

MARITIME LAW

TORTS

Motion for summary judgment seeking to dismiss plaintiff's action for negligence against defendants on basis that plaintiff's losses constituting unrecoverable economic loss — In 2015, "BBC Lena" (vessel) colliding with Bridge No. 19, which forms part of St. Lawrence Seaway (Seaway) — Collision causing severe structural damage to Bridge 19 necessitating significant repairs, halting passage over and through it for almost 6 months — Plaintiff was, at all material times, not-for-profit corporation charged with management, operation of Seaway, including Bridge 19 — Responsibility arising from *Canada Marine Act*, S.C. 1998, c. 10 (Act), s. 80(5), series of management agreements entered into by plaintiff, Crown — Agreements making plaintiff responsible for causing any necessary repairs to Bridge to be conducted at own expense — Plaintiff claiming in particular that collision, resulting damages caused by unseaworthiness of vessel with actual fault, privity of defendant owners, negligence of its officers, crew — Seeking approximately \$1 million dollars of damages for cost of repairing Bridge; also claiming for loss of use of Bridge, etc. — Defendants asserting that losses, damages that plaintiff incurring constituting relational economic losses, which not recoverable at law — Plaintiff submitting that review of relevant provisions of management agreements, Act, clearly establishing that all of Crown's rights, responsibilities in connection with relevant assets, including Bridge 19, conferred upon it; therefore, plaintiff having all necessary powers to commence these proceedings, to obtain full indemnification — Whether Act as implemented by management agreements affording plaintiff right to pursue claims; whether plaintiff's right to commence claims restricted to actions intended to protect Crown's interests; whether management agreements intending to exclude plaintiff from recovering damages caused by third party negligence; whether plaintiff's losses relational economic losses — Matter essentially coming down to nature of contractual relationship between plaintiff, Crown — Act permitting Minister of Transport to enter into agreements in respect of Seaway, which agreements can be with not-for-profit corporation — Pursuant to Act, s. 80(6), such agreement can include any terms, conditions that Minister considering appropriate — Where agreement entered into pursuant to Act, s. 80(5) so provides, person who has entered agreement shall undertake, defend any legal proceedings respecting management of property (s. 91(1)(d)), shall discharge all obligations respecting management of property (s. 91(1)(e)) — Provisions of Act, management agreements making it clear that responsibility for management, operation of managed assets, which include Bridge 19, lying exclusively with plaintiff — Further, repair costs of managed assets to be incurred exclusively by plaintiff, which is obliged to keep, repair them, to operate Seaway in commercially prudent manner — Moreover, any actions related to managed assets must be brought by plaintiff — Read together, Act, as implemented by agreements, granting plaintiff statutory right to pursue claims such as present action — Since agreements transferring from Crown to plaintiff all risks, responsibilities pertaining to Bridge 19, practical effect of Act, s. 91(2) is that only plaintiff can, has exclusive right to pursue claims for damages, as plaintiff doing so in present matter — Defendants' submission that Act, s. 91 only authorizing plaintiff to commence proceedings to "protect Her Majesty's interests — not the plaintiff corporation's interests" rejected — Significantly, s. 91 containing no such wording or restriction — Act, management agreements made pursuant to Act, s. 80(5) creating scheme under which, once s. 80(5) agreement entered into, entity entering into agreement effectively stepping into Crown's shoes in management, operation of subject property — Plaintiff, having entered into agreements pursuant to Act, s. 80(5), acting in *lieu* of Crown — Nothing in text of Act, s. 91, context or purpose of Act, or agreements implementing it, suggesting that plaintiff's right to engage in legal proceedings restricted to protecting Crown property, interests on behalf of Crown, to exclusion of plaintiff recovering losses incurred as result of responsibilities it assumes under agreements — While plaintiff not owning managed assets, including Bridge

19, plaintiff solely responsible for operation, management, repair of those assets at its own expense, must operate Seaway on commercially sound basis — To carry out this function, plaintiff must be able to pursue actions to recover costs it incurs to repair damage to those assets caused by negligence of third parties — By way of Act, as implemented by agreements, plaintiff having this authority — Finally, regarding plaintiff's losses, given nature, effect of contractual relationship between Crown, plaintiff, plaintiff's claim for recovery of costs it incurred in repairing damage to Bridge 19, caused by defendants' negligence, is analogous to claims made by demise charterers; falling within possessory interest exception (to presumption against recovery for relational economic loss) — Since few plaintiffs having possessory or proprietary interest, indeterminacy concerns created by contractual relational economic loss allayed — Unlike typical cases of economic loss, in present matter, allowing plaintiff to sue based upon possessory interest in Bridge not posing risk of indeterminate liability or over deterrence — If plaintiff not permitted to bring action seeking to recover actual repair costs, then there would be no deterrence factor — In conclusion, matter lending itself to disposition by summary judgment — Motion granted in favour of plaintiff.

ST. LAWRENCE SEAWAY MANAGEMENT CORPORATION V. BBC LENA (VESSEL) (T-1621-16, 2018 FC 1026, Strickland J., judgment dated October 12, 2018, 61 pp.)