

Federal Court



Cour fédérale

Date: 20150302

Docket: T-2085-14

Vancouver, British Columbia, March 2, 2015

PRESENT: Prothonotary Roger R. Lafrenière

**ADMIRALTY ACTION *IN REM* AGAINST A SHIP BEING
A 2003 GRADY WHITE 28 FOOT SAILFISH BEARING
IDENTIFICATION NUMBER NTLBY497B303 AND
OFFICIAL NUMBER 13K116973, INCLUDING TWO YAMAHA OUTBOARDS
BEARING SERIAL NUMBERS 69J X 1003593 AND 69K X 1001324,
AND *IN PERSONAM***

BETWEEN:

ALL-TOW BOAT MOVING LTD.

Plaintiff

and

**THE SHIP BEING A 2003 GRADY WHITE
28 FOOT SAILFISH BEARING
IDENTIFICATION NUMBER NTLBY497B303
AND OFFICIAL NUMBER 13K116973,
INCLUDING TWO YAMAHA OUTBOARDS
BEARING SERIAL NUMBERS 69J X 1003593
AND 69K X 1001324, THE OWNERS AND
ALL OTHERS INTERESTED IN A SHIP BEING
A 2003 GRADY WHITE 28 FOOT SAILFISH
BEARING IDENTIFICATION NUMBER NTLBY497B303
AND OFFICIAL NUMBER 13K116973,
INCLUDING TWO YAMAHA OUTBOARDS
BEARING SERIAL NUMBERS 69J X 1003593
AND 69K X 1001324, AND JOHN TROY LOVDAHL
ALSO KNOWN AS TROY LOVDAHL
ALSO KNOWN AS JOHN TROY AIKEN**

Defendants

JUDGMENT

UPON MOTION dated February 5, 2015, on behalf of the Plaintiff for:

- (a) an Order that pursuant to Rule 210(1), of the *Federal Courts Rules*, an order for default judgment against the Defendants, THE SHIP BEING A 2003 GRADY WHITE 28 FOOT SAILFISH BEARING IDENTIFICATION NUMBER NTLBY497B303 AND OFFICIAL NUMBER 13K116973, INCLUDING TWO YAMAHA OUTBOARDS BEARING SERIAL NUMBERS 69J X 1003593 AND 69K X 1001324 (the "Vessel") and the Owners and all Others Interested in the Vessel and JOHN TROY LOVDAHL also known as TROY LOVDAHL also known as JOHN TROY AIKEN ("Mr. Lovdahl") due to the Defendants' failure to serve and file any Statement of Defence within the time set out in Rule 204(a), or at all, in accordance with the claims and relief set out in the Statement of Claim;
- (b) a declaration that the Vessel has been abandoned by Mr. Lovdahl and that all right, title and interest in and to the Vessel shall vest absolutely in the Plaintiff;
- (c) in the alternative, judgment against the Defendants in the amount of \$20,650.00;
and
- (d) pursuant to Rule 400 of the *Federal Courts Rules*, an order for costs of this application payable by Mr. Lovdahl;

AND UPON reading the motion record filed on behalf of the Plaintiff;

AND UPON reading the Affidavit of Neela Wickberg sworn on February 25, 2015;

On a motion for default judgment, the Court has two questions before it. First, is the defendant in default, and second, is there evidence to support the plaintiff's claim: *Chase Manhattan Corp v 3133559 Canada Inc* 2001 FCT 895.

On the first issue, the Plaintiff has established that the Defendant Ship (the Vessel) was served with the Statement of Claim and that substituted service was effected on the Defendant, John Troy Lovdahl, in accordance with the Order dated November 12, 2014. As there is no record of any statement of defence being filed by or on behalf of the Defendants within the time provided in Rule 204 of the *Federal Courts Rules*, I am satisfied the said Defendants are in default.

With regard to the second issue, the affidavit of Thomas Plain sworn January 22, 2015 establishes that, on the balance of probabilities, Mr. Lovdahl has abandoned the Vessel. This is based on a number of factors, including Mr. Lovdahl's failure to move the Vessel or make any arrangements to receive the Vessel over a substantial period of time, as well as his failure to serve and file a statement of defence or make any appearance in this proceeding. Mr. Plain's affidavit has also established that the Defendants received a benefit for the moving and storage services provided by the Plaintiff for the Vessel, that the Plaintiff is owed \$20,650.00 in moving and storage charges incurred by the Defendants as of January 2015, that the Defendants have failed to pay the amount owing to the Plaintiff, and that the Plaintiff has therefore suffered a loss.

Taking into account the current condition of the Vessel, which negatively impacts its resale value, I conclude that the proper disposition of this motion is to grant a declaration that the Vessel has been abandoned by Mr. Lovdahl and that all right, title and interest in and to the Vessel shall vest absolutely in the Plaintiff in satisfaction of the Plaintiff's claim, including the costs of the proceeding.

THIS COURT DECLARES AND ADJUDGES that:

1. The Defendant Ship, a recreational powerboat being a 2003 Grady White 28 foot Sailfish bearing identification number NTLBY497B303 and official number 13K116973, including two Yamaha outboards bearing serial numbers 69J X 1003593 and 69K X 1001324 (the Vessel) has been abandoned.
2. Title to the Vessel hereby vests absolutely in the Plaintiff in satisfaction of the Plaintiff's claim, inclusive of the costs of the proceeding.

"Roger R. Lafrenière"

Prothonotary