

13-CV-05188-ORD

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THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LEONARD L. SIMPSON and NELLIE-MAY  
SIMPSON, a married couple,

Plaintiffs,

v.

LADY NELL, Official No. 941807, its Engines,  
Machinery, Appurtenances, etc.,  
*In Rem*;

and

WIN CHANG INC., a Washington corporation,  
*In Personam*,

Defendants.

IN ADMIRALTY

Case No. *13-5188-ORD*

~~[PROPOSED]~~ ORDER  
APPOINTING SUBSTITUTE  
CUSTODIAN, FOR PERMISSION  
TO MOVE THE VESSEL, AND  
FOR BOARDING AND  
INSPECTION

Plaintiffs, Leonard L. Simpson and Nellie-May Simpson, by and through their attorney, John E. Casperson of Holmes Weddle & Barcott, P.C., having appeared, now make the following recitals:

1. On March 12, 2013, a complaint herein was filed praying that the defendant vessel LADY NELL, Official No. 941807, its engines, machinery, and appurtenances, etc. ("Vessel"), be condemned and sold to pay Plaintiffs's claims and for other proper relief.

2. In the immediate future, the Clerk of this Court is expected to issue a warrant for arrest of the Vessel, commanding the United States Marshal for this District

1. to arrest and take into custody the Vessel and to detain the same in its custody until  
2. further order of this Court respecting same.

3.           3.       It is contemplated that the United States Marshal will seize the Vessel  
4. forthwith. Custody by the United States Marshal requires the services of one or more  
5. keepers at charges substantially in excess of those to be made by the substitute custodian  
6. alone, not including charges for moorage and the other services usually associated with  
7. safekeeping vessels similar to the defendant Vessel.

8.           4.       The Vessel is currently located at Ilwaco Marina, WA. Plaintiffs are  
9. agreeable to allow Matt Schneider to assume the responsibility of safekeeping the Vessel,  
10. and Mr. Schneider has consented to act as it's custodian until further order of this Court.  
11. Mr. Schneider has also consented to move the Vessel from its current location to a secure  
12. suitable marine facility in LaPush, Washington where the Plaintiffs, the former owners of  
13. the Vessel, can assist in providing for its care and keeping for security purposes.

14.           5.       Mr. Schneider, by certification submitted herewith and made a part hereof,  
15. avers that he can supervise the defendant Vessel at a charge of \$20.00 per day, and that he  
16. is the beneficiary of insurance, for damage sustained by third parties due to negligence  
17. committed during custody through the United States Marshal's office. Further, in said  
18. certification substitute custodian accepts, in accordance with the terms of this order,  
19. possession of the defendant Vessel, its engines, machinery, and appurtenances, etc.,  
20. which is the subject of the action herein.

21.           6.       In consideration of the United States Marshal's consent to the appointment  
22. of Mr. Schneider as substitute custodian, Plaintiffs agrees to release the United States and  
23. the United States Marshal from any and all liability and responsibility arising out of care  
24. and custody of the Vessel, from the time the United States Marshal transfers possession  
25. of the Vessel over to said substitute custodian, and Plaintiffs further agrees to hold  
26.

1. harmless and indemnify the United States and the United States Marshal from any and all  
2. claims whatsoever arising out of the substitute custodian's possession and safekeeping.

3.           **THEREFORE, IT IS ORDERED** that the United States Marshal for the District of  
4. Alaska is authorized, upon seizure of the Vessel, pursuant to Warrant for Arrest, to  
5. surrender the possession thereof to Mr. Schneider as substitute custodian named herein,  
6. and that upon such surrender the United States Marshal shall be discharged from the  
7. duties and responsibilities for the safekeeping of the Vessel and held harmless from any  
8. and all claims arising whatever out of said custodial services.

9.           **IT IS FURTHER ORDERED** that Mr. Schneider is appointed custodian of the  
10. Vessel and shall retain the Vessel in his custody for possession and safekeeping until  
11. further order of this Court and that Mr. Schneider may move the Vessel from its current  
12. location to a secure facility in LaPush, Washington where the Plaintiffs as prior owners  
13. and having an interest in preserving the value of the Vessel as collateral, may provide  
14. additional security and safekeeping, subject at all times to the order and direction of the  
15. custodian. All costs for such movement and safekeeping shall be paid by Plaintiffs, and  
16. may, upon further order of this Court, be deemed administrative costs herein.


17.           **IT IS FURTHER ORDERED** that the substitute custodian may permit boarding  
18. and inspection of the Vessel by marine surveyors, Plaintiffs, and prospective purchasers  
19. in order to protect and preserve the Vessel and to determine the Vessel's condition and  
20. value. All costs of such boardings and inspections shall be paid by Plaintiffs and may,  
21. upon further order of this Court, be deemed administrative costs herein. All persons  
22. entering on board the Vessel shall execute a waiver and release in the form attached  
23. hereto.

24.           **IT IS FURTHER ORDERED** that Plaintiffs' attorney serve a copy of this order on  
25. the owner of the Vessel.

26.

1. It is further requested that the Clerk of this Court deliver three certified copies of  
2. this order to the United States Marshal forthwith.

3.  
4. DATED this 13 day of March, 2013.

5.   
6. UNITED STATES DISTRICT JUDGE  
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11. Presented By:  
12. HOLMES WEDDLE & BARCOTT, P.C.  
13.

14. s/ John E. Casperson  
15. John E. Casperson, WSBA #14292  
16. 999 Third Avenue, Suite 2600  
17. Seattle, Washington 98104  
18. Telephone: (206) 292-8008  
19. Facsimile: (206) 340-0289  
20. Email: [jcasperson@hwb-law.com](mailto:jcasperson@hwb-law.com)  
21. Attorney for Plaintiffs

22. **Approved for Entry:**  
23. UNITED STATES MARSHAL  
Western District of Washington

24. G:\827\16383\LADY NELL\Order Subst Cust.doc