FEDERAL COURT OF AUSTRALIA

Commonwealth of Australia v MV Combi Dock III [2014] FCA 401

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| Citation: | Commonwealth of Australia v MV Combi Dock III [2014] FCA 401 |
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| Parties: | **COMMONWEALTH OF AUSTRALIA v MV COMBI DOCK III, DOCKSHIP III APS and J POULSEN SHIPPING AS** |
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| File number(s): | WAD 334 of 2013 |
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| Judge(s): | **SIOPIS J** |
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| Date of judgment: | 24 March 2014 |
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| Date of hearing: | 24 March 2014 | |
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| Place: |  | |
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| Division: |  | |
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| Category: | No Catchwords | |
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| Number of paragraphs: | 13 | |
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| Counsel for the Plaintiff: | Mr PJ Ward | |
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| Solicitor for the Plaintiff: | Ashurst Australia | |
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| Counsel for the Defendants: | Mr JA Thomson SC | |
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| Solicitor for the Defendants: | Norton Rose Fulbright Australia | |

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| in admiralty |  |
| WESTERN AUSTRALIA DISTRICT REGISTRY |  |
| GENERAL DIVISION | WAD 334 of 2013 |

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| BETWEEN: | COMMONWEALTH OF AUSTRALIA  Plaintiff |
| AND: | MV COMBI DOCK III  First Defendant  DOCKSHIP III APS  Second Defendant  J POULSEN SHIPPING AS  Third Defendant |

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| JUDGE: | SIOPIS J |
| DATE OF ORDER: | 24 MARCH 2014 |
| WHERE MADE: | PERTH |

THE COURT ORDERS THAT:

1. Pursuant to the provisions of Order 2 below, the plaintiff disclose to the defendant documents particularising, outlining, quantifying or relating to each head of loss and/or damage claimed by the plaintiff. This includes, but is not limited to, the following:
   * + 1. Direct costs of repairs to the HMAS *SHEEAN* (SSG 77) (Submarine);
       2. Indirect repair costs (including diverted labour costs) in relation to the Submarine;
       3. Compensation for consequential loss or loss of use of the Submarine;
       4. Other costs (including loss adjustment, claims administration, legal, and other consultant costs); and
       5. Any other head of damage or loss claimed by the Plaintiff.
2. Subject to, and in accordance with, the Non-disclosure Undertaking agreed to between the parties, appearing as annexure “A” to the defendant’s minute of proposed orders handed up in Court on 24 March 2014:
   * + 1. On or before 22 April 2014, the plaintiff will provide in disc form the disclosure of all documents in their custody, power or possession that fall within the applicable classes of documents identified at Order 1 above.
3. The parties have liberty to apply to the court for orders regarding the disclosure of the classes of documents identified at Order 1 above, and/or specific documents for the purpose of the mediation, or for any other directions in respect of the mediation.
4. The parties have liberty to apply to the court for any other orders the court deems appropriate.
5. There be no order as to costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

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| WESTERN AUSTRALIA DISTRICT REGISTRY |  |
| GENERAL DIVISION | WAD 334 of 2013 |

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| BETWEEN: | COMMONWEALTH OF AUSTRALIA  Plaintiff |
| AND: | MV COMBI DOCK III  First Defendant  DOCKSHIP III APS  Second Defendant  J POULSEN SHIPPING AS  Third Defendant |

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| JUDGE: | SIOPIS J |
| DATE: | 24 MARCH 2014 |
| PLACE: | PERTH |

**REASONS FOR JUDGMENT**

1. The HMAS *Sheean*, a submarine in the Royal Australian Navy, was damaged when the defendant vessel, the MV *Combi Dock III*, broke its moorings and collided with the submarine whilst it was berthed in Henderson harbour in Western Australia. The plaintiff, the Commonwealth of Australia, claims damages from the defendants in respect of the collision.
2. At a directions hearing on 13 November 2013, the parties agreed that this matter should go to mediation, and I made orders for such discovery as was necessary to assist in the conduct of an effective mediation. Order 5(a) stated:

That the parties are to give such discovery as necessary for the purpose of the effective conduct of the mediation, and are to confer as to the categories of documents to be discovered for this purpose.

