Federal Court  Cour fédérale

Date: 20171006

Docket: T-1376-14

Citation: 2017 FC 893

Ottawa, Ontario, October 6, 2017

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

CERTAIN UNDERWRITERS AT LLOYD'S AND SOLINE TRADING LTD.

Plaintiffs

and

MEDITERRANEAN SHIPPING COMPANY S.A.

Defendant

and

4103831 CANADA INC. (OPERATING AND DOING BUSINESS UNDER THE TRADE NAME OF TRANS SALONIKIOS)

Third Party

REASONS FOR ORDER AND ORDER

I. Introduction

[1] This is an appeal made pursuant to rule 51 of the *Federal Courts Rules*, SOR/98-106 [the Rules], of an order of Prothonotary Mireille Tabib, dated May 8, 2017 [the Order], dismissing the Defendant's third-party claim against 4103831 Canada Inc. [Trans Salonikios] on the ground that this Court lacks jurisdiction to entertain it.

II. Context

[2] The Defendant, Mediterranean Shipping Company S.A. [MSC], is a marine carrier. In June 2013, it agreed in a contract evidenced by a bill of landing upon which the Plaintiff, Soline Trading Ltd. was designated as the consignee, to carry a container said to contain a cargo of 1,000 cartons of frozen shrimps from the port of Guayaquil, in Ecuador, to the Port of Montreal.

[3] On June 26, 2013, the container was discharged at the Port of Montreal and stored at Termont Terminal's yard, awaiting pick-up. Termont is a stevedoring company and terminal operator. The key allegations that form the basis of the Plaintiffs' claim against MSC were summarized as follows by Prothonotary Tabib:

> [4] […] On that same date, Trans Salonikios, a trucking company, showed up at Termont to take possession of the container. Termont released the cargo to Trans Salonikios. However, Trans Salonikios had not been mandated by the consignee of the cargo, the Plaintiff Soline Trading Ltd., but had either unlawfully obtained the release code for the purpose of stealing the cargo or had been dispatched by person or persons unknown who had unlawfully obtained the release code. The cargo was never delivered to its rightful owner. The Plaintiff therefore sues MSC, as carrier, holding it liable for wrongful delivery of the cargo.

[4] MSC denies any liability for the wrongful delivery of the cargo, claiming that the contract of carriage was at an end the minute the cargo was discharged in Montreal and placed in the possession of Termont. As eluded to at the outset of these Reasons, MSC also seeks to be indemnified by Trans Salonikios, through a third party claim, in case any judgment is rendered against it in favour of the Plaintiffs on the basis that the loss incurred by the wrongful delivery of the cargo was the result of the unlawful and negligent actions of Trans Salonikios.

[5] Trans Salonikios moved to have MSC's third party claim struck out for want of jurisdiction. It contends that this Court lacks jurisdiction over that claim on the basis that its maritime law jurisdiction does not extend to land transportation of goods carried by sea, especially where, as is the case here, none of the parties allege the existence of a contractual relationship between Trans Salonikios and either of the Plaintiffs or MSC.

[6] MSC says that it is not "plain and obvious" that the Court lacks jurisdiction to entertain its third party claim pursuant to its general jurisdiction over claims arising by virtue of Canadian maritime law as provided for under paragraph 22(1) of the *Federal Courts Act*, RSC 1985, c F-7 [the Act].

[7] In support of its contention, MSC urged Prothonotary Tabib to consider a number of factual circumstances arising out of the discoveries held so far in this case. These circumstances are, as summarized by Prothonotary Tabib, at para 9 of her Order:

- that Trans Salonikios has recognized that it had a duty to MSC to return the container empty after it had been delivered and unloaded by its recipient and that it would be liable to MSC if it failed to do so;
- that Termont Terminal acts as agent for MSC in releasing cargo to truckers authorized to receive it;
- that the container in which the cargo was stowed was a reefer container box, which Termont was required to keep in a designated area and which it had to plug-in and monitor, and that MSC could be held liable to the cargo owner if Termont had failed in its duty to do so; and
- that, as is required by modern methods of sea transportation, of logistics of transit and of movement of containerized cargo, there is a great degree of integration between the operations of Termont and the operations of Trans Salonikios. Truckers like Trans Salonikios must be vetted and certified by Termont; they have access to the terminal's computer system to track the availability of containers and to ensure that they have the correct equipment for pickup.

[8] Although no evidence of these facts was adduced in the motion's materials, Prothonotary Tabib nevertheless considered them as if they were allegations in the pleadings. Taking these facts and all alleged facts in the pleadings as proven, she concluded that it is plain and obvious that this Court has no jurisdiction to hear the third party claim. Her rationale for so concluding is found at paragraph 11 of the Order:

> [11] Any claim against Trans Salonikios in this matter, whether it had been made directly by the Plaintiffs against Trans Salonikios or by way of MSC's third party claim for indemnity or contribution, can only be based in tort or extra-contractual liability.

> That liability would be based on Trans Salonikios' role as the trucker mandated by thieves to pick up the cargo from the marine terminal, or as a thief stealing directly from the terminal. Such a cause of action does not pertain to Canadian Maritime Law and does not, by any stretch of the imagination, relate to maritime or admiralty matters.

