

Federal Court



Cour fédérale

**Date: 20170919**

**Docket: T-1128-17**

**Vancouver, British Columbia, September 19, 2017**

**PRESENT: The Honourable Madam Justice Strickland**

**ADMIRALTY ACTION *IN REM***

**BETWEEN:**

**ROYAL BANK OF CANADA**

**Plaintiff**

**and**

**SEAMOUNT MARINE LTD. AND THE  
OWNERS AND ALL OTHERS INTERESTED  
IN THE SHIP "OCEAN MARAUDER"**

**Defendants**

**AMENDED ORDER**

**UPON MOTION** filed on September 13, 2017 on behalf of Royal Bank of Canada seeking an Order for the sale of the Defendant Vessel "Ocean Marauder" in accordance with the terms set out in the draft Order and Commission of Sale appended to the Notice of Motion.

**AND UPON** reading the motion record filed by the Plaintiff, including the affidavit of Tracee Dooley, sworn on September 13, 2017 wherein she deposes that she is advised by Christopher Giaschi, counsel for the Plaintiff, and verily believes that:

- i. The Defendants, by their counsel David Jones of Bernard & Partners LLP, consent to the Order of Sale and Commission attached as Schedules A and B to the Notice of Motion dated September 13, 2017;
- ii. The second mortgagee, Lenico Holdings Ltd., by its counsel, John C. Fiddick of Whitelaw Twining Law Corporation, consents to the Order of Sale and Commission attached as Schedules A and B to the Notice of Motion dated September 13, 2017; and
- iii. The Caveator, Stryder King Holdings Ltd, by its counsel, Darren Williams of League and Williams Law Corporation, consents to the Order of Sale and Commission attached as Schedules A and B to the Notice of Motion dated September 13, 2017;

**AND UPON** hearing the submissions of counsel for the Plaintiff and counsel for the Defendants on September 19, 2017;

**THIS COURT ORDERS that:**

1. The "Ocean Marauder", its appurtenances and equipment (collectively hereinafter referred to as the "Vessel"), now under arrest at Campbell River, British

Columbia, shall be sold by public auction in accordance with the terms of this Order.

2. The sale of the Vessel shall not include any fishing licences or quota attached to or issued in respect of the Vessel.
3. The Vessel shall be sold, as set out below, in its present state, on an "as-is, where-is" basis, with all existing faults, without any allowances for deficiencies or errors of description whatsoever and without any legal or contractual representations or warranties whatsoever, but free and clear of all liens, mortgages and any other encumbrances pursuant to Canadian Maritime law. Prospective purchasers shall satisfy themselves as to the condition of the Vessel, and the currency of its certificates, if any.
4. Mr. Harry Mose of Pacific Boat Brokers Inc. shall be appointed as an acting Sheriff of this Court (hereinafter the "Sheriff"). The Sheriff's commission on sale shall be three (3) percent of the gross total sale price, which shall include payment for any brokering services provided by Sheriff or other agency in respect of the sale. Included in the aforesaid commission shall be the services of the Sheriff in contacting any prospective or potential purchasers, arranging physical inspection of the Vessel, liaising with the shipowners or managers for the ship-board attendances by potential purchasers, soliciting and receiving sealed tenders from potential purchasers, dealing with the deposit and the balance of the purchase price, instructing lawyers, and assessing costs. The Sheriff may, in the event a situation arises in which he reasonably feels in need of independent legal advice,

retain legal counsel, the cost of which shall be included as a Sheriff's cost, payable from the sale proceeds. In the event that the Sheriff has any uncertainty as to what items are covered by the commission, he has liberty to apply to the Court on short notice for directions in that regard.

5. The Sheriff is authorized and directed to sell the Vessel by public auction in accordance with this Order and as set out in the Commission of Sale, a copy of which is attached as **Schedule "A"** hereto.
6. The Sheriff shall be required to promote the sale of the Vessel for the best reasonably obtainable sale price and seek out potential purchasers, and for such purposes may utilize the services of his own company.
7. The Defendants shall provide to the Sheriff copies of any ship's documents requested by the Sheriff. The costs of reproduction of those documents being a Sheriff's expense. The Defendants and each of them shall provide and/or not impede access to the Vessel, and shall provide such documents to any ship broker, appraiser, surveyor, prospective purchaser or other person authorized by or on behalf of the Plaintiff or the Sheriff to inspect, and show the Vessel to prospective purchasers, their inspectors, surveyors or agents, at any time of day and on any day of the week.
8. The Sheriff shall advertise the sale of the Vessel in publications it considers appropriate including, but not limited to, the Vancouver Sun, in order to obtain the best reasonably obtainable sale price. The advertisement shall be placed by

September 26, 2017. Such advertisements shall include the following information concerning the sale process and the terms of sale:

- a. The Vessel shall be sold in its present state and location, on an "as-is, where-is" basis with all existing faults, without any allowance for deficiencies or errors of description whatsoever and without any legal or contractual representations or warranties whatsoever but free and clear of all liens and encumbrances under Canadian maritime law. Prospective purchasers shall satisfy themselves as to the condition of the Vessel and the currency of her documents and certificates, if any;
- b. Prospective purchasers shall deliver to the Sheriff an offer to purchase in a sealed envelope at Pacific Boat Brokers Inc., #6-1025 Lee Road, Parksville, British Columbia, V9P 2E1 on or before 5:00 pm on October 26, 2017. Every offer to purchase shall be accompanied by a deposit of 5% of the offer amount. The deposit shall be by way of irrevocable certified cheque or bank draft drawn on or issued by a Canadian chartered bank and made payable to the ~~Federal Court~~ Receiver General; and
- c. The sale of the Vessel is at the discretion of the Court and may not necessarily be to the highest or any other bidder. If in the opinion of the Court a fair price has not been offered, one or more of those persons who have made offers may be asked to submit higher offers or the Court may order another alternative method of sale.

