

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

CIV 2011-485-1947

UNDER the Ship Registration Act 1992

IN THE MATTER OF an Application for an Order in terms of
section 69 of the Ship Registration Act
1992 for rectification of the Ships Register

BETWEEN KEYMAN TRANS LIMITED
Applicant

AND THE REGISTRAR OF SHIPS
First Respondent

AND LUCKY FISHING LIMITED
Second Respondent

Hearing: 31 October 2011

Counsel: R Stewart for the Applicant
No appearance for the Respondents

Judgment: 31 October 2011

JUDGMENT OF MALLON J

Introduction

[1] The applicant seeks an order directing the Registrar of Ships to rectify the Register to reflect that the correct owner of the vessel, Naucissa Star, Number 179734, is Keyman Trans Limited. The applicant also seeks an order granting leave to bring this application by originating application. The first respondent does not oppose the orders sought and abides the decision of the Court. The second respondent was served on 5 October 2011 and no notice of opposition has been filed.

The facts

[2] The affidavits from the Registrar of Ships and from Mr Park (a director of the applicant) set out the background.

[3] In June 2010 the applicant purchased the vessel. After effecting settlement, the applicant was in possession of the vessel. When the vessel was undergoing alterations for fishing purposes, it was stolen. The police located the vessel. At that time Lucky Fishing Limited provided information showing that it was the registered owner of the vessel. The registration had been entered on 17 September 2010, pursuant to a bill of sale dated 20 August 2010 transferring ownership of the vessel from Galeforce Limited to Lucky Fishing Limited.

[4] A dispute arose as to the ownership of the vessel as between Lucky Fishing Limited and the applicant. That dispute was resolved in the Auckland District Court by consent, the applicant and Lucky Fishing Limited both being represented by counsel. The consent orders declared that the applicant “owns and is entitled to immediate possession” of the vessel and Lucky Fishing Limited was required to deliver the vessel up to the applicant.

[5] The Registrar was advised that Naucissa Star was not owned by Lucky Fishing Limited. Correspondence ensued between the applicant and the Registrar as to the procedure for changing the registration details. The Registrar took the view that it was necessary to apply to the High Court to seek rectification of the Register pursuant to s 69 of the Ship Registration Act 1992.

Power to direct rectification

[6] Section 69 of the Ship Registration Act 1992 provides (as relevant):

(1) Where

...

(d) An entry wrongly exists in the Register; or

- (e) There is an error or defect (other than a clerical error or obvious mistake) in an entry in the Register, --

A person aggrieved or the Registrar may apply to the High Court for rectification of the Register.

...

- (3) The Court may, in proceedings under this section, --
 - (a) Decide any question that is necessary or expedient to decide in connection with the rectification of the Register; and
 - (b) Make such order as it thinks fit directing the rectification of the Register.

[7] The applicant submits that it is in the interests of justice to make an order directing rectification of the Register either because the entry is wrong or is an error or defective. The applicant referred to the High Court decision in *Pah Farm Developments Limited and Rhodo Trust Limited v The Registrar of Ships* HC Auckland CIV 2006-404-6145, 30 October 2006 as an illustration of the Court's exercise of the power in s 69 of the Ship Registration Act. That application had also been made by way of originating application.

[8] I accept that the entry is either wrong or an error because Keyman Trans Limited is the owner of the vessel. I understand from the Registrar of Ships that she considers this to be the appropriate way to correctly record the vessel's owner in light of the events which have occurred. As grounds have been made out for the orders, and they are not opposed, I consider that the orders sought are appropriate

Result

[9] Accordingly I make the following orders:

- (a) An order granting leave to bring this matter by way of originating application;
- (b) An order under s 69 of the Ship Registration Act 1992 directing the Registrar of Ships to rectify the Register to reflect the correct owner

of the vessel, Naucissa Star, number 179734, to be the applicant,
Keyman Trans Limited.

[10] The applicant does not seek costs.

Mallon J