

Citation: ☀ R. v. Alassia Newships Management Inc.  
2018 BCPC 5

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Registry: Vancouver

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**  
Criminal

**REGINA**

v.

**ALASSIA NEWSHIPS MANAGEMENT INC.**

**RULING ON APPLICATION FOR AN *EX PARTE* TRIAL  
OF THE  
HONOURABLE JUDGE K. DENHOFF**

Counsel for the Crown:	Jessica R. Lawn, Adrienne M. Switzer
Place of Hearing:	Vancouver, B.C.
Date of Hearing:	January 3, 2018
Date of Judgment:	January 12, 2018

[1] The Crown applies for an order for an *ex parte* trial against the accused Alassia Newships Management Inc. (Alassia), which has been charged with various environmental offences relating to an alleged oil spill from the Motor Vessel Marathassa in April, 2015. The operator of the vessel Marathassa is Alassia.

[2] The Information was sworn on February 15, 2017, and a summons was issued to Alassia with a first appearance date of April 5, 2017. Alassia did not appear at the first appearance or at any subsequent appearances in provincial court.

[3] Section 800(3) of the *Criminal Code* provides as follows:

Where the defendant is an organization, it shall appear by counsel or agent and, if it does not appear the summary conviction court may, on proof of service of the summons, proceed *ex parte* to hold the trial.

[4] The provision is an important one as it forces corporate offenders to attend court to face charges or to risk being convicted in *absentia*.

[5] Section 703.2 of the *Criminal Code* provides that service on an organization “may be effected by delivery ... to the manager, secretary or other senior officer of the organization or one of its branches.”

[6] Section 2 of the *Criminal Code* defines a “senior officer” as, “a representative who plays an important role in the establishment of an organization’s policies or is responsible for managing an important aspect of the organization’s activities.”

[7] Section 2 of the *Criminal Code* further defines a “representative” as “a director, partner, employee, member, agent or contractor of the organization.”

[8] On March 1, 2017, service of the Summons was made on Captain Valakitsis, who was the Master of the Motor Vessel Afroessa. That vessel was in port in Nanaimo,

British Columbia, and was also operated by Alassia. A Certificate of Service on Captain Valakitsis was prepared by Environmental Officer Ronald Graham on March 14, 2017, and according to s. 4(6) of the *Criminal Code*, is proof of service of the Summons.

[9] There have already been numerous court proceedings with respect to the Summons. On March 22, 2017, counsel for Alassia, Mr. Swanson, filed an application on behalf of Alassia in the Federal Court of Canada for prohibition of the prosecution on the basis that Alassia had not been properly served with the Summons. That application was dismissed on the basis that the Federal Court did not have jurisdiction to grant the remedy. The service of the Summons was then confirmed by a Judicial Justice of the Peace at the first appearance in the Provincial Court on April 5, 2017.

[10] On May 19, 2017, Mr. Swanson filed a Petition and on August 14, 2017, filed an Amended Petition, both in the Supreme Court of British Columbia on behalf of Alassia, seeking to quash the confirmation of the service of the Summons. Associate Chief Justice Cullen found that the Judicial Justice of the Peace had not exceeded her jurisdiction in confirming the service of the Summons.

[11] On December 12, 2017, Mr. Swanson filed an appeal in the British Columbia Court of Appeal of the Decision of Associate Chief Justice Cullen.

[12] Finally, Mr. Swanson filed an application in the British Columbia Court of Appeal to have the prosecution of Alassia stayed pending the outcome of the Appeal of the Reasons of Associate Chief Justice Cullen. That application for a stay was abandoned by Alassia at the hearing in the Court of Appeal on January 2, 2018, when Alassia conceded that the Court of Appeal had no jurisdiction to order a stay of the prosecution.

[13] In the Reasons delivered by Associate Chief Justice Cullen, it was directed that the Reasons be provided to any judge before whom an application for an *ex parte* trial is made, so that the position of Alassia on the service of the Summons could be fully aired. I have reviewed the Reasons of Associate Chief Cullen, which include a description of the positions taken by Alassia on the Amended Petition and a list of the materials filed by Alassia.

[14] In terms of the position taken by Alassia, Associate Chief Justice Cullen quoted from a portion of the Amended Petition as follows:

11. Mr. Antonios is a short-term contractor currently employed as master on board the Motor Vessel AFROESSA. His relationship with the petitioner is limited to two fixed term contracts.
12. Mr. Antonios has no official position or designation with the petitioner. He does not make decisions about the petitioner's business, nor is he involved in any contractual or other dealings between the petitioner and any shipowner. He is not involved in establishing any policies of the petitioner and does not manage the petitioner's activities. His responsibilities as master, on behalf of the owner of AFROESSA, are to ensure the safety of the crew, the ship and any cargo during voyages and while in ports.
13. The Motor Vessel AFROESSA is a ship owned by Afroessa Shipping Corp.
14. April 5, 2017 was the date of the first appearance specified in the Summons. The appearance was before the respondent Justice of the Peace.
15. The petitioner did not appear in the Provincial Court of British Columbia at the first appearance on April 5, 2017.
16. The petitioner sought to challenge the validity of service of the Summons before the Federal Court. The Honourable Madam Justice McVeigh, by Order dated April 13, 2017, concluded the Federal Court did not have jurisdiction to hear the petitioner's Motion and it was dismissed.

