

THE HIGH COURT

ADMIRALTY

[No. 2013/175 SP]

BETWEEN

AMSTERDAM TRADE BANK N.V.

PLAINTIFF

AND

THE OWNERS AND ALL PERSONS CLAIMING AN INTEREST IN THE M.V. CLIPPER FAITH

DEFENDANTS

JUDGMENT

delivered the 4th. day of June, 2014

1. The plaintiff in these proceedings seeks a declaration that Zealand Holdings Inc. (hereinafter referred to as "Zealand") has no *locus standi* to defend the proceedings herein or to intervene therein in any other way, and an Order striking out the Memorandum of Appearance filed on behalf of Zealand.

2. The vessel, M.V. Clipper Faith, was registered as being in the ownership of 'Afternoon Maritime Corporation', a company incorporated in Libya. That company was a wholly owned subsidiary of Zealand. Zealand also owns a number of other subsidiaries, including a company called Machiko Carrier Inc. Each of the subsidiaries owned one significant asset, being a ship.

3. Afternoon Maritime Corporation agreed to borrow US\$54,200,000 from the plaintiff. Zealand was a party to that agreement in its capacity as an obligator. Zealand agreed to be jointly and severally liable with Afternoon Maritime and Machiko for all of the liabilities of those companies to the plaintiff on foot of the loan agreement.

4. Security for those sums was provided by both Afternoon Maritime and Machiko by granting mortgages to the plaintiff over their respective vessels. Further security was provided by the provision of mortgages over four other vessels which were owned, respectively, by four other subsidiaries of Zealand. These vessels have been described as "the Neptune Vessels". There was default. The Bank duly called in its loan and these proceedings issued on 13th March 2013.

5. Proceedings were issued by the crew of the vessel and judgment was obtained in those proceedings for a substantial sum.

6. An Order for sale of the vessel was made on 14th May 2013.

7. The owners of the vessel do not intend to defend these proceedings.

8. In addition to the security provided by way of mortgages under the loan agreement, Zealand also granted a charge over all of its shares in the aforementioned Afternoon Maritime Corporation to the plaintiff. The plaintiff acquired possession of all of Zealand's shares in the said Afternoon Maritime Corporation in June 2013, thereby obtaining control thereof and a notice of change of solicitors was delivered on 24th June 2013, and the defence herein was duly discontinued.

9. In June 2013, Zealand issued a notice of motion seeking leave of the Court to file a Memorandum of Appearance naming Zealand as a defendant in the proceedings. That motion was dealt with on 3rd July 2013, and liberty to enter an appearance was granted. The issue as to whether or not Zealand had any interest in the vessel or in the proceeds of sale thereof was not dealt with at that stage. The plaintiff appealed that Order and sought a continuation of the stay thereon. On 12th July 2013, the Supreme Court directed that the plaintiff be at liberty to bring a motion seeking a determination as to whether Zealand had any interest in the vessel or the funds in Court and, thus, whether Zealand had *locus standi* to defend or intervene in the proceedings.

10. Zealand argues that the defendants include persons claiming an interest in the vessel, and that it had such an interest by virtue of the fact that its subsidiary companies, mentioned at paragraph 4 hereof, paid a sum of about US\$15m to the plaintiff. This, it was argued, allows Zealand to claim a charge on the ownership, and thus have the necessary *locus standi* to defend and to counterclaim.

11. The plaintiff argues that the owners of the Neptune Companies paid the sums in question under obligations to do so, and that they, therefore, never had a claim to a beneficial interest in the vessel. They further argue that Zealand is trying to make a claim to an interest in the assets of its subsidiary.

12. I have considered the submissions of the parties, and on the facts, I am satisfied, on the simple, though fundamental basis, that a shareholder has no property, legal or equitable, in the assets of a company, that Zealand never had any interest in the vessel, or, by extension, in any of the funds in Court.

13. The plaintiff must, therefore, succeed in its application for a declaration that Zealand has no *locus standi* to defend these proceedings and that the appearance entered on its behalf should be struck out.