

**ACTION IN REM AND ACTION IN PERSONAM AGAINST THE
VESSELS "NETUNO" AND "ZEUS" ALL THOSE PERSONS
INTERESTED IN THEM**

B E T W E E N:

SANDEN MACHINE LTD.

Plaintiff

- and -

**COMPANHIA DE NAVEGACAO MARITIMA NETUMAR,
and M.V. "NETUNO" AND "ZEUS" AND THEIR
OWNERS AND CHARTERERS**

Defendants

REASONS FOR ORDER AND ORDER

GILES, A.S.P.:

The plaintiff has brought a motion for judgment against one of the defendants for damages to be assessed and costs. I issued such a judgment on September 27, 1993. In a number of recent maritime actions where a claim for damages is involved, I have noticed an apparent difficulty with respect to the procedure required.

Counsel should understand that the provision in the Federal Court Rules for judgment in default of defence, when the relief claim is unliquidated damages, is, as it customarily has been for over a century in common-law courts, a two stage procedure, the first stage decides that the plaintiff is entitled to damages, and goes on to direct the second stage which determines the amount of damages.

In this Court the applicable Rule is 433(1) which indicates a plaintiff may apply for judgment against the defaulting defendant for damages to be assessed and costs. Sub-rule 433(2) deems a reference directed and engages Rule 500 for the purposes of the reference. The procedure for a reference under Rule 500 *et seq*, contemplates notice to the defaulting defendant after an appointment has been taken out. A defaulting defendant may appear at the reference to dispute the *quantum*, but not the fact of judgement. Rule 433(3) provides for short cut to be used where the Court deems it appropriate if notice has been given to the defendant of the plaintiff intention to do so.

The plaintiff here has moved for judgment in default and filed an affidavit on the topic of *quantum* of damages and a draft judgment with the amount of damages blank, presumably so that the Court may reach a conclusion as to the damages and fill in the blanks. There is no evidence filed that the defendant has been made aware of the intent to obtain a specific amount for damages without a reference. No attempt has been made to proceed by the Rule 500 procedure, and no attempt has been specifically made to proceed by the 433(3) procedure. The motion for judgment will therefore be dismissed without prejudice to the plaintiff's right to apply for a reference judgment for damages with a reference having already been signed in this case.

ORDER

Motion for judgment for the reference is dismissed without prejudice to the plaintiff's right to apply for a reference.

"Peter A.K. Giles"

A.S.P.

Toronto, Ontario
January 18, 1996

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: T-708-92

STYLE OF CAUSE: SANDEN MACHINE LTD.

- and -

COMPANHIA DE NAVEGACAO
MARITIMA NETUMAR, et al

CONSIDERED AT TORONTO, ONTARIO UNDER THE PROVISIONS OF
RULE 324.

REASONS FOR ORDER
AND ORDER BY: GILES, A.S.P.

DATED: JANUARY 18, 1996

SOLICITORS OF RECORD:

Mr. Gordon Hearn
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For the Plaintiff

No solicitor of record

For the Defendants