[9] Prothonotary Tabib dismissed MSC's contention that its claim against Trans Salonikios, being based on the theft of cargo from a sea terminal, is indistinguishable from the claim considered in *ITO – International Terminal Operators v Miida Electronics Inc*, [1986] 1 SCR 752 [*ITO*], noting that the cause of action in *ITO* was asserted against the ocean carrier and the terminal operator, not, as is the case here, against a land carrier. She further held:

> [14] […].MSC's claim against Trans Salonikios is not a claim based on the execution of a contract of carriage of goods by sea or a claim based on the duties and liabilities of the operator of a sea terminal. What MSC puts at issue in its claim against Trans Salonikios is not MSC's obligations as a ship operator or as a carrier of goods by sea, or the obligations of Termont as the operator of a sea terminal, but strictly Trans Salonikios' obligations as a trucker or its conduct as a thief.

[10] As such, Prothonotary Tabib found that the present set of circumstances was much closer to that of the truckers in *Matsuura Machiner Corp v Hapag Lloyd AG*, [1997] FCJ No 360; *Sio Export Trading Co v The "Dart Europe"*, [1984] 1 FC 256 [*The "Dart Europe"*] and *Marley Co v Cast North America (1983) Inc* (1995), 94 FTR 45 [*Marley*] than that of the terminal operator in *ITO*. These cases stand for the premise that transportation by land carriers is not "so integrally connected to", nor "closely connected to" the voyage by sea as to fall under Canadian maritime law. She underscored the fact that it was even clearer here that Trans Salonikios' activities in the present case "are not part and parcel of the carriage by sea and that an action against it does not fall within the maritime jurisdiction of the Court" since, contrary to what was the case in these

three matters, Trans Salonikios is "not even alleged to be contractually bound to any part to the contract of carriage by sea" (Order, at para 19).

[11] She then dealt with two further arguments raised by MSC in response to Trans Salonikios' motion to strike. First, she dealt with MSC's contention that the present case being a matter of misdelivery of containerized cargo, the limits of Canadian Maritime Law, and, thereby, those of this Court's maritime law jurisdiction, need to be reassessed in light of evolving technology and practices in the transport logistics and movement of such cargo which, these days, require intricate logistical integration between the terminal operator and the trucker's activities.

[12] Prothonotary Tabib held that this argument was "miss[ing] the point" as the integration of the logistics between terminal operators and truckers did not bring the matter of the trucker's activities within federal jurisdiction "by association":

> [21] MSC's argument misses the point. It has already been recognized that terminal operators' activities are integrally connected to maritime matters and that their duties towards shipping lines and cargo owners are thus governed by Canadian Maritime Law; that would include terminal operators' duties to deliver the container to the proper consignee. The integration of the logistics between the terminal operator and truckers does not bring the matter of the trucker's activities within federal jurisdiction by association. The cause of action asserted by MSC against Trans Salonikios in this matter may arise because the terminal operator failed in its duties to ensure proper delivery, but it is not founded on the breach of the terminal operator's duties. It is founded solely on the extra-contractual responsibility of Trans Salonikios, as trucker or thief, towards MSC.
>
> [22] The integration of activities and logistics between Termont and Trans Salonikios is part of the *res gestae* in this matter, but it does not modify or affect the legal relationship between MSC as

> ocean carrier and Trans Salonikios as trucker. That relationship remains, as always, a matter governed by the law of the provinces.

[13] Second, Prothonotary Tabib addressed MSC's argument regarding judicial economy and the risk of contradictory judgments. Citing this Court' judgment in *The "Dart Europe"*, she concluded that the desirability of keeping all the parties concerned with the outcome of an action - the land carrier, the cargo owner, the shipper, the ocean carrier, the vessel and the consignee - as parties to the action cannot clothe the Court with a jurisdiction that it does not otherwise possess.

[14] MSC has essentially made the same arguments on appeal.

[15] Both before Prothonotary Tabib and in this appeal, the Plaintiffs have taken no position but have cautioned that the Court should refrain from making any determination of fact that would affect their claim against MSC, in particular when it comes to MSC's contention that the contract of carriage by sea it entered into with the cargo owners, came to an end at the time the cargo was discharged and placed in possession of Termont Terminal.

III. Issue and Standard of Review

[16] In order to strike MSC's third party claim, Prothonotary Tabib had to be satisfied that the Court's lack of jurisdiction is "plain and obvious" or "beyond reasonable doubt" (*Sokolowska v Canada*, 2005 FCA 29, at paras 14-15 [*Sokolowska*]; *Hodgson v Ermineskin Indian Band No 942*, [2000] FCJ No 313 (FCTD) at para 10; *Dumont v Canada (Attorney General)*, [1990] 1 SCR 279, at p 280).

