

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2011-404-3292

BETWEEN PDL INTERNATIONAL PTE LTD
Plaintiff
AND THE SHIP RATSTOR
Defendant

Hearing: (On the papers)

Judgment: 27 June 2011

JUDGMENT OF BREWER J

SOLICITORS

Lowndes Associates (Auckland) for Plaintiff

[1] The plaintiff filed and served a notice of proceeding *in rem* and application for warrant of arrest on 3 June 2011 against the defendant, The Ship *Ratstor*. It claimed (at that time) the sum of US\$50,808.38 arising out of a Charterparty dated 29 April 2011 with the plaintiff as charterer over the defendant vessel.

[2] The notice of proceeding *in rem* and the warrant of arrest were served on the defendant on 5 June 2011. The vessel has remained under arrest since that time.

[3] The defendant has not filed an appearance within 10 working days of the date of service of the notice of proceeding as required by r 25.14 of the High Court Rules. The plaintiff therefore seeks judgment by default in the action *in rem* pursuant to r 25.32(4).

[4] Counsel for the plaintiff has also filed a memorandum requesting urgency in relation to the plaintiff's interlocutory application for default judgment. The main reason for the application is that the ongoing costs of arrest are mounting rapidly (and already exceed the amount now claimed). In addition, the plaintiff anticipates that appraisalment and sale of the defendant vessel will be necessary.

Judgment by default

[5] Rule 25.32(4) provides:

A plaintiff to an action *in rem* may apply to the court for judgment by default if—

- (a) the defendant to the action fails to enter an appearance within the period specified for appearing; and
- (b) not less than 10 working days has passed since the notice of proceeding was served; and
- (c) the plaintiff has filed an affidavit proving due service of the notice of proceeding, a statement of claim (where one has not already been filed), and an affidavit verifying the facts on which the action is based.

[6] The Court file contains the plaintiff's affidavit proving due service of the notice of proceeding. It has filed a statement of claim (dated 22 June 2011) in which the amount for which judgment is now sought is stated as US\$45,975.59. There is a

comprehensive affidavit from Rowan Brookes Moss sworn on 23 June 2011 verifying the facts on which the proceeding is based.

[7] I have read all the documentation and I am satisfied that the plaintiff has established on the balance of probabilities its entitlement to the sum claimed. I can see no defence to the plaintiff's claim.

[8] I am also of the view that, for the practical reasons set out in Mr Moss's affidavit, urgency should be given to this application. These reasons are well set out in the following paragraphs of Mr Moss's affidavit:

11. PDL commenced this proceeding on 3 June 2011 and also filed documents to arrest the Vessel. The notice of proceeding and arrest documents were served on 5 June 2011. The Vessel has remained under arrest since that time. PDL has incurred the legal cost of this proceeding. PDL as the arresting party has also been required to fund the Registrar's costs of arrest. At the date of this affidavit, PDL has paid to the Registrar NZ\$100,000 towards the cost of arrest.
12. The ship is currently at anchor in Auckland Harbour off Rangitoto Island. The costs of arrest will continue to accrue and the longer the Vessel remains under arrest, the greater the costs of arrest will be. Already, the costs of arrest paid by PDL exceed the amount of its claim. However, PDL is determined to pursue this claim. The expenses incurred so far have been mainly for the costs of the Registrar appointing a representative to assess the Vessel and to provide Bunkers to the Vessel and provisions for the crew. PDL is content that the Vessel remains at anchor at present. If the Vessel is taken into and remains at a berth then the costs of arrest would increase significantly as berthage rates in the port of Auckland are relatively high.
13. If the Owner does not pay the amount due to PDL after PDL obtains judgment by default then PDL will file a request for commission for appraisal and sale of the Vessel. It will take some time for the appraisal and sale. PDL will be required to keep funding the Registrar's costs pending the appraisal and sale process.

[9] Accordingly, I give judgment against the defendant by default in favour of the plaintiff in the sum of US\$45,975.59. I also award the plaintiff interest at the rate of 8.4% on the sum of US\$45,975.59 from 24 May 2011 to the date of judgment pursuant to s 87 of the Judicature Act 1908.

[10] The plaintiff is entitled to costs. I fix these on a 2B scale basis, to be paid by the defendant to the plaintiff.

Brewer J