



HIGH COURT OF AUSTRALIA

Public Information Officer

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ISLAND MARITIME LIMITED v BARBARA FILIPOWSKI
SACHIN KULKARNI v BARBARA FILIPOWSKI

The owner and master of a ship which allegedly discharged oil into Botany Bay were not subjected to double jeopardy when they faced a second trial over the incident, the High Court of Australia held today.

The Pacific Onyx, owned by Island Maritime and under master Sachin Kulkarni, allegedly dropped the oil on 14 November 1999. In February 2002, prosecutor Barbara Filipowski, the general counsel with the Sydney Ports Authority, filed two summonses in the New South Wales Land and Environment Court alleging a contravention by both Island Maritime and Mr Kulkarni of section 27 of the NSW *Marine Pollution Act* covering discharges during transfer operations. A trial proceeded 12 months later but Justice Angus Talbot dismissed the summonses, finding there was no case to answer.

In November 2003, two further summonses were filed alleging that section 8, concerning discharge of oil from a ship into State waters, rather than section 27, had been contravened. Ms Filipowski intended to present the same evidence. The penalties were the same. Island Maritime and Mr Kulkarni, the appellants, sought a permanent stay of the second summonses on the grounds that proceedings were barred by the principles of *autrefois acquit* (formerly acquitted) or that the proceedings were an abuse of process. Justice Neal Bignold dismissed the application for a stay and the Court of Criminal Appeal dismissed an appeal. The appellants appealed to the High Court.

The Court unanimously dismissed the appeals. It held that the possibility of a bar based on the principles of *autrefois acquit* does not exist because the appellants were never actually in jeopardy on the first set of summonses, so there was no double jeopardy in having to answer another charge. There could not have been a valid conviction because those summonses were defective. The appellants could have taken exception to the first summonses but did not. The charges in the second set of summonses were not the same as in the first set. Although the conduct of the case was unsatisfactory it did not amount to an abuse of process.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*