the “MCP Altona” to an end, there shall be no order as to costs.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The motion for reassessment of the assessment officer's refusal to grant taxable fees to Acting Sheriff Nicholas Bailey is dismissed.
2. The motion for reassessment of the costs of H.S.H. Nordbank A.G. is granted. The taxable fees are increased by \$4,420 and disbursements by \$2,688.94 plus any applicable taxes.

"Sean Harrington"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-484-11
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STYLE OF CAUSE: CAMECO CORPORATION *ET AL*
v THE SHIP "MCP ALTONA" *ET AL*

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 8, 2014

REASONS FOR ORDER AND ORDER: HARRINGTON J.

DATED: APRIL 10, 2014

APPEARANCES:

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H.S.H. NORDBANK A.G.

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