

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161201

Docket: A-32-16

Citation: 2016 FCA 307

**CORAM: PELLETIER J.A.
SCOTT J.A.
DE MONTIGNY J.A.**

BETWEEN:

WORLDSPAN MARINE INC.

Appellant

and

**HARRY SARGEANT III AND
COMERICA BANK**

Respondents

Heard at Vancouver, British Columbia, on November 30, 2016.
Judgment delivered from the Bench at Vancouver, British Columbia, on November 30, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on November 30, 2016).

PELLETIER J.A.

[1] Worldspan Marine Inc. (Worldspan) appeals from a decision of the Federal Court, reported at 2016 FC 27, in which the Federal Court held that Harry Sargeant III (Sargeant) was not required to pay Worldspan any amounts which it may be found to owe to Worldspan pursuant to a Vessel Construction Agreement as a condition of exercising its rights under a ship's mortgage granted to it by Worldspan.

[2] We have not been persuaded that the Federal Court committed a palpable and overriding error in coming to the conclusion which it did. Mr. Wharton, counsel for Worldspan skillfully laid out a contractual interpretation which would support the conclusion which he seeks. Unfortunately for his client, the Federal Court adopted an equally plausible construction which supports a different conclusion. To the extent that there is evidence which would support the FC's conclusion, and there is, this Court cannot intervene.

[3] As a result, the appeal will be dismissed with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-32-16
(APPEAL FROM AN ORDER AND REASONS OF THE HONOURABLE MR. JUSTICE SOUTHCOTT OF THE FEDERAL COURT, DATED JANUARY 8, 2016, DOCKET NO. T-1226-10)

STYLE OF CAUSE: WORLDSPAN MARINE INC. v.
HARRY SARGEANT III AND
COMERICA BANK

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: NOVEMBER 30, 2016

REASONS FOR JUDGMENT OF THE COURT BY: PELLETIER J.A.
SCOTT J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

W. Gary Wharton FOR THE APPELLANT

Kieran E. Siddall FOR THE RESPONDENT
Kaitlin Smiley HARRY SARGEANT III

John I. McLean, Q.C. FOR THE RESPONDENT
COMERICA BANK

SOLICITORS OF RECORD:

Bernard LLP FOR THE APPELLANT
Barristers and Solicitors
Vancouver, British Columbia

Bull, Housser & Tupper LLP FOR THE RESPONDENT
Barristers and Solicitors HARRY SARGEANT III
Vancouver, British Columbia

Gowling WLG (Canada) LLP FOR THE RESPONDENT

Barristers and Solicitors
Vancouver, British Columbia

COMERICA BANK