

CANADA / JUDGMENT

Gilling v. Canada

2001 FCT 1271

COURT

Federal Court

DECIDED

20 November 2001

Source: decisions.fct-cf.gc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Gilling v. Canada Court (s) Database Federal Court Decisions Date 2001-11-20 Neutral citation 2001 FCT 1271 File numbers T-109-97 Decision Content Date: 20011120 Docket: T-109-97 Neutral citation: 2001 FCT 1271 Action in rem against the ship "SEPTEMBER" (a.k.a. DESPERADO) BETWEEN: DOUGLAS GILLING Plaintiff

- and - HER MAJESTY THE QUEEN IN RIGHT OF CANADA and DENISE SHEPPARD and ALLEN COX and THE OWNERS AND ALL OTHERS INTERESTED IN THE SHIP SEPTEMBER (A.K.A. DESPERADO) Defendants REASONS FOR ORDER NADON J.
- [1] The plaintiff, pursuant to Rule 51(1) of the Federal Court Rules[1], appeals from the decision of Prothonotary Richard Morneau, dated June 6, 2001. The prothonotary's decision reads as follows: The Plaintiff shall cease and desist from and discontinue any and all proceedings instituted or instigated by him, directed against the Defendant Denise Sheppard and/or the Defendant vessel "Desperado" (ex-September) in Turkey, including taking all steps necessary to forthwith release the said vessel from seizure and/or Court-Ordered detention in Turkey. Failing compliance with this Court's Order within thirty (30) days, the Plaintiff's action against the Defendant Denise Sheppard herein shall be dismissed, with prejudice and with costs. Costs of this motion go to the Defendant Denise Sheppard.
- [2] In addition to an order setting aside the prothonotary's decision, the plaintiff seeks two additional orders from this Court, namely:
 - (a) that all parties to these proceedings immediately cease and desist from and discontinue any and all proceedings and claims instituted by them in Turkey against other parties to these proceedings;
 - (b) that, pending final determination by this Court of the issues between the parties, the vessel SEPTEMBER (a.k.a. DESPERADO) remains in the possession of the current trustee, Mr. Metin Erkerman, at the Netsel Marina, Marmaris, Turkey.
- [3] I now turn to the plaintiff's challenge of the prothonotary's decision of June 6, 2001, whereby the prothonotary ordered him to terminate the legal proceedings which he instituted in Turkey against the defendants Sheppard, Cox and/or the vessel. In his affidavit of October 5, 2001, the plaintiff states that he has complied with the prothonotary's order, in that he has

not appealed the judgment of the Marmaris Civil Court which dismissed his lawsuit against the aforesaid defendants. It appears that the Turkish Court dismissed the plaintiff's lawsuit on the ground that an identical action was pending before this Court. Consequently, at the time of the hearing before me, the prothonotary's decision had been executed. In these circumstances, the plaintiff's appeal is moot. I need not, therefor, address the substantive issues raised by the plaintiff.

- [4] The second order which the plaintiff seeks is that all parties immediately cease and desist from and discontinue any and all proceedings and claims instituted by them in Turkey against other parties.
- [5] The defendant Sheppard does not appear to have instituted legal proceedings in Turkey against the plaintiff. In any event, I am advised by Ms. Tabib that that is the case. With respect to the defendant Cox, he has instituted proceedings in Turkey, claiming the sum of £ 75,000 against the plaintiff in respect of wages, marina charges, maintenance and miscellaneous costs, all incurred prior to the sale of the vessel to the defendant Sheppard. The defendant Cox has not filed any proceedings in Canada in respect of the foregoing. Consequently, in these circumstances, I see no basis for making the order which the plaintiff seeks.
- [6] I now turn to the third order sought by the plaintiff. The plaintiff argues that I should order, pending a final determination by this Court, that the vessel remain in the possession of its current trustee in Turkey.
- [7] Since this Court has no power or jurisdiction to arrest the vessel outside of Canada, I do not see on what basis I could make the order which the plaintiff seeks. The plaintiff could not refer me to any authority supporting his submission. I am, therefor, not prepared to make the order sought by the plaintiff.
- [8] For these reasons, the plaintiff's motion shall be dismissed. The costs shall be in the cause. Marc Nadon JUDGE O T T A W A, Ontario November 20, 2001
- [1] Rule 51(1) provides as follows: An order of a prothonotary may be appealed by a motion to a judge of the Trial Division.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/50514/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/gilling-v-canada-2001-fct-1271>

Prepared on 29 October 2026 · Esheria