

IN THE HIGH COURT OF NEW ZEALAND  
IN ADMIRALTY  
TAURANGA REGISTRY

2617

AD 2/92

Admiralty Action In Rem and  
In Personam

1308

BETWEEN MARCEL EISENRING

Plaintiff

A N D PACIFIC TRADING  
ENTERPRISES LIMITED

First Defendant

A N D THE SHIP M.V. CARPATHIA

Second Defendant

NOT  
RECOMMENDED

Hearing: 15 July 1992  
(at Rotorua)

Counsel: G.K. Riach for plaintiff  
No appearance for defendants

Judgment: 15 July 1992

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JUDGMENT OF DOOGUE J

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This is an application for judgment by default in an action in rem under Rule 29(3) Admiralty Rules 1975 ("the Rules").

Judgment is sought against the second defendant, which has failed to enter an appearance within the time limited for appearing under Rule 11 of the Rules, service having been effected upon the second defendant on 12 May 1992 in accordance with Rule 10 of the Rules.

The plaintiff has satisfied the requirements of Rule 29(3). An affidavit of service has been filed proving service, in accordance with Rule 10, of the writ. A

statement of claim has been filed together with affidavits verifying the facts upon which the action is based by the plaintiff.

The plaintiff was engaged by the first defendant on the second defendant as a refrigeration officer for the fishing season of 1992. His remuneration was to consist of a cash payment of \$NZ10,000 on departure of the vessel from Whangarei. That was paid. In or before 60 days of the signing of the contract he was to receive a further \$NZ10,000, and on completion of the albacore fishing season he was to receive \$US19,400. The latter two payments have not been paid.

The plaintiff deposes that he commenced work on the vessel after the agreement was signed and completely rebuilt the refrigeration system of the vessel over the following month. The ship then went to sea, returning to Tauranga in early May upon completion of the albacore fishing season on 16 April 1992. The plaintiff has not received either of the payments due to him under his contract. He was advised by the master there was no money available to him, or indeed other crew members.

There is no question therefore that upon the undisputed evidence of the plaintiff he can satisfy the Court that his claim is well founded and that he is entitled to judgment under Rule 29(6) of the Rules. Under that rule the Court may also order the property against which the action is brought to be appraised and sold and the proceeds to be paid into Court. Such an order is sought in the present case.

The plaintiff seeks judgment for both the sum owing to him in New Zealand currency and the sum owing to him in United States currency, both sums being so specified in the contract. There can no longer be any dispute that in appropriate cases it is proper for the Court to enter judgment in the currency of another country. See, for example, Miliangos v George Frank (Textiles) Limited [1975] 3 All ER 801; Barclays Bank International Ltd v Levin Bros (Bradford) Ltd [1976] 3 All ER 900; Société Française Bunge SA v Belcan NV, The Federal Huron [1985] 3 All ER 378; American Express Europe Limited v Bishop (unreported, High Court, Wellington, CP 61/87, 21 August 1987, Heron J).

As is noted in the Barclays Bank and American Express cases, following Miliangos, the appropriate conversion rate is to be applied at the time the plaintiff comes to execute judgment. There will accordingly be judgment for the plaintiff against the second defendant in the sums of \$NZ10,000.00 and \$US19,400.00. In addition, there will be an order that the second defendant be appraised and sold and the proceeds be paid into Court.

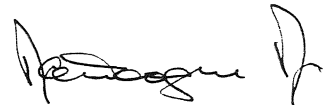
Having regard to the order for the sale of the ship, it is further ordered, in terms of Rule 30(2) of the Rules:

- (a) That the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 60 days beginning with

the day on which the proceeds of sale are paid into Court;

- (b) That any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the order;
- (c) That within seven days after the date of payment into Court of the proceeds of sale the Registrar shall send for publication in the "Gazette" and the "New Zealand Herald" a notice in form 16 to the Rules.

The plaintiff is entitled to his costs in the sum of \$NZ1,500.00, together with his reasonable disbursements to be fixed by the Registrar under Item 34 of the Second Schedule to the High Court Rules.

A handwritten signature in black ink, appearing to be 'H. J. Sharp', written in a cursive style.

Solicitors for Plaintiff:  
Sharp Tudhope, Tauranga