[17] Recently, in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*], a five-member panel of the Federal Court of Appeal abandoned the standard of review applicable to discretionary orders made by prothonotaries enunciated in *Canada v Aqua-Gem Investments Ltd*, [1993] 2 FC 425, 149 NR 273 [*Aqua-Gem*] and replaced it by the standard applicable to first instance decisions set out by the Supreme Court of Canada in *Housen v Nikolaisen*, [2002] 2 SCR 235 [*Housen*].

[18] By adopting the *Housen* standard, the Federal Court of Appeal ruled that discretionary orders of prothonotaries "should only be interfered with when such decisions are incorrect in law or are based on a palpable and overriding error in regard to the facts" (*Hospira*, at para 64). In particular, it held that the supervisory role of judges over prothonotaries under Rule 51 no longer requires that a distinction be made between discretionary orders that are vital to the outcome of a case and those that are not and that orders that are held to be vital to the outcome of a case be subject to a *de novo* hearing (*Hospira*, at para 64).

[19] Here, there is no doubt – and this is not disputed by the parties - that Prothonotary Tabib applied the correct legal test in asking herself whether it is plain and obvious that this Court has no jurisdiction to hear MSC's third party claim against Trans Salonikios (Order, at para 10). The issue to be resolved in this appeal then is whether the answer she gave to that question is legally defensible. In my view, it is.

IV. Analysis

[20] The Federal Court has been established pursuant to section 101 of the *Constitution Act, 1867*, for the "better Administration of the Laws of Canada". Unlike the jurisdiction of the provincial superior courts, which is inherent and general, the Federal Court derives its authority from statutes (*R v Thomas Fuller Const Co (1958) Ltd*, [1980] 1 SCR 695, at p 713; *Ordon Estate v Grail*, [1998] 3 SCR 437, at para 46 [*Ordon Estate*]; *Canada (Attorney General) v Telezone Inc*, 2010 SCC 62, at para 43).

[21] It is now settled law that in order to determine whether this Court has jurisdiction over a subject matter, the following test, as first set out by the Supreme Court of Canada in *Quebec North Shore Paper Co v Canadian Pacific Ltd*, [1977] 2 SCR 1054 [*Quebec North Shore*] and *McNamara Construction et al., v The Queen*, [1977] 2 SCR 654, and then later on, notably, in *ITO*, has to be met:

a) There must be a statutory grant of jurisdiction by Parliament;

b) There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction; and

c) The law on which the case is based must be a "law of Canada" as these terms are used in section 101 of the *Constitution Act, 1867*.

[22] MSC claims that paragraph 22(1) of the Act provides the statutory grant of jurisdiction over its third party claim as it confers on this Court concurrent jurisdiction, between subjects and subjects, in "all cases in which a claim for relief is made or a remedy is sought under or by virtue

of Canadian maritime law". It says that its claim against Trans Salonikios falls within the definition of "Canadian maritime law" as set out at paragraph 2(1) of the Act, which encompasses two categories of Canadian maritime law: (i) the law that was administered by the Exchequer Court of Canada on its Admiralty side by virtue of the *Admiralty Act* or any other statute, and (ii) the law that would have been so administered if that court had had on its Admiralty side unlimited jurisdiction in relation to maritime and admiralty matters (see also: *ITO*, at p 769).

[23] It insists that paragraph 22(1) of the Act is to be given "a broad and purposeful interpretation so as to include all claims which stem from a contract relating to the carriage of goods by sea" (*Pantainer Ltd v 996660 Ontario*, [2000] FCJ No 334 (QL), 183 FTR 211 , at para 100 [*Pantainer*]) and that the words "maritime" and "admiralty" of the definition of "Canadian maritime law" are to be interpreted "within the modern context of commerce and shipping" (*ITO*, at p 774; *Ordon Estate*, at para 24).

[24] MSC underscores the fact that the second part of that definition, as held in *ITO*, "was adopted for the purpose of assuring that Canadian maritime law would include unlimited jurisdiction in relation to maritime and admiralty matters" (*ITO*, at p 774). Hence, a subject-matter will be within Canadian maritime law, and therefore within this Court's jurisdiction, if it is "so integrally connected to maritime matters as to be legitimate Canadian maritime law within federal legislative competence" (*ITO*, at p 774). Tortuous activities that are sufficiently connected with navigation and shipping are one such example of the broad scope of what the definition of Canadian maritime law encompasses (*Whitbread v Walley*, [1990] 3 SCR 1273, at

p 1290 [*Whitbread*]; *Ruby Trading S.A. v Parsons*, [2001] 2 FC 174 (FCA) at paras 28-29 [*Rudy Trading*]). It submits, therefore, that the second part of the test set out in *ITO* is satisfied as Canadian maritime law is essential to the disposition of the third-party claim and nourishes the statutory grant of jurisdiction.

[25] As to the third part of that test, MSC contends that Canadian maritime law is a "law of Canada" within the meaning of section 101 of the *Constitution Act, 1867* as it falls under Parliament's legislative authority over navigation and shipping pursuant to section 91(10) of that Act.

