

CANADA / JUDGMENT

## Roxford Enterprises SA v. Cuba (Republic)

2003 FCT 763

COURT

Federal Court

DECIDED

19 June 2003

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Roxford Enterprises SA v. Cuba (Republic)

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Notes

Reported Decision

Decision Content

Date: 20030619

Docket: T-123-00

Citation: 2003 FCT 763

Toronto, Ontario, June 19th, 2003

ADMIRALTY ACTION IN REM AND IN PERSONAM

BETWEEN:

ROXFORD ENTERPRISES S.A. Plaintiff

AND:

THE GOVERNMENT OF THE REPUBLIC OF CUBA,  
THE MINISTRY OF FISHING INDUSTRY AND MERCHANT MARINE  
(MINISTERIO DE LA INDUSTRIA PESQUERA Y MARINA MERCANTE),  
THE MINISTRY OF TRANSPORT, EMPRESA NAVEGACION MAMBISA  
and NAVIERA POSEIDON, O.E.E.

Defendants (In Personam)

AND:

THE OWNERS AND ALL OTHERS INTERESTED IN THE VESSELS M/V CALIX, M/V AJANA (ex CARIBBEAN QUEEN), M/V GABYANA (ex CARIBBEAN PRINCESS), M/V AVON, M/V LOTUS ISLANDS, M/V LILAC ISLANDS, M/V AGATHE ISLANDS, M/V WEST ISLANDS, M/V ODELYS (ex ROSE ISLANDS), M/V SOUTH ISLANDS M/V EAST ISLANDS, M/V TEPHYS, M/V RIO YATERAS, M/V ANACOANA, M/V GUARIONEX, M/V DAJQUIRI, M/V CAJIO, M/V MINAS DEL FRIO, M/V GRAN PIEDRA AND M/V MAGNOLIA REEFER

Defendants (In Rem)

AND:

NATIONAL BANK OF CANADA, INTERNATIONAL AIR TRANSPORT ASSOCIATION, CUBANA TOURS, A. NASH TRAVEL INC.,

Garnishees

AND:

CUBANA DE AVIACION S.A.

Moving Party

REASONS FOR ORDER

LAFRENIÈRE P.

Cubana de Aviacion S.A. ("Cubana") moves pursuant to Rule 399 of the Federal Court Rules, 1998 to set aside an order to show cause on debts owed by certain garnishees to Cubana and a writ of seizure and sale of the assets of Cubana, issued ex parte on August 27, 2001, to satisfy a judgment obtained by default against the government of Cuba ("Cuba") by the Plaintiff, Roxford Enterprises S.A. ("Roxford").

Cubana claims that Roxford misled the Court into issuing the attachment order by providing inaccurate or outdated information showing that Cubana was owned and controlled by the government of Cuba and, further, that Cubana could not own property because of constitutional limitations. Cubana submits that Roxford's evidence concerning the Cuban Constitution was inaccurate because the version cited had been amended years earlier. In the older version of the

Constitution, the socialist state asserted control of most property in Cuba. However, significant amendments to the Constitution were adopted in 1992, particularly Articles 15 and 17, which now permit property ownership by separate enterprises.

Cubana maintains that it is not an arm of the Cuban government, but a separate entity with a separate juridical personality. It is entitled to carry on business in the Province of

Quebec, has issued shares that are held by a separate company, Corporation de la Aviation Cubana S.A. ("CAC"), and has its own banking facilities and annual financial statements. In short, Cubana submits that it cannot be considered an "alter ego" of the Cuban government such as to be liable for its debts.

Roxford denies having misrepresented any facts to the Court, but says that, in any event, the alleged errors in evidence were not sufficiently important that the Court would not have issued the order that resulted in the seizure of Cubana's assets and the garnishment of third parties. Roxford submits that the law concerning "piercing the corporate veil" is applicable and argues that Cubana is a "sham", or an alter ego of Cuba. According to Roxford, Cuba is the true owner of Cubana's shares and assets. Therefore, Roxford argues, the property of Cubana should be liable to seizure to satisfy Cuba's debts.

The three issues to be determined on this motion are as follows: first, whether the order dated August 27, 2001 should be reviewed; second, whether it is within the jurisdiction of this Court to order that Cubana, a third party, be treated as liable for the debts of Cuba; and, third, whether the order of seizure and sale issued against Cubana to satisfy the judgment debt of Cuba should be set aside.

