

Federal Court



CANADA

Cour fédérale

Date: 20060523

Docket: T-2143-04

Citation: 2006 CF 630

Montréal, Quebec, May 23, 2006

Present: Richard Morneau, Prothonotary

Admiralty action *in rem* and *in personam*

BETWEEN:

LAGOON SEAFOOD PRODUCTS, INC.

Plaintiff

and

A.P.MOLLER – MAERSK A/S

and

BALEEN SHIPPING CO. LTD.

and

THE VESSEL “CLARAMAERSK”

and

**THE OWNERS AND ALL THOSE INTERESTED
IN THE VESSEL “CLARA MAERSK”**

and

THE VESSEL “NORASIA TELAMON”

and

**THE OWNERS AND ALL THOSE INTERESTED
IN THE VESSEL “NORASIA TELAMON”**

Defendants

REASONS FOR ORDER AND ORDER

[1] IN VIEW OF the motion by defendant A.P.Moller-Maersk A/S et al. (hereinafter Maersk) seeking decisions on six objections raised by the plaintiff at the examination for discovery of its representative;

[2] WHEREAS Maersk's defence is not limited to the allegation that its refrigeration unit was operating properly at all relevant times but also puts at issue, in paragraphs 15 and 16, the conditions relating to the state of the cargo before it was received by Maersk for maritime transport;

[3] WHEREAS questions 2, 3 and 6 relate to Maersk's defence and the questions have not yet been adequately answered at this stage;

[4] WHEREAS the third parties from whom the plaintiff will have to seek information may be viewed as agents for the purposes of section 241 of the *Federal Courts Rules*, in the case of a transport matter such as the one before us;

[5] WHEREAS the plaintiff did not establish by affidavit evidence that it would require unreasonable effort to attempt to find any information in this matter;

[6] IN VIEW OF the following principles set out by the Federal Court in *Reading & Bates Construction Co. et al v. Baker Energy Resources Corp. et al* (1988), 24 C.P.R. (3rd) 66, at pages 70 to 72, specifically that:

1. The test as to what documents are required to be produced is simply relevance. The test of relevance is not a matter for the exercise of the discretion. What documents parties are entitled to is a matter of law, not a matter of discretion. The

which may directly or indirectly enable the party requiring production to advance his own case or to damage the case of his adversary, or which might fairly lead him to a train of inquiry that could have either of these consequences: *Trigg v. MI Movers Int'l Transport Services Ltd.* (1986), 13 C.P.C. (2d) 150 (Ont. H.C.); *Canex Placer Ltd. v. A.-G. B.C.* (1975), 63 D.L.R. (3d) 282, [1976] 1 W.W.R. 644 (B.C.S.C.); and *Compagnie Financiere et Commerciale du Pacifique v. Peruvian Guano Co.* (1882), 11 Q.B.D. 55 (C.A.).

[Emphasis added.]

[7] WHEREAS Maersk's motion is not so late that we must consider Maersk foreclosed from filing it;

[8] WHEREAS, moreover, that question 1 was adequately answered and that question 4 was also adequately answered and further that question 4, as drafted, is seeking out evidence, something the plaintiff is not required to provide at this stage;

[9] WHEREAS in the same vein as part of question 3, namely the part requiring "by whom" need not be answered since on its very face it amounts to a fishing expedition;

[10] WHEREAS the wording of question 5 is too general and appears to duplicate questions 2, 3 and 6;

[11] IN VIEW OF THESE CONSIDERATIONS, THE COURT ORDERS AS FOLLOWS:

ORDER

- Within thirty (30) days of this order, the applicant shall obtain and provide to Maersk answers to questions 2 and 3 (only the first part, i.e. “where”), and 6;
- The other questions at issue need not be answered;
- Costs in the cause.

“Richard Morneau”

Prothonotary

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2143-04

STYLE OF CAUSE: LAGOON SEAFOOD PRODUCTS, INC.
v.
A.P.MOLLER – MAERSK A/S ET AL.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 15, 2006

REASONS FOR ORDER: PROTHONOTARY MORNEAU

DATE OF REASONS: May 23, 2006

APPEARANCES:

Jean-François Bilodeau FOR THE PLAINTIFF

Jean-Marie Fontaine FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Robinson Sheppard Shapiro FOR THE PLAINTIFF
Montréal, Quebec

Borden Ladner Gervais FOR THE DEFENDANTS
Montréal, Quebec