[26] MSC claims that Prothonotary Tabib mischaracterized the third party action as being a matter of trucking governed by provincial law as opposed to a matter of theft of a container while at port. It submits that in so doing, Prothonotary Tabib failed to properly appreciate the modern context of navigation and shipping as evidenced by the fact Trans Salonikios' activities are exclusively focussed on the logistics of container movement and delivery of same in the context of shipping and port activities, and are, as a result, integrally connected to the operations of Termont Terminal. This is further evidenced, it submits, by the fact that, as any other trucker involved in the business of movement of cargo stored at a port terminal, it has to be vetted and certified by Termont to access cargo stored at its terminal and is under a legal duty to return the container empty at said terminal once the container has been delivered and unloaded.

[27] Subsection 22(1) of the Act, which has to be read together with the definition of "Canadian maritime law" found at subsection 2(1) of the Act, is the Court's main statutory grant

of maritime jurisdiction. Subsection 22(2) lists a number of claims to come within that jurisdiction. However, as the wording of that provision suggests, this list of matters is non-exhaustive so that a claim may come within the Court's jurisdiction even though it is not mentioned in that subsection (see also: *General MPP Carriers Ltd. v SCL Bern AG*, 2014 FC 571, at para 46).

[28] Subsections 22(1) and (2) and the definition of "Canadian maritime law", read as follows:

Navigation and shipping	**Navigation et marine marchande**
22 (1) The Federal Court has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under or by virtue of Canadian maritime law or any other law of Canada relating to any matter coming within the class of subject of navigation and shipping, except to the extent that jurisdiction has been otherwise specially assigned.	22 (1) La Cour fédérale a compétence concurrente, en première instance, dans les cas — opposant notamment des administrés — où une demande de réparation ou un recours est présenté en vertu du droit maritime canadien ou d'une loi fédérale concernant la navigation ou la marine marchande, sauf attribution expresse contraire de cette compétence.
Maritime jurisdiction	**Compétence maritime**
(2) Without limiting the generality of subsection (1), for greater certainty, the Federal Court has jurisdiction with respect to all of the following:	(2) Il demeure entendu que, sans préjudice de la portée générale du paragraphe (1), elle a compétence dans les cas suivants :
(a) any claim with respect to title, possession or ownership of a ship or any part interest therein or with respect to the proceeds of	a) une demande portant sur les titres de propriété ou la possession, en tout ou en partie, d'un navire ou sur le produit, en tout

sale of a ship or any part interest therein;

ou en partie, de la vente d’un navire;

(b) any question arising between co-owners of a ship with respect to possession, employment or earnings of a ship;

b) un litige entre les copropriétaires d’un navire quant à la possession ou à l’affectation d’un navire ou aux recettes en provenant;

(c) any claim in respect of a mortgage or hypothecation of, or charge on, a ship or any part interest therein or any charge in the nature of bottomry or respondentia for which a ship or part interest therein or cargo was made security;

c) une demande relative à un prêt à la grosse ou à une hypothèque, un privilège ou une sûreté maritimes grevant tout ou partie d’un navire ou sa cargaison;

(d) any claim for damage or for loss of life or personal injury caused by a ship either in collision or otherwise;

d) une demande d’indemnisation pour décès, dommages corporels ou matériels causés par un navire, notamment par collision;

(e) any claim for damage sustained by, or for loss of, a ship including, without restricting the generality of the foregoing, damage to or loss of the cargo or equipment of, or any property in or on or being loaded on or off, a ship;

e) une demande d’indemnisation pour l’avarie ou la perte d’un navire, notamment de sa cargaison ou de son équipement ou de tout bien à son bord ou en cours de transbordement;

(f) any claim arising out of an agreement relating to the carriage of goods on a ship under a through bill of lading, or in respect of which a through bill of lading is intended to be issued, for loss or damage to goods occurring at any time or place during transit;

f) une demande d'indemnisation, fondée sur une convention relative au transport par navire de marchandises couvertes par un connaissement direct ou devant en faire l'objet, pour la perte ou l'avarie de marchandises en cours de route;

(g) any claim for loss of life or personal injury occurring in connection with the operation of a ship including, without restricting the generality of the foregoing, any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of the ship are responsible, being an act, neglect or default in the management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

g) une demande d'indemnisation pour décès ou lésions corporelles survenus dans le cadre de l'exploitation d'un navire, notamment par suite d'un vice de construction dans celui-ci ou son équipement ou par la faute ou la négligence des propriétaires ou des affréteurs du navire ou des personnes qui en disposent, ou de son capitaine ou de son équipage, ou de quiconque engageant la responsabilité d'une de ces personnes par une faute ou négligence commise dans la manoeuvre du navire, le transport et le transbordement de personnes ou de marchandises;

(h) any claim for loss of or damage to goods carried in or on a ship including, without restricting the generality of the foregoing, loss of or damage to passengers' baggage or personal effects;

h) une demande d'indemnisation pour la perte ou l'avarie de marchandises transportées à bord d'un navire, notamment dans le cas des bagages ou effets personnels des passagers;

(i) any claim arising out of any agreement relating to the carriage of goods in or on a ship or to the use or hire of a ship whether by charter party or otherwise;

i) une demande fondée sur une convention relative au transport de marchandises à bord d'un navire, à l'usage ou au louage d'un navire, notamment par charte-partie;

