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Court

Amsterdam district court

Date of judgment

04-10-2014

Date of publication

17-10-2014

Case no.

C/13/573557 / KG ZA 14-1258 MW/EB

Field of law

Civil law

Special features

Interim injunction proceedings

Nature of decision

Interim injunction proceedings. Greenpeace is forbidden by the interim relief judge from defacing, damaging or hindering the passage, access to port, unloading or departure of an oil tanker expected in the port of Rotterdam during the night of 4 to 5 October 2014 in order to offload oil. The planned protest against the tanker was deemed disproportionate, partly because Greenpeace (for example in a similar protest on 1 May 2014) had already attracted sufficient attention. The judge held that in this case the interest of the charterer in prior certainty outweighed the interest of Greenpeace in a second surprise protest. It was reasonable to suppose that the previous protest caused significant damage and incurred public expenditure. Since Greenpeace was able to protest in other ways, this judgment would not render its right to demonstrate illusory.

Source

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Judgment

Judgment

AMSTERDAM DISTRICT COURT

Private law sector, civil law interim relief judge

Case no: C/13/573557 / KG ZA 14/1258 MW/EB

Judgment in interim injunction proceedings of 4 October 2014

in the case of

BLUEWARD SHIPPING COMPANY LTD

a company incorporated under foreign law,
with its offices in Limassol, Cyprus,
address for service in this matter in Rotterdam,
claimant in identical short-notice writs of summons of 4 October 2014,
attorney-at-law: T. van der Valk, Rotterdam,
against

1. the foundation

STICHTING GREENPEACE NEDERLAND,

2. the foundation

STICHTING GREENPEACE COUNCIL,

3. the foundation

STICHTING IRIS,

4. the foundation

STICHTING PHOENIX,

all of which have their seat in Amsterdam,
defendants,

attorney-at-law: R. Hörchner, Breda.

The parties are referred to below as 'Blueward' and 'Greenpeace', with the individual defendants referred to individually where necessary as 'Greenpeace Nederland', 'Greenpeace Council', 'Iris' and 'Phoenix' respectively.

1 The proceedings

At the hearing on 4 October 2014 Blueward presented its arguments and applications in accordance with the photocopy of the summons appended to this judgment. Greenpeace entered a defence arguing that the requested injunctions should be denied. Because of the urgency of the case, the decision, supported by an oral statement in broad outline of the grounds for the decision, was given on 4 October 2014. What follows is the written amplification of that decision, which (in contrast to what was announced at the hearing, when the date of issue was given as 18 October 2014) was drawn up on 17 October 2014.

The following were present at the hearing for Blueward: J.J. van Blaaderen and H.C.A. van der Houven van Oordt (members of the same firm as T. van der Valk). The following were present for Greenpeace: [name 1] (campaign director of Greenpeace Nederland), [name 2] and [name 3] (press officers of Greenpeace Nederland) and R. Hörchner. The following were also present:

[name 4] (Deputy State Harbour Master of the Port of Rotterdam) and [name 5] (head of legal affairs at the Port of Rotterdam Authority), J.N. de Blécourt (attorney-at-law for the Port of Rotterdam Authority) and another member of his firm.

2 The facts

2.1.

During the night of 4 to 5 October 2014 – the night after the hearing in this case – the oil tanker *Mikhail Ulyanov* ('the oil tanker' or 'the tanker') is expected in the port of Rotterdam, carrying a cargo of crude oil from the Barents Sea.

2.2.

Shortly before the hearing, at approximately 16.00 on Saturday 4 October 2014, Greenpeace issued a press release stating its intention to demonstrate against the offloading from the tanker of the second shipment of Arctic oil in Rotterdam. The Greenpeace vessel *Arctic Sunrise* will await the oil tanker at the entrance to the port of Rotterdam.

2.3.

Earlier, on 1 May 2014, Greenpeace mounted a large-scale protest to stop the oil tanker from docking in the port of Rotterdam, with the aim of preventing it from unloading its cargo of oil. During this protest, the activists ignored instructions from the port authorities and one of their boats collided with a police vessel. The police intervened and the public prosecutor imposed penalties on several activists. The activists are contesting the fines imposed. The proceedings in this matter are still under way.

