

Federal Court



Cour fédérale

Date: 20110829

Docket: T-1226-10

Toronto, Ontario, August 29, 2011

PRESENT: Roger R. Lafrenière, Esquire
Case Management Judge

**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", AND
THE VESSEL "QE014226C010"**

Defendants

ORDER

UPON MOTION dated August 16, 2011, on behalf of the Plaintiff for the following Orders pursuant to *Federal Courts Rules* 3, 47, 55, 490, 491 and 492 that:

1. prior to any sale of the Vessel "QE014226C010" (the Vessel) the Court shall determine the rights of all claimants thereto on the following basis:

- (a) counsel for the Defendants shall deliver within 5 days after the pronouncement of this Order to counsel for the Plaintiff, a list of all current or potential *in rem* creditors presently known by the Defendants;

- (b) counsel for the Plaintiff will then notify in writing each of these current or potential *in rem* creditors that any claim against the Vessel by *in rem* creditors must be filed by Affidavit in the Federal Court of Canada, Vancouver Registry, on or before 4:00 p.m. PST Friday September 30, 2011, failing which their claim shall be barred. Counsel for the Plaintiff will also inform each *in rem* creditor that their Affidavit must contain all particulars and documents in support of their claim against the Vessel;

- (c) counsel for the Plaintiff will also advertise a notice to *in rem* creditors once in each of the *Vancouver Sun* and the *Vancouver Province* and such advertisement shall include the following information:
 - (i) the Vessel is under arrest at 27222 Lougheed Highway, Maple Ridge, British Columbia, Canada;

 - (ii) any claim against the Vessel by *in rem* creditors must be filed by Affidavit in the Federal Court of Canada, Vancouver Registry, on or before 4 p.m. PST Friday September 30, 2011, failing which their claim shall be barred;
and

- (iii) the Affidavit must contain all particulars and documents in support of the claim against the Vessel;
 - (d) any claim against the Vessel by *in rem* creditors must be filed by Affidavit in the Federal Court of Canada, Vancouver Registry on or before 4 p.m. PST Friday September 30, 2011, failing which the claim shall be barred. The Affidavit must contain all particulars and documents in support of the claim against the Vessel. The time for filing any additional Affidavit evidence such as that required for the proof of foreign law shall be reserved for the further direction of the Court; and
 - (e) all reasonable expenses of advertising the notice to creditors and all other costs, disbursements, commissions and other expenses necessary or inherent to giving effect to this Order incurred by Plaintiff's counsel shall be treated as and given the same priority as Sheriff's costs and shall be payable immediately from the proceeds of any subsequent sale;
2. all questions relating to the right of any claimant *in rem* against the Vessel and all questions respecting the priority of all *in rem* creditors shall be reserved until further Order of this Court and shall be determined at a subsequent hearing date, the date and time of which shall be set down by this Court upon further application by any interested party or claimant providing the time set out above for the filing of Affidavits has passed or alternatively by leave of this Court; and

3. sale of the Vessel and the process for advertising, conducting the sale, depositing the sale proceeds and payment out of the sale proceeds, if so required, shall be reserved until further Order of this Court and shall be determined at a subsequent hearing date or dates, the date and time of which shall be set down by this Court upon further application by any interested party or claimant providing the questions relating to the rights of any claimant and the questions respecting the priority of all creditors have been resolved or alternatively by leave of this Court;

AND UPON reading the motion record of the Plaintiff filed August 17, 2011 and the motion record of the Defendants, Worldspan Marine Inc. and Crescent Custom Yachts Inc. and the Vessel "QE014226C010" filed August 19, 2011;

AND UPON this Court taking note of the Order (the Claims Process Order) of Mr. Justice Pearlman made July 22, 2011 in the Supreme Court of British Columbia, Action No. S113550 (the CCAA Proceeding);

AND UPON hearing the submissions of Gary Wharton and Paul Mooney appearing for the Plaintiff, John Sandrelli and Jordan Schultz appearing for the Defendants Worldspan Marine Inc. and Crescent Custom Yachts Inc. and the Vessel "QE014226C010", John McLean appearing for Comerica Bank and Kieran Siddall and John Bromley appearing for the Intervenor Harold Sargeant III, Geoffrey Dabbs appearing for the Monitor Boale, Wood & Company Ltd. and Sandra Wilkinson appearing for the Director of Employment