(j) any claim for salvage including, without restricting the generality of the foregoing, claims for salvage of life, cargo, equipment or other property of, from or by an aircraft to the same extent and in the same manner as if the aircraft were a ship;

j) une demande d'indemnisation pour sauvetage, notamment pour le sauvetage des personnes, de la cargaison, de l'équipement ou des autres biens d'un aéronef, ou au moyen d'un aéronef, assimilé en l'occurrence à un navire;

(k) any claim for towage in respect of a ship or of an aircraft while the aircraft is water-borne;

k) une demande d'indemnisation pour remorquage d'un navire, ou d'un aéronef à flot;

(l) any claim for pilotage in respect of a ship or of an aircraft while the aircraft is water-borne;

l) une demande d'indemnisation pour pilotage d'un navire, ou d'un aéronef à flot;

(m) any claim in respect of goods, materials or services wherever supplied to a ship for the operation or maintenance of the ship, including, without restricting the generality of the foregoing, claims in respect of stevedoring and lighterage;

m) une demande relative à des marchandises, matériels ou services fournis à un navire pour son fonctionnement ou son entretien, notamment en ce qui concerne l'acconage et le gabarage;

(n) any claim arising out of a contract relating to the construction, repair or equipping of a ship;

n) une demande fondée sur un contrat de construction, de réparation ou d'équipement d'un navire;

(o) any claim by a master, officer or member of the crew of a ship for wages, money, property or other remuneration or benefits arising out of his or her employment;

o) une demande formulée par un capitaine, un officier ou un autre membre de l'équipage d'un navire relativement au salaire, à l'argent, aux biens ou à toute autre forme de rémunération ou de prestations découlant de son engagement;

(p) any claim by a master, charterer or agent of a ship or shipowner in respect of disbursements, or by a shipper in respect of advances, made on account of a ship;

p) une demande d'un capitaine, affréteur, mandataire ou propriétaire de navire relative aux débours faits pour un navire, et d'un expéditeur concernant des avances faites pour un navire;

(q) any claim in respect of general average contribution;

q) une demande relative à la contribution à l'avarie commune;

(r) any claim arising out of or in connection with a contract of marine

r) une demande fondée sur un contrat d'assurance maritime ou

insurance; and	y afférente;
(s) any claim for dock charges, harbour dues or canal tolls including, without restricting the generality of the foregoing, charges for the use of facilities supplied in connection therewith.	s) une demande de remboursement des droits de bassin, de port ou de canaux, notamment des droits perçus pour l'utilisation des installations fournies à cet égard.
Canadian maritime law means the law that was administered by the Exchequer Court of Canada on its Admiralty side by virtue of the Admiralty Act, chapter A-1 of the Revised Statutes of Canada, 1970, or any other statute, or that would have been so administered if that Court had had, on its Admiralty side, unlimited jurisdiction in relation to maritime and admiralty matters, as that law has been altered by this Act or any other Act of Parliament; (*droit maritime canadien*)	**droit maritime canadien** Droit - compte tenu des modifications y apportées par la présente loi ou par toute autre loi fédérale - dont l'application relevait de la Cour de l'Échiquier du Canada, en sa qualité de juridiction de l'Amirauté, aux termes de la Loi sur l'Amirauté, chapitre A-1 des Statuts revisés du Canada de 1970, ou de toute autre loi, ou qui en aurait relevé si ce tribunal avait eu, en cette qualité, compétence illimitée en matière maritime et d'amirauté. (*Canadian maritime law*)

[29] It is well-settled (i) that Canadian maritime law embraces all claims in respect of maritime and admiralty matters in the modern sense, that is in the sense that these matters are not to be considered as having been frozen by the *Admiralty Act, 1934*, (ii) that it is limited only by the extent of Parliament's legislative competence (*ITO*, at p774) and (iii) that it encompasses

rules and principles of tort and contract adopted from the common law and applied in admiralty cases (*ITO* at p 776).

[30] However, in determining whether a particular claim involves a maritime or admiralty matter, the Court "must avoid encroachment on what is in 'pith and substance' a matter of local concern involving property and civil rights or any other matter which is in essence within exclusive provincial jurisdiction under section 92 of the *Constitution Act, 1867*" (*ITO*, at p774). The test for making that determination, as alluded to previously, is whether the claim's subject-matter is so integrally connected to maritime matters as to be legitimate Canadian maritime law within federal competence under the constitutional division of powers (*ITO*, at p 774; *Monk Corp. v Island Fertilizers Ltd*, [1991] 1 SCR 779, at p 795).

[31] MSC concedes that its claim against Trans Salonikios does not fall within one of the classes of claims listed at subsection 22(2) of the Act. It does not contend either that it falls under section 23 of the Act as being a claim coming within the class of subjects of "works and undertakings connecting a province with any other province or extending beyond the limits of a province".

[32] The issue, therefore, is whether that third party claim is a claim for relief made under or by virtue of "Canadian maritime law" as defined at subsection 2(1) and interpreted by the courts.