3 The dispute

3.1.

Blueward has requested the judge to order all the defendants jointly and with immediate effect to cease, cancel or in any event refrain from all possible protests against the oil tanker and Blueward, and to forbid them from defacing or damaging the tanker, or obstructing or hindering it in any way in its passage, access to the port, unloading or departure, on pain of a penalty payment of €100,000, or an amount to be determined reasonably and fairly by the interim relief judge, for every hour that they fail to comply, the said orders to be immediately enforceable at any time.

3.2.

The grounds for Blueward's application, in summary, are that Greenpeace's previous protest against the oil tanker attracted more than enough attention to its position, both in the Netherlands and elsewhere. Blueward argues that further protests against the tanker will serve

no interest, are unnecessary, disproportionate and irresponsible, and hence tortious vis-à-vis Blueward. The company argues that its interest in the unobstructed unloading of the shipment should outweigh Greenpeace's interest in a second protest.

3.3.

Greenpeace has entered a defence.

3.4.

The parties' arguments are discussed below, where relevant.

4 The assessment

4.1.

Greenpeace has entered a number of procedural defences. First, it argues that Blueward's case is inadmissible because Greenpeace is of the opinion that its rights of defence have been violated by the late service of the writs of summons, despite the lack of an urgent interest in the application.

This defence is dismissed: although it may be the case that the oil transport was announced a month ago, as Greenpeace argues, it was only when the press release was issued shortly before the hearing that it became clear that Greenpeace intends to protest against the oil tanker again. This establishes an urgent interest – a matter to be assessed at this point in time – and the interim relief judge takes the view that there has been no question of delay on the part of Blueward. In addition, Greenpeace has entered a comprehensive defence and has not indicated at any stage that shortage of time has rendered it unable or not fully able to go into any specific point in the preparation of its defence.

4.2.

Greenpeace also argues that, regardless of other considerations, the application should be denied because no relationship has been shown to exist between Blueward and the oil tanker. However, at the hearing Blueward submitted a charter agreement from which, in the preliminary relief judge's opinion, it is sufficiently clear that Blueward has chartered the oil tanker. This defence too is therefore dismissed.

4.3.

Concerning the substantive side of the case, Greenpeace wishes to protest against drilling for oil in the Arctic because it believes that oil extraction poses a threat to the environment.

Greenpeace is, in principle, at liberty to protest, but the right to demonstrate is not unlimited.

Greenpeace's interest in drawing attention to its views must be weighed against Blueward's lawful commercial interests. For the present it is not clear that Blueward's interests merit less

protection because it transports Arctic oil. Although oil extraction in polar regions, including the transport of the oil in question, is controversial, it is not a criminal offence.

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It should also be noted that not all obstruction of commercial activities is tortious. Obstruction is assumed to be tortious where it is disproportionate.

4.4.

As stated above, the subject of the protest, polar drilling, is controversial. Greenpeace has previously mounted protest actions, including on 1 May 2014, to draw public attention to the risks of polar drilling. These protests were extensively covered in the press and have also been the focus of political attention in the Netherlands. Greenpeace itself pointed out that on 1 April 2014 the House of Representatives passed a motion calling on the government to seek a ban on the transport of oil through the Arctic region. It is of course possible for Greenpeace to continue to take action to further its goal, but its interest in doing so is less urgent in view of the attention the matter has already received.

4.5.

This interest must be weighed against Blueward's interest, as the charterer, in being able to unload the cargo without hindrance and fulfil its contractual obligations without loss. Since Greenpeace has not revealed what form its planned protest will take, the possibility that it will delay the unloading must be taken into account. Unlike Greenpeace, the interim relief judge thinks it probable that such a delay will result in loss for Blueward. The statement made by Greenpeace at the hearing to the effect that on 1 May 2014 the tanker itself was hardly touched is relevant in this regard. It can be inferred from this statement that the aim of the planned protest is to obstruct the tanker to at least the same extent as in the previous protest. It can be conceded to Greenpeace that the Port Authority and the seaport police can intervene if the protest gets out of hand so that it causes too great a delay, but it is not desirable for them to do so because public money has already been spent in relation to the protest of 1 May 2014.