## Background Facts

On January 26, 2000, Roxford brought an action against a number of defendants, including the Government of Cuba, for breach of a contract of sale. The subject matter of the contract was the sale of the vessel M/V "Calix".

The Government of Cuba did not defend the action, and a default judgment in the amount of \$2,371,921.50 was issued against it. The moving party, Cubana, was not named in that action, nor did it take part in the proceedings. The judgment remains unsatisfied to this day.

On August 13, 2001, the Plaintiff applied ex parte for an order of seizure and sale of the assets of Cubana in satisfaction of its judgment debt against Cuba. In support of the motion, Roxford filed the affidavit by Alexander Printzios, an authorized representative of the company. Mr. Printzios states in his affidavit that he believes that Cubana is an "organ of Cuba". His belief is based on information gleaned from the Cubana's website, certain extracts of the Constitution of the Republic of Cuba and inquiries he made to others, including the International Aviation Trade Association. In light of the uncontradicted evidence adduced by Roxford and the submissions of its counsel, I issued an order on August 27, 2001 providing for the seizure and sale of Cubana's assets, as well as garnishment in the hands of third parties of amounts owing or accruing to

Cubana.

Within days of attachment of its assets, Cubana brought a motion to quash the order dated August 27, 2001. Prothonotary Morneau suspended the order on September 11, 2001, pending disposition of this motion. Cubana also appealed the Order, but subsequently withdrew the appeal, without prejudice to any of its rights.

### **Evidence adduced by the parties in the present motion**

Cubana filed two affidavits in support of its motion to set aside the order dated August 27, 2001: one by Ivan Lurbe, its general manager, and the other by Francisco Marqués Granda, an in-house counsel. Roxford countered with two further affidavits by Mr. Printzios, an affidavit by one of its solicitors, Jean-Marie Fontaine, and the affidavit of a legal expert, Matias Travieso-Diaz. Only Roxford's affiants were cross-examined.

To rebut Mr. Printzios' claims that Cubana is an agent of Cuba, Mr. Lurbe and Mr. Marqués Granda refer to facts that were not brought to the Court's attention at the time the *ex parte* order was sought, and that they say establish that Cubana is a separate corporate entity. Mr. Lurbe points to the Articles of Incorporation for Cubana (Corporacion de la Aviacion Cubana), attached as an exhibit to his affidavit, as well as its shareholding, which does not include the Government of Cuba, as proof of the independent existence of Cubana under Cuban law. According to Mr. Lurbe, Cubana is entitled to carry on business in the province of Quebec, which recognizes its separate legal personality. Mr. Lurbe also takes issue with Mr. Printzios' characterization of Cubana as simply a reincarnation, under a different name, of its predecessor, a state-owned airline called Empresa Consolidada Cubana de Aviacion ("Empresa"). Mr. Lurbe states that Empresa no longer exists.

Mr. Marqués Granda states that Mr. Printzios' relied on an incorrect version of the Constitution of the Republic of Cuba in support of his motion to seize Cubana's assets. (Roxford does not dispute that version of the Cuban Constitution produced was outdated.) Mr. Marqués Granda states that Cuba adopted significant amendments to its Constitution in 1992 to adapt to the commercial reality. Article 15 of the Constitution was amended to allow the transfer of property to natural and legal persons, where the transfer furthers an economic objective and does not affect the political, social or economic foundations of the state. Further, Article 17 was amended to clearly indicate the autonomy of legal persons. The second paragraph of article 17 provides:

These enterprises and entities only answer for their debts through their financial resources, within limits prescribed by law. The state does not answer for the debts incurred by the enterprises, entities and other legal bodies, and neither do these answer for those incurred by the state.

Mr. Marqués Granda states that Cubana is a duly incorporated entity, carrying on its own business, with its own employees and its own books of account. He also says that Cubana is a separate legal entity under Cuban law, operating independently of the Government of Cuba, competing with other carriers, undertaking and executing contractual obligations on its own behalf, employing its own employees and doing all things required to run its business.

Mr. Travieso-Diaz, a Cuban-born attorney practising law in the United States of America, was engaged by Roxford to provide a legal opinion regarding certain aspects of Cuban law and their applicability to the status of certain Cuban entities. In preparation for providing his opinion, Mr. Travieso-Diaz examined the motion material filed on behalf of Cubana, as well as Cuba's constitution, its Civil Code and its law relating to foreign investment.

