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## South Africa will have to pay to get its hands on sunken treasure

By admin On October 18, 2022 In Insurance Marine News, Keep, Legal

A court has ruled that South Africa will have to pay to get back the treasure salvaged from the 10,000 gt World War II steamer cargo ship **SS Tilawa**, torpedoed by a Japanese submarine off the Maldives coast in November 1942.

Ross Hyett, 67, brought the long-lost 2,364 silver bars, valued at £32m, back to Southampton in 2017. The former racing driver had spent two years planning and carrying out the mission.

When Hyett got the treasure back to Southampton he declared it to the Receiver of Wreck, which oversees salvage law. At this point the South African government, the owner of the long-lost silver bars but which had done nothing in 75 year to attempt to recover them, sued Mr Hyett's company Argentum Exploration Ltd over the hoard, claiming it was state property and must be handed over.

Lawyers for the Republic of South Africa (RSA) claimed that state immunity meant they were under no obligation to pay Argentum Exploration a massive "salvage reward" under the 1995 Merchant Shipping Act to get them to release the silver.

In December 2020, Judge Sir Nigel Teare in the Admiralty Court in London found that RSA was obliged to pay up. In a rare case of a board game being cited, he compared the dispute to the board game *Buccaneer*, in which rivals race to claim pirate treasure.

In 2021 RSA won permission to take their fight to the Court of Appeal.

The Appeal Court has now dismissed the RSA's appeal, handing victory to Mr Hyett and meaning the RSA has to

pay to get the silver back.

The case turned on the legal argument over whether the silver was in commercial or sovereign use as it lay at the bottom of the sea 75 years after the ship carrying it was sunk.

If it was deemed to be in use for a sovereign purpose it would grant the RSA state immunity from paying a reward to the treasure hunters.

Appeal judge Lord Justice Popplewell ruled that, while the silver on board had been largely destined for the sovereign purpose of being turned into coins in the South African national mint, it was legally in “commercial use” as it had been bought and sold and was being carried on a merchant ship when it was lost.

That purpose had not changed during the decades it had lain at the bottom of the sea the judge found.

The SS Tilawa was a merchant ship owned by the British India Steam Navigation Company, having been built on the Tyne in 1924. It was 125m in length and at the time it was sunk carried a crew of 222, as well as 732 passengers and 6,472 tons of cargo. That cargo included 2,391 bars of silver, purchased by the South African government and destined to be turned into coinage. The ship was sunk en route from Bombay to Durban.

The nearby HMS Birmingham mounted a rescue operation and a total of 673 of the 954 people on board were brought back to Bombay on November 27<sup>th</sup> 1942, with 281 losing their lives. Of the 2,391 silver bars on board, 2,364 were salvaged and brought back to Southampton over in 2017. The bars have since been held under lock and key in a secure warehouse whilst Mr Hyett’s company and the South African government fought in court over the rights to the treasure.

The Appeal Court ruled that RSA is the legal owner of the hoard, but Argentum Exploration is not obliged to release the silver until South Africa has agreed to pay the salvage reward under the 1995 Merchant Shipping Act.

Lord Justice Popplewell said in the appeal court ruling that “what exposes a state cargo owner to salvage in such cases...is the commercial use of a vessel to carry the cargo, which exposes it to the risk of having to pay salvage if it is saved from danger to the cargo owner’s advantage. The silver had in all probability been forgotten about by RSA, which did not actively consider what to do with it until after October 13<sup>th</sup> 2017” he concluded “that activity is non-sovereign and does not attract immunity under customary international law”.

Lady Justice Andrews agreed with Lord Justice Popplewell’s conclusion.

However, Lady Justice Elisabeth Laing disagreed and delivered a dissenting judgement, leaving the door open for a potential challenge being taken to the Supreme Court.

Argentum Exploration Ltd (claimant/respondent) v The owner of the cargo of 2391 bars of silver lately laden on

board SS Tilawa being the Government of the Republic of South Africa (defendant/appellant)

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