[33] To the extent the underlying activity allegedly engaging Canadian maritime law in the present case is that of a land carrier, there appears not to be much jurisprudential support, if any, for MSC's position.

[34] As Prothonotary Tabib pointed out, *ITO* was concerned with the negligence of a stevedore-terminal operator in the short-term storing of goods within the port area pending delivery to the consignee. The Supreme Court held that such "incidental storage" by the sea carrier itself, or by a third party under contract to the carrier, was a matter of maritime concern by virtue of the "close, practical relationship of the terminal operation to the performance of the contract of carriage". It stressed that the maritime nature of the case depended upon three "significant" factors: (i) the proximity of the terminal operation to the sea, that is to the area within the terminal which constitutes the port of Montreal; (ii) the connection between the terminal operator's activities within the port area and the contract of carriage by sea; and (iii) the short-term nature of the storage pending delivery to the consignee (*ITO*, at pp 775-776).

[35] Here, there is hardly any proximity of Trans Salonikios operations to the sea. Besides picking-up goods on occasion, Trans Salonikios does not operate from a port area like a terminal operator does. If there is any proximity, it is with the land. There is also no connection between Trans Salonikios and the contract of carriage by sea entered into in the present case since, as pointed out by Prothonotary Tabib, Trans Salonikios is not even alleged to be contractually bound to any party to that contract.

[36] I note that in *re Industrial Relations and Disputes Act*, [1955] SCR 529, to which *ITO* refers, the stevedoring function, which was found to be "an integral part of carrying on the activity of shipping", was held to include the work of "shedmen", that is of those who "deliver cargo from the sheds to the tailboards of trucks or to railway car doors or receive cargo at these points and place it in the sheds and sometime re-arrange the cargo in the sheds" (*ITO*, at p 775) (My emphasis). *ITO*, therefore, is no indication that cargo delivery activities that go beyond these points - tailboards of trucks or railway car doors – are an integral part of carrying on the activity of shipping within the meaning of section 91(10) of the *Constitution Act, 1867*.

[37] MSC also relies on *B.C. (A.G.) v Lafarge Canada*, 2007 SCC 23 [*Lafarge*]. However, this case discusses the constitutional inapplicability of municipal zoning and land development by-laws to the construction of an integrated ship offloading/concrete batching facility on federal waterfront lands administered by the Vancouver Port Authority, not the relationship between maritime law and land transportation of cargo unloaded from a ship at a port terminal.

[38] The facility at issue in *Lafarge* was designed to mix aggregate barged in by sea, offloaded and stored temporarily in silos in the waterfront with cement so that it could be dispatched to various construction sites within downtown Vancouver (*Lafarge*, at para 2) That facility was held to be integrated in marine transportation as an "incidental port development business" and therefore within the reach of federal jurisdiction under the navigation and shipping head of power although it was found as "certainly [lying] beyond the core of s. 91(10)" (*Lafarge*, at para 72).

[39] Land transportation of cargo offloaded from a ship at a port terminal so that it be brought to its next - or ultimate - destination does not qualify, in my respectful view, as a port development business within the meaning of *Lafarge*. (My emphasis)

[40] I note too that in commenting on *ITO*, the Court appears to have found the loading of trucks for the removal of cargo from the port so as to avoid wharves from becoming so congested as to cease to operate, to be a logical extension of dockside unloading and storage activities which were held, in *ITO*, to be integral to shipping (*Lafarge*, at para 35) (My emphasis). However, it did not go as far as to suggest that the actual land transportation of the goods, once loaded on trucks, from the port to their consignees is also integral to shipping.

[41] *Whitbread*, on which MSC also relies, dealt with the constitutional applicability of provisions of the *Canada Shipping Act* limiting the liability of the defendants in that case who were sued for damages resulting from a serious injury sustained by the plaintiff when the pleasure craft he took from its moorings at Coal Harbour in Vancouver struck rocks in a body of water located in the city's north end. The Supreme Court held that theses provisions were valid legislation in respect of Canadian maritime law, that they applied to accidents involving not only merchant vessels but also pleasure crafts, and that their territorial application was not limited to torts committed on high seas or within the ebb and flow of the tide, but extended to torts committed on Canada's inland navigable waterways.

[42] The Court, in *Whitbread*, insisted on the need for legal uniformity in the area of tortious liability for collisions and accidents occurring in the course of navigation. Speaking for an unanimous Court, Justice Laforest had this to say on this point:

> […] In this country, inland navigable waterways and the seas that were traditionally recognized as the province of maritime law are part of the same navigational network, one which should, in my view, be subject to a uniform legal regime.
>
> I think it obvious that this need for legal uniformity is particularly pressing in the area of tortious liability for collisions and other accidents that occur in the course of navigation. As is apparent from even a cursory glance at any standard text in shipping or maritime law, the existence and extent of such liability falls to be determined according to a standard of "good seamanship" which is in turn assessed by reference to navigational "rules of the road" and have long been codified as "collision regulations" [references omitted]. It seems to me to be self-evident that the level of government that is empowered to enact and amend these navigational "rules of the road" must also have jurisdiction in respect of tortious liability to which those rules are so closely related. So far as I am aware, Parliament's power to enact collision regulations has never been challenged; nor, as far as I can tell, has it ever been contended that these regulations do not apply to vessels on inland waterways. They are in fact routinely applied to determine the tortious liability of such vessels [reference omitted]. It follows that the tortious liability of the owners and operators of these vessels should be regarded as a matter of maritime law that comes within the ambit of Parliament's jurisdiction in respect of navigation and shipping.
>
> (*Whitbread*, at p. 1295-1296)