9. The Sheriff shall also include in the advertisement for sale a notice to creditors to the effect that:
  - a. The Vessel is under arrest at Campbell River, British Columbia, Canada;  
and
  - b. Any claim against the Vessel or the proceeds of its sale by an alleged creditor must be filed by Affidavit in any Registry Office of the Federal Court on or before October 26, 2017, failing which the claim shall be barred. Such Affidavit shall provide full particulars of the claim, its basis and alleged status. If priority is claimed, the creditor/claimant shall set out the basis upon which it claims such priority.
10. The terms set out in the advertisement as listed in paragraphs 8 and 9 above are terms of this Order.
11. The offers to purchase will be opened by the Sheriff after 5:00 pm on October 26, 2017. The Sheriff shall report the results of the auction within 24 hours to the Court and to the solicitors for the Plaintiff and Defendants and shall provide his recommendation regarding whether any offer received is a fair and reasonable offer. Any party may thereafter apply to the Court for approval of the sale of the Vessel.
12. If the sale of the Vessel is approved by the Court, the successful bidder shall remit and pay the balance of the purchase price of the Vessel within five (5) days of the

date of the Court's approval of the offer. Payment of the balance of the purchase price shall be by way of irrevocable certified cheque or bank draft drawn on or issued by a Canadian chartered bank and made payable to the ~~Federal Court~~ Receiver General.

13. If the successful bidder fails to pay the balance of the purchase price within five (5) days of the date of the Court's approval of the purchaser's offer, the purchaser's deposit shall be forfeited and the Court may approve the sale of the Vessel to another bidder or order another alternative method of sale, upon such other terms and conditions as the Court may deem fit to impose.
14. In the event that the sale of the Vessel is approved by the Court, the Sheriff shall sign a bill of sale transferring to the purchaser the ownership of the Vessel in the same manner and to the same extent as though the Sheriff were the registered owner thereof, but free and clear of any liens, mortgages or any other encumbrances pursuant to Canadian Maritime law. The Sheriff shall be entitled to deliver such bill or bills of sale to the purchaser by delivery thereof to the purchaser's nominated agent at Parksville, British Columbia.
15. Possession, risk and title to the Vessel shall pass to the purchaser on delivery by or on behalf of the Sheriff of an executed bill of sale.
16. All reasonable expenses of advertisement of the sale, agency fees and all other costs, disbursements, commissions and other expenses such as reproduction of plans, photographs, courier services, and survey fees, necessary or inherent to

giving effect to this Order and the commission of sale, shall be treated as Sheriff's costs, who, after taxation by an assessment officer, upon notice to the other parties identified herein, shall be paid out to him or as he may direct out of the proceeds of sale in priority to all other claims.

17. All questions relating to the right of any claimant, including the Plaintiff and Caveators, against the Vessel or the proceeds of sale of the Vessel and all questions respecting the priority of all *in rem* creditors shall be reserved until further order of the Court.

18. Liberty to apply to the Court to vary or set aside this Order or any provision thereof is granted to all interested parties.

"Cecily Y. Strickland"

Judge



SCHEDULE "A" TO THE ORDER OF JUSTICE STRICKLAND  
DATED SEPTEMBER 19, 2017 IN COURT FILE NO. T-1128-17

Docket: T-1128-17

**FEDERAL COURT**

**ADMIRALTY ACTION *IN REM***

**BETWEEN:**

**ROYAL BANK OF CANADA**

**Plaintiff**

**and**

**SEAMOUNT MARINE LTD. AND THE  
OWNERS AND ALL OTHERS INTERESTED  
IN THE SHIP "OCEAN MARAUDER"**

**Defendants**

**COMMISSION OF SALE**

**TO:** Harry Mose, designated as Acting Sheriff of the Federal Court (the "Sheriff"),

**WHEREAS** this Court has ordered that the Defendant Vessel "Ocean Marauder" (the "Vessel") be sold,

**YOU ARE DIRECTED** to cause the Vessel to be sold at public auction for the highest price that can be obtained for it.

**YOU ARE FURTHER DIRECTED**, as soon as the sale has been completed, to file an account of the sale signed by you, together with this Commission.

Dated this \_\_\_ day of September, 2017.

Issued by: \_\_\_\_\_ (Designated Officer)

Federal Court Registry  
Vancouver Registry Office  
3rd Floor, 701 West Georgia Street  
Vancouver, British Columbia, V7Y 1 B6  
Telephone: (604) 666-3232  
Facsimile: (604) 666-8181

This Commission was issued at the request of, and enquires may be directed to:

Giaschi & Margolis  
401-815 Hornby Street  
Vancouver, B.C. V6Z 2E6  
Tel: 604-681-2866  
Fax: 604-681-4260  
Email: [giaschi@admiraltylaw.com](mailto:giaschi@admiraltylaw.com)

Attention: Christopher J. Giaschi  
Solicitors for the Plaintiff