Standards at the General Sittings in Vancouver on August 22, 2011, and by teleconference at a special sitting in Toronto on August 24, 2011;

AND UPON Boale, Wood & Company Ltd. (the Monitor) agreeing to be bound by the Order of this Court;

THIS COURT ORDERS that:

1. The Court shall determine the rights of all *in rem* claimants in respect of the Vessel on the following basis:
 - (a) the Monitor will notify in writing each current or potential *in rem* creditor known to the Defendants as follows:
 - (i) that any claim against the Vessel must be provided to the Monitor in accordance with the terms of the Claims Process Order;
 - (ii) the creditor must specify in its Proof of Claim that the creditor wishes to pursue a maritime claim against the Vessel; and
 - (iii) any claim by a creditor not following this process and providing a Proof of Claim to the Monitor by September 9, 2011 is forever barred;

- (b) the Monitor will advertise by notice to *in rem* creditors once in the *Vancouver Sun* and such advertisement shall include the following information:
- (i) the vessel, a 144' tri deck motor yacht currently under construction at Crescent Yachts and bearing hull number "QE14226C010" (the Vessel), is under arrest at 27222 Lougheed Highway, Maple Ridge, British Columbia, Canada;
 - (ii) on July 22, 2011, Mr. Justice Pearlman in the British Columbia Supreme Court pronounced an Order setting out a claims process for all creditors of the owner of the Vessel, Worldspan Marine Inc., as well as Crescent Custom Yachts Inc., Queenship Marine Industries Ltd., 27222 Developments Ltd. and Composite FRP Products Ltd. (the Claims Process Order);
 - (iii) pursuant to the terms of the Claims Process Order, claimants who wish to pursue maritime claims are required to file a Proof of Claim and specify whether they wish to assert a maritime claim;
 - (iv) if any claimant does not make their claim known to the Monitor by September 9, 2011 at 5 p.m. PST and does not specify that they wish to assert a maritime claim against the Vessel, any claims by such creditor against the Vessel are forever barred;

- (v) claims process materials can be obtained directly from the Monitor, Boale, Wood & Company Ltd. Suite 1140 – 800 West Pender Street, Vancouver, BC V6C 2V6 or via their website at www.boalewood.ca; and
- (vi) any creditor who has already filed a Proof of Claim with the Monitor and now wishes to assert a maritime claim against the Vessel may, on or before September 9, 2011, notify the Monitor to amend their claim in this regard;
- (c) all reasonable expenses of advertising the notice to creditors and all other costs, disbursements, commissions and other expenses necessary or inherent to giving effect to this Order incurred by the Monitor shall be treated as and given the same priority as Sheriff's costs and shall be payable immediately from the proceeds of any subsequent sale.

2. Where a claimant notifies the Monitor by September 9, 2011 that it wishes to assert a maritime claim against the Vessel, the following process will be following:

- (a) after September 9, 2011, the claimant will be notified in writing by the Monitor that they are required to file an Affidavit in Federal Court;
- (b) the Affidavit must contain all particulars and documents in support of the claim against the Vessel, specifying the nature of the claim in order that the Court can

determine if such a claim constitutes an *in rem* claim, and the priority position to be given to the claim;

(c) the Affidavit must be filed in the Federal Court of Canada, Vancouver Registry, on or before 4 p.m. PST on the 21st day following the day that the *in rem* creditor received the written notification; and

(d) where an *in rem* creditor does not file an Affidavit as specified above within the time specified, the *in rem* claim of such creditor shall be barred unless the Court grants an extension.

3. Notwithstanding the requirements of the Claims Process Order, any *in rem* claim asserted by the Petitioners in the CCAA Proceedings, or Harry Sargeant III or Comerica Bank, must be supported by an Affidavit as contemplated in paragraph 2(b) above, to be filed on or before October 14, 2011 or such claims will be barred, unless the Court grants an extension.

4. All questions relating to the right of any claimant *in rem* against the Vessel and all questions respecting the priority of all *in rem* creditors shall be reserved until further Order of this Court and shall be determined at a subsequent hearing date, the date and time of which shall be set down by this Court upon further application by any interested party or claimant providing the time set out above of September 9, 2011 has passed or alternatively by leave of this Court.

5. If so required, the sale of the Vessel and the process for advertising, conducting the sale, depositing the sale proceeds and payment out of the sale proceeds, shall be reserved until further Order of this Court.

“Roger R. Lafrenière”

Case Management Judge