Case Summary: Moray Channel Enterprises Ltd. V. Gordon, 2017 FC 250

May 17, 2017

In a case involving a moorage contract for a float home, the Federal court has held that regular late payments and outstanding debts warrant the sale of the vessel; spotty record keeping by the marina disallows it to receive costs on a solicitor-client basis.

(i) Facts

Moray Channel Enterprises Ltd, the owner of the Richmond Marina ("Marina") entered into a moorage agreement regarding Mr Gordon's ("Boat owner") float home, which is a registered vessel. Under the terms of the agreement, the Marina must provide moorage and certain ancillary services for a monthly fee; the Boat owner had to comply with the Marina community rules.

At various points in time, the Boat owner failed to pay the monthly fees. Under the marina rules, the Marina charged a number of monetary penalties, all of which remained unpaid and soured the relationship between the parties. The Marina also argued that the Boat owner failed to respect the marina rules. As of May 2015, the Boat owner simply stopped all payment.

The Marina began proceedings in the federal court against both the Boat owner and his vessel. The vessel was arrested and a marshal was appointed to take possession of the vessel. The Boat owner filed a counterclaim, claiming misrepresentations and fraud, arguing that the case should be tried by the British Columbia Residential Tenancy Board rather than the Federal Court.

The marshal eventually sold the vessel for a lower price than the initial asking price; an initial sale was cancelled after an inspection revealed serious deficiencies in the vessel. The court received a total of CA $132,000. The claim by the Marina was for CA $17,000, and costs on a solicitor-client basis (valued at about CA $18,000).

(ii) Decision

The court first made short work of the argument of the Boat owner that the case is in pith and substance a property rights case. The case deals with a registered vessel and as such must be treated under the principles of Canadian maritime law.

The court recognized that misrepresentations were made by the Marina's manager as to the outstanding amounts under the moorage contract. There seemed to have been an ongoing practice of overcharging the Boat owner and a general failure to provide him with up to date invoices. However, despite the Marina's negligence, this does not excuse the Boat owners' behaviour of simply not paying any of the charges under the contract as of May 2015.

The court disallowed several of the late payment charges claimed by the Marina, but held that it was entitled to some CA $15,000; the counterclaim was struck for showing no genuine issue for trial. The negligent billing practices of the marine means that the Marina should not be awarded any higher than regular costs.

This case is a reminder that, despite recent decisions to the contrary in the United States, house boats in Canada fall within the ambit of Canadian maritime law, not provincial property rights law. It is also a reminder for marinas accommodating house boats to ensure proper record keeping, as failing to do so may be used against the marina in a court of law.

By

Nils Goeteyn, Jean-Marie Fontaine

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
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F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

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200 Burrard Street
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V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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