

Federal Court



Cour fédérale

Date: 20181026

Docket: T-1174-18

Citation: 2018 FC 1079

Montréal, Quebec, October 26, 2018

PRESENT: The Honourable Mr. Justice Bell

**SIMPLIFIED ACTION
ADMIRALTY ACTION *IN PERSONAM***

BETWEEN:

2955-9820 QUÉBEC INC.

Plaintiff

and

**CONSTRUCTION NAVALE ATLANTIQUE
INC.**

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The Plaintiff brings a motion for default judgment pursuant to Rules 210 and 369 of the *Federal Courts Rules*, SOR/98-106. The Plaintiff's claim is in the amount of \$12,324.97 for the cost to replace the motor in its motor vessel, the TOMMY FRANÇOIS, which was designed and

built by the Defendant and purchased by the Plaintiff in December, 2015. The Plaintiff contends the motor in the TOMMY FRANÇOIS was damaged beyond repair by the infiltration of rain water. The Plaintiff argues rain water was able to enter the motor due to the negligent design and construction of the muffler. The Plaintiff's claim is supported by an expert report dated August 1, 2016, from Senior Marine Surveyor, Denis Servant. That report states in part that:

Presence of water has contaminated all moving parts. Mechanic told me that water entered by the muffler pipe because the angle of the muffler was no quite closed. The angle of the pipe should be 45 degree instead of 25 degree. I told Mr. Boulay that I will be in Rivière-au-Renard I will go and verify the angle of the muffler.

July 16, 2016, I went in Rivière-au-renard and did check the angle of the muffler and effectively the rake angle should be over a length of minimum 12 inch. Yes indeed the angle should be a 45 degree angle. Here, the bevel is only 4". Under these conditions, when heavy rains is pushed by the wind, rain is coming in the engine. At 99% it is what happened in this case.

[2] Under the title **Cause of Damage**, Mr. Servant states that: "Water came in by muffler and damage engine head". With respect to the damages flowing from the alleged negligent design, Mr. Servant indicates that the cost to replace the motor at \$12,324.97 is cheaper than the cost to rebuild, which is \$13,235.00.

[3] On June 18, 2018, the Plaintiff filed a Statement of Claim (Simplified Action) *In Personam*. On July 3, 2018, the Statement of Claim was served on the Defendant. The Defendant has not filed and served a Statement of Defence within 30 days after service of the Statement of Claim as required by Rule 204(a).

[4] I am satisfied on the record before me that the Plaintiff properly served the Defendant, the Defendant is in default and that, on the merits, the Defendant is liable to the Plaintiff for the amount claimed.

[5] The Plaintiff also claims interest on the amount claimed from the date of filing the Statement of claim. The amount of interest is not fixed. The *Interest Act*, RSC, 1985, c I-15 stipulates that interest at 5% per annum may be claimed. Recently, this Court in *Canada v Adventurer Owner Ltd*, 2017 FC 105, and the Federal Court of Appeal in *Platypus Marine, Inc. v Tatu (Ship)*, 2017 FCA 184, awarded 5% interest on damages.

[6] For these reasons, there will be a judgment in favour of the Plaintiff against the Defendant in the amount of \$12,324.97 plus interest at 5% commencing June 19, 2018, with costs in favour of the Plaintiff.

JUDGMENT in T-1174-18

THIS COURT'S JUDGMENT is that:

1. The Plaintiff is granted judgment;
2. The Defendant shall pay to the Plaintiff the sum of \$12,324.97, plus interest at 5% per annum commencing June 19, 2018; and
3. Costs are awarded against the Defendant in favour of the Plaintiff in the amount determined based upon Tariff B column III, plus reasonable disbursements.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1174-18

STYLE OF CAUSE: 2955-9820 QUÉBEC INC. v CONSTRUCTION NAVALE
ATLANTIQUE INC.

**MOTION IN WRITING CONSIDERED AT MONTRÉAL, QUEBEC, PURSUANT TO
RULES 210 AND 369 OF THE *FEDERAL COURTS RULES***

JUDGMENT AND REASONS: BELL J.

DATED: OCTOBER 26, 2018

WRITTEN REPRESENTATIONS BY:

Vanessa Major

FOR THE PLAINTIFF

SOLICITORS OF RECORD:

De Man Pillet
Montreal (Quebec)

FOR THE PLAINTIFF