17. The Federal Court proceeding and issues and evidence raised therein were not put to the Justice of the Peace.

[Emphasis in the original.]

[15] It should be noted that Captain Valakitsis is also referred to as Mr. Antonios, which is apparently part of his name.

[16] At paragraphs 29 and 30 of the Reasons of Associate Chief Justice Cullen, the additional materials filed in the Petition were listed. All of those same materials were put before this Court by the Crown on the application for an *ex parte* trial.

[17] Although the Crown relies on the Certificate of Service as proof of service pursuant to s. 4(6) of the *Criminal Code*, the Crown also relies on supplemental materials to prove service on Alassia.

[18] An employment agreement between Captain Valakitsis and Alassia was tendered into evidence which establishes that Alassia was the employer of Captain Valakitsis, whose employment position was the vessel Master of the *Afroessa*

[19] Captain Valakitsis also confirmed in an affidavit filed in other proceedings and placed before this Court, that he was a contract employee of Alassia as the Master of the *Afroessa*. As such, Captain Valakitsis was a representative of Alassia as defined by s. 2 of the *Criminal Code*, which includes both contractors and employees.

[20] The Crown provided affidavit evidence from Ronald Graham, who in his various roles as a Fisheries Officer, Environmental Enforcement Officer and Customs Officer has conducted hundreds of inspections and investigations of vessels. Mr. Graham provided evidence that a vessel Master is the most senior officer aboard any vessel and has final oversight and responsibility over all vessel operations. That evidence is

supported by the various obligations of a vessel Master contained in the *Canada Shipping Act, 2001*, c.26.

[21] Mr. Graham provided further evidence of the activities of Alassia from representations made by Alassia on its website. In particular, Alassia described itself as a ship management company and stated that it offered “the full spectrum of ship management services to Owners of vessels that transport dry bulk commodities on a worldwide basis”. The website included photos of the Marathassa and the Afroessa with the Alassia logo on the exhaust stack of both vessels. Some of the services described as provided by Alassia were in relation to safe operations of vessels, cargo operations, crew management, ensuring the compliance of local and international law, seaworthiness of vessels and safety and security conditions.

[22] As the most senior officer of the Afroessa vessel, Captain Valakitsis was responsible for managing those important aspects of Alassia’s activities, which qualifies him as a senior officer under the *Criminal Code* and as a person who may be served on behalf of Alassia. Although Captain Alassia deposed that he was performing his duties on behalf of the owners of the Afroessa, his employment contract was directly with Alassia. Therefore, he was managing important aspects of Alassia’s activities for Alassia, even though those activities may have been for the benefit of the owners of the Afroessa pursuant to a separate contract between Alassia and the owners.

[23] The Crown has proven service on Captain Valakitsis, who was a senior officer of Alassia at the time of service and as such the Crown as satisfied the requirements of s. 703.2 of the *Criminal Code*.

[24] In addition to relying on the personal service of Captain Valakitsis as a senior officer of Alassia, the Crown also served the Summons on legal counsel Mr. Swanson, who was listed as a contact on Alassia's *Protection & Indemnity Defence Rules* for the Marathassa. The Crown further served the Summons on the second contact on the *Protection & Indemnity Defence Rules*, Charles Taylor Adjusting.

[25] When Mr. Swanson was served with the Summons, he wrote to the Crown stating that he did not have instructions to accept service of the Summons. As noted in *R. v. Sinopec, Shanghai Engineering Company Ltd.*, 2011 ABCA 331 (CanLII) at para. 40, "Service is not consensually based; service does not depend on the willingness of the party that is being served to be served. .... Baker MacKenzie LLP, in 'refusing' service, was merely indicating that it had no authority or instructions from its principal to accept service on its behalf."

[26] As also noted in *Sinopec* at para 39, "Service is a specialized form of notice. Notice, as a legal concept, encompasses the conveying of knowledge or information with intention to affect legal rights. Service of legal process conveys the information that a proceeding has been commenced that may affect the rights of the person being served, with an intention to affect or engage legal rights. The party served is put on notice that it must take steps to protect its rights, or the court might adjudicate in its absence."

[27] The Court in *Sinopec* further noted that s. 703.2 uses the permissive wording that "service may be effected by delivery...", which does not exclude other forms of legitimate service. It is significant that a few weeks after Mr. Swanson was served with the Summons, and prior to the first appearance, he filed an application in the Federal

Court of Canada for various remedies in relation to the service of the Summons. When that application was dismissed, Mr. Swanson subsequently filed applications in the Supreme Court of British Columbia and in the British Columbia Court of Appeal in relation to the service of the Summons. In fact, Mr. Swanson has represented Alassia on four separate court applications in relation to the service of the Summons.

[28] It is abundantly clear that prior to the first appearance, Alassia had knowledge of the Summons because Alassia instructed Mr. Swanson to challenge the service of the Summons in Federal Court. Therefore, not only has there been proper service on Alassia by service on a senior officer of Alassia, there has also been proper service of Alassia by service on its legal counsel who has demonstrated through his representation of Alassia in various courts to challenge the service of the Summons, that Alassia has received notice of the Summons.

[29] Pursuant to s. 800(3) of the *Criminal Code*, there will be an *ex parte* trial of the accused Alassia Newships Management Inc., which will take place at the same time as the trial of the Marathassa.

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The Honourable Judge K. Denhoff  
Provincial Court of British Columbia