[43] In *Ordon Estate,* where it was held that provincial statutes of general application having the effect of altering federal maritime negligence law were constitutionally inapplicable in the maritime context, the Supreme Court of Canada stressed that the need for legal uniformity in the maritime context resulted in large part from the historical roots and unique character of Canadian maritime law:

> 92 Moreover, unlike most other areas of exclusive federal jurisdiction, maritime law has historically been a specialized area of law, adjudicated within separate courts through the application of principles and rules of law which do not derive solely from traditional common law and statutory sources. The multiplicity of legal sources, including international sources, which nourish Canadian maritime law render it a body of law in which uniformity is especially appropriate. The interference of provincial statutes with core areas of Canadian maritime law, such as the law of maritime negligence, would interfere with its historical roots and with its appropriately unique character.
>
> 93 The conclusion which we draw from the above comments is that much of the *raison d'être* of the assignment to Parliament of exclusive jurisdiction over maritime matters is to ensure that Canadian maritime law in relation to core issues of fundamental international and interprovincial concern is uniform. This *raison d'être*, although not unique to the federal power over navigation and shipping (in the sense that other heads of power were assigned to the federal legislature out of concern for uniformity), is uniquely important under s. 91(10) because of the intrinsically multi-jurisdictional nature of maritime matters, particularly claims against vessels or those responsible for their operation. This concern for uniformity is one reason, among others, why the application of provincial statutes of general application to a maritime negligence claim cannot be permitted.

[44] Here, I fail to see how what supports the need for legal uniformity in the area of tortious liability for collisions and other accidents occurring in the course of navigation, is applicable to the area of tortious liability of land carriers alleged to have failed to deliver to its rightful consignee cargo picked up at a port terminal. That demonstration has not been made before me.

[45] MSC submits that claims for damages in connection with theft of goods stored in a warehouse pending their final delivery to the consignee were held to fall within this Court's jurisdiction in cases such as *Prudential Assurance co v Canada*, [1993] 2 FCR 293 (FCA) [*Prudential*]; *Pantainer*; and *Town Shoes Ltd v Panalpina Inc*, 169 FTR 267 (FC) [*Town Shoes*].

However, MSC's reliance on *Prudential*, *Pantainer* and *Town Shoes* is, in my view, misplaced as all three decisions are easily distinguishable from the case at bar.

[46] First, *Prudential* deals with a completely different legislative scheme as the matter under consideration related to air law, not maritime law. The Court's grant of jurisdiction was found in section 23 of the Act and the claim at issue was rooted in the *Carriage by Air Act* and the Warsaw Convention of 1929 on International Carriage by Air and the Amending Protocol of 1955, which were both incorporated in that Act. Article 18 of the Convention was held to "explicitly cover[s] the loss of cargo in the case at bar" (*Prudential*, at p 301).

[47] Second, unlike Trans Salonikios, the parties in *Pantainer* and *Town Shoes* were in a contractual relationship. Thus, their responsibility arose from contractual obligations, not from tort principles. In addition, at issue in *Pantainer* was whether the Court had jurisdiction to entertain the defendant's counter-claim for damages sustained by goods stored while en route from Italy to Canada and on arrival to Canada as part of the contract for carriage by sea entered into by the parties. It did not involve the liability of a land carrier whose actions allegedly caused damage to cargo previously carried by sea. In *Town Shoes*, the Court was called upon to determine whether the plaintiff's claim for loss of cargo shall be stayed so as to allow the parties be have the claim exclusively decided by a German court in accordance with the law of Germany, as contemplated by the terms and conditions of the bill of landing relied upon by the plaintiff. *Town Shoes* was therefore not a matter involving the Court's jurisdiction *per se*.

[48] I agree that the situation of Trans Salonikios is much closer to that of the land carriers in *The "Dart Europe"* and *Marley* where the Court held it lacked jurisdiction, either in contract or in tort, to entertain claims in negligence directed at a trucker (*The "Dart Europe"*) and a rail carrier (*Marley*) for damage to cargo carried by sea in one instance and to be carried by sea from the United States to Holland through the port of Montreal in the other. In discussing these two cases, Prothonotary Tabib stated the following:

