

Federal Court



Cour fédérale

Date: 20111007

Docket: T-1226-10

Vancouver, British Columbia, October 7, 2011

PRESENT: The Honourable Mr. Justice Harrington

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 of the Plaintiff, Offshore Interiors Inc. for:

1. Orders pursuant to Federal Court Rules 3, 47, 55, 490, 491 and 492 that:
 - a. The Court approve the process for marketing and advertising the sale of the Vessel "QE014226C010" (the Vessel) and specifically:
 - i. The appointment of Fraser Yachts as the marketing firm hired to market advertise and arrange for the sale of the Vessel;

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- ii. The commission structure for the services of Fraser Yachts in marketing, advertising and arranging for the sale of the Vessel (the Commission Structure); and
 - iii. The initial listing price of the Vessel.
- b. The Court grant Fraser Yachts one or more priority charges against the Vessel with priority equivalent to that of an Admiralty Marshall as security for the payment of any and all commissions earned by and due and owing to Fraser Yachts under the Commission Structure.

AND UPON reading the motion record of the Plaintiff filed September 28, 2011 and the motion record of the Defendants Worldspan Marine Inc. and Crescent Custom Yachts Inc. and the Vessel "QE014226C010" filed September 30, 2011;

AND UPON HEARINGS on October 3 and October 7, 2011, Paul Mooney appearing for the Plaintiff, Jordan Schultz appearing for the Defendants Worldspan Marine Inc. and Crescent Custom Yachts Inc. and the Vessel "QE014226C010", John McLean QC appearing for Comerica Bank, Kieran Siddall appearing for the Intervener Harold Sargeant III (Sargeant) and Geoffrey Dabbs (Allan Perry on October 7) appearing for the Monitor Boale, Wood & Company Ltd.;

THIS COURT ORDERS that:

- 1) Leave is granted to market the Vessel "QE014226C010" (the Vessel) for sale.
- 2) Worldspan Marine Inc. as registered owner (the Owner) of the Vessel is entitled to enter into a listing agreement with Fraser Yachts California Inc. (the Broker) for the marketing of the Vessel;
- 3) The form of the listing agreement between the Broker and the Owner shall be in the form attached as schedule "A" and shall include the following terms:
 - a) The gross asking price of the Vessel shall be \$18,900,000 USD (eighteen million nine hundred thousand United States dollars).

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- b) Upon sale, donation, trade, charter or exchange of the Vessel, or if it is otherwise transferred or conveyed during the term of the listing agreement, the Owner agrees to pay the Broker a fee of ten per cent (10%) of the agreed sales price on the first ten million dollars (\$10,000,000), five per cent (5%) on the second ten million dollars (\$10,000,000) and two and one half percent (2.5%) thereafter (the "Commission"). All expenses and disbursements incurred by the Broker in marketing the Vessel will be paid from the Commission and will not be extra charges payable by the Owner.
- c) The listing agreement shall be for a term of not more than six (6) months and can be extended for a further period of time by leave of this Court.
- d) No Commission will be due and owing to the Broker until and unless a sale of the Vessel is ultimately completed.
- e) No Commission will be due and owing to the Broker on any amounts expended by the buyer in excess of the purchase price in order to complete construction and take delivery of the Vessel.
- f) No Commission will be due and owing to the Broker where the ultimate buyer of the Vessel is Harry Sargeant III (Sargeant) or anyone or any corporate entity associated with Sargeant or any party that is currently negotiating with the Owner to purchase the Vessel.
- g) Item 9 of Schedule "A" shall read as "The Owner further agrees to pay the same fee as above should he at any time within six (6) months after the termination of this Agreement, sell, trade, exchange, charter or otherwise transfer or convey yacht in any manner to a purchaser or charterer to whom Broker, or one of its sublisted brokers, has submitted the yacht during the term of this Agreement."
- h) The listing agreement and its terms and conditions and any and all disputes of any nature and kind arising out of or in any way connected with the listing agreement and whether between the Owner, the Broker or any party with an interest in the Vessel or any of them will be governed by Canadian maritime law and the jurisdiction of the Federal Court of Canada, and each of the Broker and Owner agree to the exclusive jurisdiction of the Federal Court of Canada.