According to Mr. Travieso-Diaz, Cubana is not a private enterprise but a state instrumentality in disguise. In order to buttress his opinion, Mr. Travieso-Diaz identifies a number of perceived deficiencies in Cubana's evidence, such as the absence of any evidence to explain how the principal shareholder of Cubana, CAC, acquired the state enterprise's assets, the basis upon which the assets were transferred to Cubana, the consideration that was given for the assets, or the economic justification for the transfer of state assets to Cubana.

At paragraphs 8 and 9 of his affidavit, Mr. Travieso-Diaz comments as follows regarding what he considers to be continued state control and ownership of Cubana's business and assets:

8. The President and legal representative of CAC is one Rogelio Acevedo Gonzalez ("Acevedo"). Mr. Acevedo was a military leader in Cuba's Revolution, is a long-time Division General in Cuba's Armed Forces, is a member of Cuba's Council of Ministers that rules the country, and is the President of the Cuban Institute of Civil Aeronautics... The fact that such a government official is the President of CAC strongly suggest that CAC is a direct instrument of the Cuban state, since it is the consistent practice of the Cuban Government, and in particular its Armed Forces Ministry (often referred to by the initials "FAR"), to set up enterprises which are controlled by the state and headed by high ranking members of the military...
9. On September 16, 1996 Mr. Acevedo as President of CAC and one Jose Heriberto Prieto Musa ("Prieto") incorporated a company known as Cubana de Aviacion S.A. ("Cubana S.A.")... Mr. Prieto contributed one thousand Cuban pesos (approximately C\$75.00 at the current exchange rate of C\$1=13.4 pesos) and received one share of Cubana S.A. Mr. Acevedo, on behalf of CAC, contributed 185,687,000 pesos (approximately C\$13,857,000) and was issued the remaining 185,667 shares of Cubana S.A. The contribution of CAC consisted of the right to use ("usufructo"), for a term of 25 years, Cubana's fixed and moveable assets, including aircraft. (Under Cuban law, conveyance of an usufructo right in property "grants the right to the enjoyment free of charge of assets belonging to others, with the obligation to preserve their form and substance, unless the deed of conveyance or the laws authorize otherwise."...

According to Mr. Travieso-Diaz, to the extent that there was transfer of assets of the state-owned airline enterprise by CAC to Cubana, such a transfer was inconsistent with the Cuban Constitution. The 1992 amendments to the Cuban Constitution reaffirm the state's ownership of and control over the country's economic assets that are not subject to foreign investment, particularly at Article 15 which provides in part as follows:

Socialist state property, which is the property of the entire people, comprises:

- (a) ...
- (b) The sugar mills, factories, chief means of transportation and all those enterprises, banks and facilities that have been nationalized...

(Emphasis added)

While enabling the transfer of some state assets to entities that include foreign investors, such transfers are narrowly circumscribed, according to Mr. Travieso-Diaz, and are allowed only where they foster economic development, and must be approved at the highest levels of government. As the country's national flag airline and main carrier of the island, Cubana constitutes a "chief means of transportation" whose ownership must remain with the State absent an exceptional situation in which a change of ownership would foster economic development.

After reviewing the known facts leading to the incorporation of Cubana and the alleged transfer of assets, Mr. Travieso-Diaz concludes that Cubana is nothing more than an alter ego of the Cuban government as follows:

In my opinion, the Cuban Government has sought to weave a thin veil to conceal behind an apparent corporate form the continued ownership by the Cuban state of the assets of Cubana, the national airline. For the reasons described above, the corporate veil in this instance is but a fiction intended to place the assets of Cubana beyond the reach of creditors and others asserting claims against the state, even though such assets continue to be state property.

## Analysis

### A. Whether the order dated August 27, 2001 should be reviewed

A court making an ex parte order possesses the jurisdiction to set it aside: *May & Baker (Canada) Ltd. v. The Motor Tanker Oak et al.*, [1979] 1 F.C. 401 (C.A.). See also *Becker v. Noel* and another, [1971] 2 All E.R. 1248 (C.A.). Rule 399 of the Federal Court Rules, 1998 provides, however, that the party seeking to set aside an ex parte order has the burden of establishing that the order should not have been made.