4.6.

Assessing the interests involved is made more difficult by the fact that it is not clear when, how and for how long Greenpeace intends to protest. It is true that Greenpeace is not obliged to reveal its plans in advance, but the resulting uncertainty over the nature and duration of the protest increases Blueward's interest in a prior review by the court. Waiting until Greenpeace informs the port authorities of the details at the beginning of the protest – as it usually does – will probably mean that public money will again have to be spent, especially because the tanker is expected to arrive at night, thus necessitating extra vigilance. That it is the tanker's own

choice to enter port at night, as Greenpeace has argued, does not alter the foregoing and cannot be used against Blueward.

4.7.

Greenpeace's protest, the details of which are not yet known, must meet the requirements of subsidiarity and proportionality. As regards subsidiarity, it should be noted that Greenpeace has already achieved a great deal. It has been neither argued nor demonstrated that this protest will result in anything more than further publicity. Greenpeace has not demonstrated, or in any event has not demonstrated sufficiently clearly, why this goal cannot be achieved by forms of action that will cause no loss to Blueward.

4.8.

As regards proportionality, Blueward's interest in prior certainty outweighs the interest of Greenpeace in a second surprise protest. Since Greenpeace has not provided such certainty, while it is reasonable to suppose that the previous action caused significant damage and incurred public expenditure, Greenpeace is ordered not to obstruct the tanker if it proceeds with the protest. In contrast to the view held by Greenpeace, this does not render its right to demonstrate illusory: after all it can still protest; it simply may not make use of any of the methods listed in the decision. The injunction will be granted for the period referred to in the decision and subject to the territorial limitations also referred to therein. The application for a general order to cease any form of protest against the oil tanker will be denied.

4.9.

The application for an injunction will be granted in any event against Greenpeace Nederland, which is due to carry out the planned protest if it goes ahead. The application will also be granted in respect of Iris and Phoenix, the owners of the vessels involved in the planned protest. It is not possible to make an order against all the defendants jointly, as requested, in response to an application such as the one made in this case. The application will be denied in so far as it concerns Greenpeace Council, since Blueward does not dispute that Greenpeace Council only plays an advisory role and is not involved in carrying out the protest.

4.10.

The penalty payment applied for will be reduced and limited as stated below.

4.11.

As the parties against whom judgment has largely been given, Greenpeace Nederland, Iris and Phoenix will be ordered to pay Blueward's costs in the proceedings. The costs of writs of summons, which are not further itemised, are assessed at €200, on the basis of the costs of service of three writs (given that three of the defendants are being ordered to pay costs) of

approximately €75 per writ, which makes the sum mentioned appear reasonable. Blueward's total costs in these proceedings are assessed at:

- writ of summons (4x) €200

- court fees €608

- attorney fees €816

Total €1,624

4.12.

Blueward will be ordered to pay Greenpeace Council's costs in the proceedings. Because of the connection between the defences these costs are assessed at zero.

5 The decision

The interim relief judge

5.1.

forbids Greenpeace Nederland, Iris and Phoenix, in the Netherlands for four weeks with effect from today, from in any way defacing or damaging the tanker *Mikhail Ulyanov* or obstructing or hindering its passage, access to the port, unloading or departure;

5.2.

orders Greenpeace Nederland, Iris and Phoenix to pay Blueward a penalty payment of €50,000 every time that the injunction set out in 5.1 is contravened after service of this judgment, up to a maximum of €100,000;

5.3.

orders Greenpeace Nederland, Iris and Phoenix to pay Blueward's costs in these proceedings, assessed thus far at €1,624;

5.4.

declares this judgment immediately enforceable at all times;

5.5.

orders Blueward to pay Greenpeace Council's costs in these proceedings, assessed thus far at zero;

5.6.

dismisses any and all other applications.

This judgment was given by M. van Walraven, interim relief judge, assisted by E. van Bennekom, clerk of the court, and was pronounced in open court on 4 October 2014.