- 4) In marketing the Vessel, the Broker must inform any potential buyer or interested party that:
 - a) The Vessel is a 144' tri deck motor yacht currently under construction at Crescent Yachts and bearing hull number "QE014226C010".
 - b) The Vessel is under arrest and currently is under the jurisdiction of the Federal Court of Canada.
 - c) The Vessel will be sold in its present state, on an "as-is, where-is" basis with all existing faults, without any allowances for deficiencies or errors of description whatsoever and without any legal or contractual representations or warranties whatsoever, but free and clear of all liens and encumbrances pursuant to Canadian maritime law.
 - d) No buyer shall be obliged to retain the defendants Worldspan Marine Inc. and Crescent Custom Yachts Inc. to complete construction of the Vessel.
- 5) The Broker has no authority to sell the Vessel. Any sale of the Vessel must in all instances be first approved by the Federal Court of Canada before any agreement to sell the Vessel can be entered into between the buyer and the Owner. Such approval will be by way of an application to this Court, the date and time of which shall be set down by this Court upon further application by any interested party or claimant.
- 6) Although not a marshal, any portion of the Commission earned by the Broker on the ultimate sale of the Vessel shall be treated as and given the same priority as Admiralty Marshall's costs and shall be payable to the Broker from the proceeds of any sale of the Vessel upon the hearing of a subsequent application respecting the priority of all *in rem* creditors, the date and time of which shall be set down by this Court upon further application by any interested party or claimant.
- 7) During the course of the listing agreement, the Broker will provide the Monitor, Boale, Wood & Company Ltd., with a written report every two (2) weeks outlining the progress made in marketing the Vessel and any potential buyers for the Vessel.
- 8) Once the Broker has obtained a written offer for the Vessel the Broker must immediately notify the Monitor in writing and provide a copy of the offer to the Monitor. The Monitor

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must then notify all interested parties, either by written correspondence, telephone, email or internet posting on its website, within two (2) days receipt of such notice that:

- a) An offer has been obtained; and
- b) provide each such party with a copy of the offer

so that an application for sale by any interested party can be made to the Federal Court.

- 9) Any party, including the Monitor, affected by this Order may apply to this Court for an alteration or variation of this Order or direction as to the implementation of this Order. Without limiting the generality of the forgoing, Sargeant is at liberty to apply to terminate the operation of this Order upon committing to fund the completion of construction of the Vessel for delivery to Sargeant.

“Sean Harrington”
Judge

Schedule "A" to the Order of Mr. Justice Harrington, dated October 7, 2011



FRASER YACHTS

2353 Shelter Island Dr., San Diego, CA 92106, USA

T +1 619 225 0588 F +1 619 225 1325 Email: salessandiego@fraseryachts.com

**MULTIPLE LISTING
CENTRAL AGENCY EXCLUSIVE AGREEMENT**

1. It is agreed that Fraser Yachts California, INC.,/ (brokers), are hereby authorized to exclusively manage the sale of the yacht (vessel): _____ Length: _____ Type: _____ Year: _____ Documentation or State Registration #: _____ Homeport: _____, on a multiple listing basis. The yacht will be offered for sale at a gross asking price of _____ (\$ _____) and no other price shall be quoted without specific authorization from the Owner. Broker agrees to submit any and all offers of any type to the Owner for his consideration. The Owner agrees to sell the yacht to a broker customer, or to a customer of a sublisted broker who is ready, willing and able to purchase at this price, or at any other lower price and terms that the Owner may accept.
2. Broker is authorized to distribute information describing the yacht to its clients and to other sublisted brokers. The sublisted brokers are those brokers Fraser Yachts California normally exchanges Central Agency listings with on an individually agreed basis. It will be the responsibility of the Owner to supply pictures, plans, and all detailed information, and also to keep broker informed of any changes in location, price, or specifications of this yacht.
3. Upon sale, donation, trade, charter or exchange of the yacht, or if it is otherwise transferred or conveyed during the term of this Agreement, the Owner agrees to pay broker a fee of ten per cent (10%) of the agreed sales price on the first ten million dollars (\$10,000,000), five per cent (5%) on the second ten million dollars (\$10,000,000) and two and one half per cent (2.5%) thereafter.
4. Should the Owner decide to donate the vessel for tax purposes during the term of this agreement, or within one (1) year thereafter, Owner authorizes broker to negotiate the donation without charge or reduction in donated tax value to Owner. Broker, however, may negotiate a fee from the non-profit organization receiving the vessel as a gift.
5. It is specifically understood and agreed that broker does not assume and is not delegated care, custody or control of the yacht. Permission is hereby given to broker, brokers who are associated with broker, and sublisted brokers, to board and show the yacht.
6. This Agreement shall commence on (date) _____, and shall terminate on (date) _____. This Agreement may be cancelled by broker or the Owner by giving 90 day written notice of cancellation.

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- 7. This Agreement is binding on broker and the yacht Owner(s), their heirs, executors, successors, administrators and assigns.
- 8. Broker will make reduced contract advertising rates available to the owner for special advertising.
- 9. The Owner further agrees to pay the same fee as above should he at any time within one (1) year after the termination of this Agreement, sell, trade, exchange, charter or otherwise transfer or convey yacht in any manner to a purchaser or charterer to whom broker, or one of its sublisted brokers, has submitted the yacht during the term of this Agreement.
- 10. The Owner agrees to refer immediately to broker all inquiries or offers from other brokers or parties interested in purchasing the yacht during the life of this Agreement.

Acknowledged and accepted:

Owner Name (Typed or Printed)

Date:

Owner Signature

Listing Broker (Typed or Printed) Office

Listing Broker Signature Date:

OWNER INFORMATION:

Name(s): _____

Address: _____

Telephone (H) _____ (O) _____

FAX (H) _____ (O) _____

Cellular: _____

Location of vessel: _____

Showing Instructions: _____

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