399. (1) On motion, the Court may set aside or vary an order that was made

- (a) ex parte; or

- b) in the absence of a party who failed to appear by accident or mistake or by reason of insufficient notice of the proceeding, if the party against whom the order is made discloses a prima facie case why the order should not have been made.
399. (1) La Cour peut, sur requête, annuler ou modifier l'une des ordonnances suivantes, si la partie contre laquelle elle a été rendue présente une preuve prima facie démontrant pourquoi elle n'aurait pas dû être rendue :
- a) toute ordonnance rendue sur requête ex parte;
  - b) toute ordonnance rendue en l'absence d'une partie qui n'a pas comparu par suite d'un événement fortuit ou d'une erreur ou à cause d'un avis insuffisant de l'instance.

In *Nedship Bank N.V. v. Zoodotis (The)*, [1999] F.C.J. No. 581 (QL), Prothonotary Hargrave stated, at para. 2:

An ex parte order may be both granted and, on application, set aside, at the discretion of the Court. To set aside an ex parte order there must have been an error of fact or law. It is for the party seeking to set aside the Order to establish a prima facie case why the order ought not to have been made. However, such an order, setting aside an ex parte order, ought not to be made arbitrarily, particularly where there may be substantial prejudice.

The affidavits produced by Cubana, which include the most recent version of the Cuban Constitution, Cubana's Articles of Incorporation and fresh evidence regarding Cubana's structure and operations, clearly cast a different light on the untested evidence adduced by Roxford in support of its ex parte motion. Moreover, the Court did not have the benefit of legal submissions concerning the status of instrumentalities of foreign states. For the reasons set out below, I am satisfied the order would not have been made had all the additional facts and legal argument been presented.

B. Whether it is within the jurisdiction this Court to order that Cubana, a third party, be treated as liable for the debts of Cuba

Cubana submits that in the absence of a body of federal law to nourish jurisdiction, this Court cannot determine that Cubana is liable for the debts of Cuba. Such a determination, it says, would require delving into the complex factual and legal issues of ownership of the assets of Cubana, and its relationship to Cuba. Cubana maintains that decisions of this nature are not within the jurisdiction of this Court. Moreover, it submits that it is inappropriate for the Court to attempt to resolve such issues in a summary procedure, via affidavit evidence.

Similar challenges to this Court's jurisdiction to deal with the merits of objections made in the context of the enforcement of a judgment have been rejected in the past. In *Le Bois de Construction du Nord (1971) Ltée. v. Guilbault Inc. et. al.* [1986] A.C.F. No. 434 (QL), Pratte J. stated, at 334:

[A] court which has the jurisdiction to order that the property of a debtor be garnished must necessarily have that of ruling on any objections put forward by third parties claiming to own the garnished property. Similarly, the power to garnish debts owed to a debtor in my opinion necessarily implies the power to rule on the existence of the debts garnished. Accordingly I believe that in the case of a garnishment of debt the court has the power, if the garnishor objects to the negative declaration of the garnishee, to rule on the existence of the debt garnished.

More recently, the Federal Court of Appeal confirmed that this Court has broad jurisdiction to decide issues which arise in the enforcement of its judgments, including whether the corporate veil should be lifted: *Canada (Minister of National Revenue) v. Gadbois*, [2002] F.C.J. No. 836 (QL) ("Gadbois"). The Court in *Gadbois* also concluded that objections to enforcement could adequately be argued on the basis of "documentary evidence in the record, affidavit evidence and cross-examination of affiants".

Cubana has not established that it was in any way prejudiced by having to resort to the usual procedure in connection with motions in the Federal Court. Moreover, leave was never sought to deviate from the general scheme applicable to motions. Consequently, I conclude that this Court has jurisdiction to determine the principal issue in this motion, namely whether Cubana is assimilated to Cuba or a separate juridical personality that is immune from seizure.

C. Whether the order of seizure and sale issued against Cubana to satisfy the judgment debt of Cuba should be set aside

I am left to consider whether, on a balance of probabilities, the evidence leads to the conclusion that Cubana is liable for Cuba's debts. Although neither party advanced any arguments regarding sovereign immunity, the parties placed considerable reliance on case law concerning the scope of sovereign immunity in support of their respective positions.

As a matter of customary international law, foreign sovereigns are generally entitled to immunity from suit in respect of conduct or property *jure imperii*: Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law* (Amsterdam: Elsevier, 2000) Vol. IV at 619. In order to clarify parties' rights and responsibilities, many states have enacted legislation governing the extent of sovereign immunity, e.g. in Canada, the State Immunity Act, R.S.C. 1985, c. S-18, in the United States, the Foreign Sovereign Immunities Act. The United Kingdom has enacted the State Immunity Act, which brings into force the terms of the European Convention on State Immunity and Additional Protocol: Ian Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 1998) at 340-341.