1. Since the making of those orders, the parties have been able to secure dates in June 2014 for a mediation before the Honourable Ian Callinan AC.
2. This matter is back before the Court because the defendants complain that the Commonwealth has not complied with the order for discovery.
3. I have been informed that pursuant to the order for discovery made on 13 November 2013, the Commonwealth provided discovery of some 30 “work packs” which comprised thousands of pages. Mr Ward, on behalf of the Commonwealth, had at the hearing on 13 November, foreshadowed that these work packs would be discovered. However, the defendants’ complaint is that, although it was said that the work packs would provide all the necessary information, in fact, the work packs deal, primarily, with the nature of the physical damage which was incurred by the submarine when the collision occurred. The defendants say that the discovery is deficient in relation to the quantum of the financial loss and damage suffered by the Commonwealth; and this information, say the defendants, is essential information needed for the conduct of an effective mediation.
4. The defendants also said that that information was relevant to determining whether the amount which was demanded by the Commonwealth by way of security, for the release of the vessel from arrest, was substantially excessive or not.
5. After the defendants filed this interlocutory application, the Commonwealth’s solicitors by a letter dated 21 March 2014, identified a number of documents which the Commonwealth says will be provided in the near future to the defendants’ solicitors, which will include much of the information which the defendants seek. On this basis, the Commonwealth resists the making of the orders sought by the defendants.
6. However, Mr Thomson, on behalf of the defendants, drew attention to an attachment to the letter of 21 March 2014, which evidenced correspondence between ASC, the contractors which the Navy used to carry out repairs to the submarine, and the Defence Materials Organisation, which showed that some financial information about the cost of the repairs, exists. Mr Thomson also said that it appeared that third party documents such as invoices in respect of expenses incurred in effecting the submarine repairs, such as, car hire, accommodation and airfares and so forth exist, but that these documents had not been disclosed.
7. Mr Ward submitted that there would not be a great deal of value in discovering the documents referred to by Mr Thomson for the purposes of mediation, because the information contained therein was at too high a level of generality. Mr Ward went on to say that the Commonwealth was in the process of procuring the production by ASC of documents which identified with much more precision the amount of time and money which had been expended in affecting the repairs to the submarine. Mr Ward said that those documents have been requested from ASC, but have not yet been generated; and when the documents come into existence, they will be discovered. Therefore, said Mr Ward, there was no need for an order for further discovery by the Commonwealth.
8. The orders made on 13 November 2013 did not set a date by which the parties were to give discovery. The defendants say that they have brought this application because they are becoming concerned as to whether sufficient discovery will be given in time for a mature reflection before the attendance at the mediation conference. That reflection, say the defendants, includes a decision by the defendants’ insurers, who are located in Germany, whether to attend the mediation; which, in turn, involves a determination as to whether the parties are sufficiently informed as to the facts and issues as to enhance the prospect of a successful outcome to the mediation.
9. In light of the fact that the Commonwealth’s discovery as comprised by the work packs proved a disappointment in relation to the nature and extent of the information thereby provided, and the fact that mediation is not that far off, I have decided that I will make orders for the giving of discovery by the Commonwealth, by a specific date, in respect of certain specified classes of documents. Accordingly, I will make orders in terms of para 1(a) of the draft minute of orders.
10. I will hear from Mr Ward in relation to the timing for the giving of that discovery.
11. I emphasise that these orders are not intended to be a substitute for discovery in relation to all the matters which may ultimately be in issue between the parties, should the mediation be unsuccessful. Further, each of the parties will have liberty to apply for additional discovery in relation to documents which they consider necessary in order for there to be a viable mediation.

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| I certify that the preceding thirteen (13) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Siopis. |

Associate:

Dated: 23 April 2014