

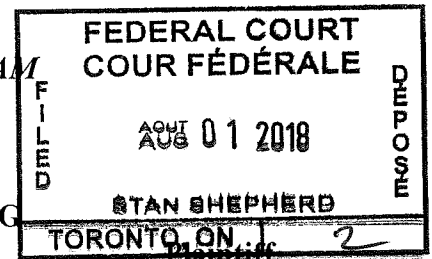
Court File No. T-1462-18

FEDERAL COURT

ADMIRALTY ACTION *IN REM* AND *IN PERSONAM*

BETWEEN:

BBC CHARTERING CARRIERS GMBH & CO. KG



- and -

OPENHYDRO TECHNOLOGY CANADA LIMITED, AND THE OWNERS AND ALL OTHERS INTERESTED IN THE CARGO *ex* THE SHIP *BBC EMERALD*, BEING AN OTC03 TURBINE CONTROL CENTRE PRESENTLY LOCATED AT CAPE SHARP TIDAL IN THE MINAS PASSAGE OF NOVA SCOTIA, *IN REM*

Defendants

AFFIDAVIT TO LEAD WARRANT

I, MARC D. ISAACS, lawyer, of the City of Toronto, in the Province of Ontario, DO SOLEMNLY AFFIRM:

1. I am a partner of the law firm Isaacs & Co., lawyers for the Plaintiff, BBC Chartering Carriers GmbH & Co. KG.
2. I affirm this affidavit based upon information and belief. The source of my information is the Plaintiff's employee, Mr. Andrei Kharchenko. Mr. Kharchenko is the Manager of Risk, Claims and Litigation of the Plaintiff, and I do verily believe the information I have so received from Mr. Kharchenko to be true.
3. The Plaintiff, BBC Chartering Carriers GmbH & Co. KG ("BBC"), is a business entity incorporated pursuant to the laws of the Federal Republic of Germany as a *Gesellschaft mit beschränkter Haftung* (GmbH).

4. The Plaintiff carries on business in the shipping industry, and specifically as the charterer of ships which are then chartered to others in need of carriage of cargoes.
5. The Plaintiff is located at Hafenstrasse 12, 26789 Leer, Germany.
6. At all material times, the Plaintiff was a charterer of the Vessel BBC Emerald ("Vessel). In turn the Plaintiff, as owner, time chartered the Vessel to the Defendant OpenHydro Technology Canada Limited ("OpenHydro") for the carriage of cargo from Ireland to Saint John, New Brunswick pursuant to a Time Charterparty Agreement.
7. The Plaintiff's claim against the Defendants arises out of charges due for hire in connection with a Charterparty Agreement dated April 17, 2018, concerning the Vessel and the cargo and equipment aboard, made between the Plaintiff and the Defendant, OpenHydro.
8. Pursuant to the Charterparty Agreement, the Vessel was hired by OpenHydro for the purposes of carrying an OTC03 Turbine Control Centre on a voyage from Ireland to Canada.
9. The Charterparty Agreement also provided that OpenHydro would be utilizing the Vessel and her equipment for lift operations at the Saint John port in Saint John, New Brunswick.
10. The Vessel's cargo included the OTC03 Turbine Control Centre to be discharged at Saint John Port at Saint John, New Brunswick.
11. The OTC03 Turbine Control Centre is now in the possession of OpenHydro or its partners and affiliates at the Cape Sharp Tidal Project located at Minas Passage in the Bay of Fundy, Nova Scotia, Canada.
12. The Plaintiff seeks the arrest of the OTC03 Turbine Control Centre, which was carried on board the BBC Emerald.

13. The Plaintiff invokes the *in rem* jurisdiction of the Court pursuant to sections 22 of *Federal Courts Act*. In particular, the Plaintiff relies on subsection 22(i) of the *Federal Courts Act*, as the overdue charges relate to the hiring of the vessel.

14. The Plaintiff has arranged for a Statement of Claim to be issued against the Defendants in the Federal Court of Canada.

15. The Plaintiff's claim against the Defendants as set out in the Statement of Claim has not been satisfied. The amount alleged to be outstanding and owing is €582,407. as follows:

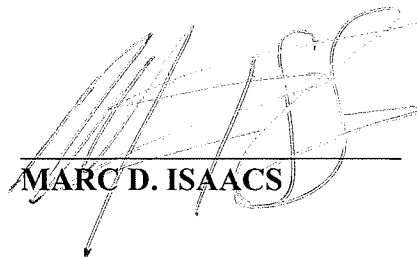
- a. €447,760.00 for Hire Period 4, Hire Period 5, Demobilization fee, Meeting attendance and currency adjustment factor (Invoice No. 003741VREV);
- b. €16,538.37 for BAF IFO RMG 380 and BAF MGO DMA, (Invoice No. 003745VREV);
- c. €29, 864.59 for port expenses and stevedoring in Greenore, Ireland (Invoice No. 003857VREV);
- d. €22,397.50 for the balance of the Canadian Flag Waiver (Invoice No. 003867VREV);
- e. €65,847.11 for port Expenses in Saint John (Invoice No. 003866VREV);

16. I affirm this affidavit for the purposes of the issuance of a warrant for the arrest of the cargo described above and for no other improper purpose.

AFFIRMED before me at)
the City of Toronto,)
in the Province of Ontario,)
this 1st day of August, 2018)

A Commissioner etc.

George Nathanael



MARC D. ISAACS