In the case at bar, the issue is a narrow one: are the assets of Cubana liable to seizure for a debt owed by Cuba in respect of litigation unrelated to Cubana's affairs? A typical sovereign immunity question asks whether a state entity is entitled to the benefit of sovereign immunity in respect of its activities. The question in the present case, as noted by counsel for Cubana, has been "stood on its head", as the issue is whether the alleged state entity should be made liable for the judgment debt of the state. There does not appear to be any Canadian case law addressing the issue.

In *First National City Bank v. Banco Para El Comercio Exterior De Cuba*, 462 U.S. 611, ("Bancec"), the Supreme Court of the United States set out the principle that duly created instrumentalities of a foreign state are entitled to be accorded a presumption of independent status. However, where a corporate entity is so extensively controlled by its owner that a relationship of principal and agent is created, one may be held liable for the actions of the other. This principle strikes me as both logical and sound and should be applied to the present case.

According to the Supreme Court of the United States, an instrumentality of the state is typically established as a separate juridical entity, with the powers to hold and sell property and to sue and be sued. It is primarily responsible for its own finances, and run as a "distinct economic enterprise" (at p. 624).

In *Bancec*, First National, an American bank, failed to honour a letter of credit issued to Bancec, prompting Bancec to sue in the United States. The government of Cuba then seized all of First National's assets located in Cuba. First National counterclaimed against Bancec, asserting a right to set off the value of its seized Cuban assets. The Supreme Court of the United States held that the presumption that Bancec was a duly created instrumentality was overcome. Giving effect to the corporate form would run contrary to principles of equity at international law, since, by 1961, Banco had been dismantled and was a "mere arm of the Cuban government" and was "totally dependent on the government for financing and required to remit all of its profits to the government". Thus, any award given to Bancec would accrue automatically to Cuba.

In *Hercaire International, Inc. v. Argentina*, 821 F.2d 559, the plaintiff was a Florida corporation that obtained judgment against the state of Argentina for breach of a contract to supply military aircraft parts. Thereafter, the district court ordered the seizure of an airplane belonging to Aerolineas, Argentina's 100% owned airline. On appeal, the United States Court of Appeals (11th Circuit) held that the district court had erred in ordering the seizure, since Argentina did not exercise such extensive control over Aerolineas to warrant a finding of principal and agent. The Court noted at p. 565 of the decision that the "presumption of independent status is not to be lightly overcome". The 100% ownership of Aerolineas by Argentina was not sufficient to overcome this presumption.

Furthermore, the court noted that, given that Aerolineas had no connection whatsoever to the underlying transaction, it would be manifestly unfair to permit the seizure. Quoting from *Bancec*, supra, the Court noted that the Foreign Sovereign Immunities Act did not permit execution against the property of one instrumentality to satisfy the judgment against another. The policy reason for this is to encourage foreign jurisdictions to respect, in kind, the juridical divisions between different U.S. corporations and subsidiaries located in foreign states.

In the case at bar, I find that Roxford has not dislodged the presumption that Cubana is a separate juridical entity. The facts do not support the conclusion that Cubana's business, income, undertaking and assets are controlled or even "owned" by Cuba. Such a conclusion would entail an assimilation of the corporation to the Cuba. Cubana's articles of incorporation allow the corporation to carry on its own business. It hires its own employees, who are not civil servants, it

has its own banking facilities and prepares annual financial statements. Moreover, Cubana appears to possess all of the powers of a company incorporated under Cuban law with the full knowledge and blessing of the Cuban government. Pursuant to its articles of incorporation, the board has all of the usual powers of a board of directors of a corporation. All of the foregoing is inconsistent with Cubana being an agent of Cuba in respect of its business and assets.

There are, however, a number of factors that are somewhat inconsistent with an independent status. These include the matter of ownership of Cubana's assets and ultimate control of the company. These factors must however be weighed and given their proper importance when viewed from the perspective of a communist regime. It is clear from the evidence produced by the parties that CAC retains ownership of the corporate assets and that Cuba may be the ultimate owner. However the right of usufructo granted to Cubana over the assets appears to a bona fide surrender by CAC of its possessory rights for an extended period of time. Under the civil law, the right to enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce, is well recognized. In my view, the factors establishing effective control by Cubana of its business and assets support the conclusion that it is an independent corporation, and not an agent of Cuba in respect of its business.

