

CANTERBURY  
DISTRICT LAW SOCIETY

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IN THE HIGH COURT OF NEW ZEALAND  
IN ADMIRALTY  
CHRISTCHURCH REGISTRY

A.D.No.31

BETWEEN PATRICIA AVEEN OAKES

Plaintiff

A N D THE SHIP "KEY LARGO"

First Defendant

A N D HAROLD JOSEPH OAKES

Second Defendant

A N D SHERIE LOVELL OAKES

Intervenor

Hearing: 20 and 27 September 1984

Counsel: A.M. McIntosh in support  
C.M. Marshall to oppose

Judgment: 16 NOV 1984

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JUDGMENT OF HARDIE BOYS J

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On 25 May 1983 the plaintiff issued these proceedings in the Admiralty jurisdiction claiming both in rem and in personam an interest in a part-completed yacht standing on a property at Leeston. The plaintiff claims that for a period of eight

years until December 1982, she lived with the second defendant as man and wife and that the hull of the yacht was purchased out of joint funds and that subsequent work on it was done out of joint funds and joint efforts. She has produced what purports to be a written acknowledgment by him that she in fact owns a half share. An appearance has been entered by Miss Oakes, who describes herself as a friend of Mr Oakes and who has adopted his surname by deed poll. She has filed an affidavit asserting that he has transferred all his interest in the yacht to her in consideration for moneys she advanced to him for various purposes including the purchase of materials for the yacht's construction. At the time of issuing the writ, the plaintiff applied for and obtained a writ of arrest, filing an affidavit in which she stated that Mr Oakes was working on the boat continuously, had made arrangements to transport it to a place where it might be launched, and intended to launch it shortly, and that then he and the intervenor would be departing for a shakedown cruise around the New Zealand coast before sailing to Hawaii. This she alleged would happen during the latter half of 1983. The writ was duly executed.

On 4 November 1983 counsel for Miss Oakes moved for an order directing the vessel's release. In her supporting affidavit she stated that she and Mr Oakes had moved to Coromandel and were residing there permanently, whilst work on the vessel had ceased. She wished to sell it as she could not see that it would be completed. I declined to order release but on the plaintiff's application and with the consent of Mr Oakes and Miss Oakes I ordered that the vessel be appraised and

sold by private contract. The appraisal took some time but resulted in a Marine Surveyor's report that the hull and fittings were worth \$9,500 and the motor and gear boxes \$850, but that few buyers would be interested at that valuation and all that could be expected from a sale by tender was about \$5,000. Tenders were called for but the highest fell considerably short of the figure of \$5,000.

Whilst Mrs Oakes is prepared to accept the highest tender, Miss Oakes is not and she has now moved for orders that the yacht be not sold, that it be released to her and removed from the action and that the proceedings be transferred to the District Court.

It is quite clear that the grounds upon which the writ of arrest was issued and the order for sale was made no longer exist, if they ever did - and as to that I have considerable doubt. Now, there is certainly no prospect of the yacht being launched and sailed out of the jurisdiction. And Miss Oakes has now filed an undertaking not to sell the vessel without further order of the Court. In those circumstances the dispute becomes simply one as to the respective claims of Mrs Oakes and Miss Oakes to a beneficial interest in the vessel which is now no more than a land-bound, deteriorating, chattel. It is a dispute within the jurisdiction of the District Court where it can be disposed of promptly before the vessel deteriorates further. It is in the interests of all parties to bring the dispute to an end as quickly as possible: not least those of the Legal Aid fund, which I suspect may already be expected to meet costs quite out of proportion to the value of the interests involved.

I accordingly order that the vessel be released from arrest. This order is made in reliance on Miss Oakes' undertaking and is of course without prejudice to the claims of ownership asserted by both the plaintiff and the intervenor. I discharge the order for sale made on 4 November 1983. It is no longer appropriate to treat the proceedings as an action in rem in respect of which a District Court has no jurisdiction, and accordingly the first defendant is dismissed from the proceedings so that they may continue solely as an action in personam. I would further order a transfer to the civil jurisdiction, pursuant to s 12 of the Admiralty Act 1973, were it not that that would necessitate dismissing Miss Oakes from the proceedings too: but she is an essential party. I further order pursuant to s 46 of the Districts Court Act 1947 that the proceedings be transferred to the District Court at Christchurch.

All questions of costs are reserved for consideration in the District Court.

Solicitors:

Raymond, Donnelly & Co, CHRISTCHURCH, in support.  
Rudd Garland Horrocks Stewart Johnston, AUCKLAND, to oppose.