> [17] In *The "Dart Europe*", negligence of the land carrier was also alleged. There, the packaging of a machine carried in an open top container had been damaged during sea transportation. The ocean carrier had arranged for the machine and container to be sent to a repair shop in Dorval to be repackaged and properly secured prior to continuing with the contract of carriage. The machine was damaged while being carried back from the repair shop to the port of Montreal by a trucker hired by the ocean carrier. The Federal Court held that "the land transport operation undertaken by Godin from the Dorval repair shop to the Port of Montreal cannot be considered so "closely connected" to the voyage by sea as to be "part and parcel" of the marine activities essential to the carriage of goods by sea."
>
> [18] Finally, in *Marley Co*., where a rail carrier's negligence caused damage to a cargo being transported pursuant to a through bill of lading, the Court found it had no jurisdiction over a claim against the rail carrier:
>
> 19. (…) It is not because a contract of carriage by rail or by land is entered into in the context of a through bill of lading, a portion of which calls for carriage by sea, that the former contracts necessarily fall within the jurisdiction of this Court. I am certainly not prepared to accept that a contract to carry goods by rail or by truck in the United States, Canada or Europe is within the maritime jurisdiction of this Court simply because they are part of the ongoing movement of a container between Shiller Park, Illinois, to Tiel, Holland.
>
> (…)
>
> 21. In my view, in no way can it be argued that Soo Line's activities are, in the sense that the terminal operator's activities in ITO were, part and parcel of the contract of carriage by sea.

[49] I also agree that the integration of the logistics between a terminal operator and a trucker, as is the case here according to MSC, does not bring the matter of the trucker's activities within federal jurisdiction. As pointed out by Prothonotary Tabib, the cause of action asserted against Trans Salonikios may arise because Termont Terminal failed in its duties to ensure proper delivery. However, such cause of action is founded not on Termont's duties towards MSC but rather on the extra-contractual liability of Trans Salonikios, as trucker or thief, towards MSC. As was Prothonotary Tabib, I am of the view that this integration, while part of the matter's *res gestae,* does not modify the essential character of the legal relationship, governed by provincial law, between MSC, as ocean carrier, and Trans Salonikios as trucker.

[50] The significant transformation, integration and harmonization of securities markets in Canada through notably technological changes and evolution was found not be enough to oust the provinces' jurisdiction in that area in favour of Parliament's legislative authority over trade and commerce (*Reference Re Securities Act*, 2011 SCC 66). Similarly, the fact that Trans Salonikios needs to be vetted and certified by Termont to access cargo stored at its terminal, that the terminal is accessed using computerized access codes and that Trans Salonikios has an obligation to return the container empty at said terminal once the container has been delivered and unloaded, does not bring the present matter under the Court's jurisdiction as it cannot be said, in my view, that Trans Salonikios' activities as a trucker, although connected to some extent with the maritime context, are "so integrally connected to maritime matters as to be legitimate Canadian maritime law within federal legislative competence" (*ITO*, at p 774).

[51] Trans Salonikios remains fundamentally a trucker governed by provincial law and it has not been shown, as I have already indicated, that the historical roots and unique character of Canadian maritime law require legal uniformity, as it does in the area of tortious liability for accidents occurring in the course of navigation, for the tortious liability of land carriers alleged to have failed to deliver to its rightful owner cargo picked up at a port terminal. Again, when determining the scope of Parliament's jurisdiction over navigation and shipping, the courts must avoid encroachment on what are in 'pith and substance' matters of local concerns which are, in essence, within exclusive provincial jurisdiction.

[52] Finally, as Prothonotary Tabib pointed out, MSC's claim that this Court should hear its third party claim against Trans Salonikios as a matter of judicial economy was considered and rejected in *The "Dart Europe"*. I see no reason whatsoever to depart from that finding in the present case.

[53] For these reasons, it is plain and obvious, in my view, that this Court lacks jurisdiction to entertain MSC's third party claim against Trans Salonikios. Therefore, MSC's appeal of Prothonotary Tabib's Order will be dismissed, with costs payable to Trans Salonikios in any event of the cause.

[54] As to the assessment of the costs, it shall be made under column IV of Tariff B. MSC only filed and served its motion record the day before the hearing, in the middle of the afternoon, and, in doing so without proper justification, failed to abide by rule 364(3) of the Rules and by a direction issued by the Court five days prior to said hearing. In particular, after its third request

for adjournment of the hearing of its appeal was refused, MSC inexplicably brought a last minute request that its motion be transformed in a motion in writing pursuant to rule 369 of the Rules; the request was denied. Nevertheless, there was still time for MSC to file and serve its motion record within the timelines set out in the Rules. Again, it failed to do so without proper justification. This calls, in my view, for an elevated cost order.

ORDER in T-1376-14

THIS COURT ORDERS that:

1. The motion is dismissed;

2. Costs to the third party payable in any event of the cause and assessed under column IV of Tariff B.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1376-14
STYLE OF CAUSE:	CERTAIN UNDERWRITERS AT LLOYD'S AND SOLINE TRADING LTD. v MEDITERRANEAN SHIPPING COMPANY S.A. AND 4103831 CANADA INC. (OPERATING AND DOING BUSINESS UNDER THE TRADE NAME OF TRANS SALONIKIOS)
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JULY 11, 2017
REASONS FOR ORDER AND ORDER:	LEBLANC J.
DATED:	OCTOBER 6, 2017

APPEARANCES:

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