As noted in *Hercaire*, *supra*, it is not sufficient to show that the state owns 100% of the shares. Roxford's evidence concerning Cubana's connection with the Cuban Institute of Civil Aeronautics, its share and asset ownership, and affiliation with parent company CAC falls short of demonstrating that Cuba exerts a controlling influence over Cubana. Similarly, media and official references to "state ownership" of Cubana are not determinative of the issue, particularly since the information is mostly hearsay and therefore carries little weight.

It bears repeating that Cubana's affiants were not cross-examined on their affidavits. Cubana has produced its articles of incorporation and by-laws, which show that the company is controlled by a Board of Directors and the annual meeting of shareholders. The onus was on Roxford is to show that Cuba exerts a controlling influence over the Cubana's operations, but has failed to do so. Roxford's own expert acknowledges that Cubana is a state instrumentality that is an operational entity. In addition, Mr. Travieso-Diaz testified that the CAC is likely undergoing a process of "perfeccionamiento", which entails "functioning as accountable organizations that show profits, control personnel, and expenses".

The *Hercaire* judgment is also relevant in that the United States Court of Appeal was loathe to order seizure against assets that had no connection to the underlying transaction. In the case at bar, Cubana had no connection to the breach of contract between Roxford and the state of Cuba. Although the Foreign Sovereign Immunities Act has no application in Canada, it represents one version of customary international law. The policy reasons behind the rule that assets unrelated to litigation ought not to be seized is relevant to the Canadian context, given that Canada has an interest in having the status of its corporations respected abroad. Considering that Cubana had no apparent connection with the contract dispute between the plaintiffs and Cuba, it would be unfair to allow its assets to be seized.

To find that Cubana is assimilated to Cuba so that its separate identity merged with Cuba and became an alter ego of the state in carrying on the business for which it was created is a somewhat far-reaching conclusion. Based on the evidence before me, I conclude that one of the purposes of the corporation is to permit it to carry out its purposes independently of the government. To conclude that in its activities, business and use of its assets it is an alter ego of Cuba would require both compelling evidence of a de facto assimilation of it, or of its business and property, to Cuba and a clear legal basis of a de jure assimilation to Cuba. Neither has been satisfactorily established, in my view.

In conclusion, Roxford has failed to establish, on the balance of probabilities, that Cubana is the alter ego or agent of Cuba. The order dated August 27, 2001 must therefore be set aside.

Cubana's motion was heard together with another motion brought against Adecon Ship Management Inc. seeking the same relief and based on similar facts. My conclusions apply equally

to the second motion. The Registry is therefore directed to place a copy of these reasons in Court File No. T-267-00. The parties shall submit, either jointly or separately and by July 8, 2003, draft orders for both Court files to give effect to these reasons, as well as their written submissions on costs, not to exceed two pages in length.

"Roger R. Lafrenière"

Prothonotary

FEDERAL COURT OF CANADA

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-123-00

STYLE OF CAUSE: ROXFORD ENTERPRISES S.A.

Plaintiff

and

THE GOVERNMENT OF THE REPUBLIC OF CUBA, THE MINISTRY OF FISHING INDUSTRY AND MERCHANT MARINE(MINISTERIO DE LA INDUSTRIA PESQUERA Y MARINA MERCANTE), THE MINISTRY OF TRANSPORT, EMPRESA NAVEGACION MAMBISA and NAVIERA POSEIDON, O.E.E.

Defendants (In Personam)

and

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Garnishees/Charged Parties

and

CUBANA DE AVIACION S.A.

Moving Party

PLACE OF HEARING: MONTRÉAL, QUÉBEC

DATE OF HEARING: DECEMBER 20, 2001

REASONS FOR ORDER BY: LAFRENIÈRE P.

DATED: JUNE 19, 2003

APPEARANCES: Mr. George Pollack

For the Plaintiff

Mr. Aaron Rodgers

For the Moving Party

Mr. Philippe Tremblay

For the Garnishee, National Bank of Cuba

SOLICITORS OF RECORD: George Pollack Sproule & Pollack Montréal, Québec

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For the Garnishee, National Bank of Cuba

FEDERAL COURT OF CANADA

Date: 20030619

Docket: T-123-00

BETWEEN:

ROXFORD ENTERPRISES S.A.

Plaintiff

and

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REASONS FOR ORDER

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