

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2022/0003

BETWEEN:

[1] ANDERSON PETERS

[2] KIDDON PETERS

Claimants/Respondents

and

“MV HARBOUR MASTER”

AND THE OWNERS OF AND PARTIES INTERESTED IN THE MOTOR VESSEL

“HARBOUR MASTER”

Defendant/Applicant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Derick Sylvester with Ruggles Ferguson K.C for the Claimants

Mr. Dylan Charles with Ms Nyree Alfonso for the Defendant

2023: October 31

JUDGMENT

- [1] **ACTIE, J.:** The defendant’s application seeks an order to set aside the claimants admiralty claim in rem for want of jurisdiction. The parties agreed that the matter be determined on their written submissions filed on March 6, 2023, April 20, 2023 and May 5th 2023.

Factual Background

- [2] On 10th August 2022, the claimants boarded the defendant vessel (hereafter referred to as “Harbour Master”) attending a party cruise called “Recovery”. The claimants aver that at the end of the event, prior to disembarking the Harbour Master, a physical altercation ensued, and crew members of the defendant assaulted and battered the claimants causing them injury. On 12th August 2022,

the claimants filed an admiralty claim in rem seeking, inter alia, general damages, aggravated damages, special damages, interest and costs.

- [3] The parties by consent filed on 12th October 2022 agreed to extend the time for filing a defence to the 17th October 2022.

Application made by the Defendant

- [4] On 17th October 2022, the defendant (hereafter referred to as “the applicant”) applied for the following orders:

- (1) that this court has no jurisdiction to hear and determine the claim;
- (2) that the claim be set aside and all subsequent proceedings stayed or relief granted to the defendant;
- (3) costs in the claim and costs in the said application.

- [5] The applicant disputes the claimants’ claim and contends that the claim does not fall within the prescribed jurisdictional parameters of this court to hear and determine admiralty in rem claims.

- [6] Conversely, the claimants argue that the relevant staff members of the vessel were at all material times under the management and control of the applicant, and that admiralty in rem claims are intended to hold the vessel responsible for damage and any injury caused to patrons.

The Legislative Framework.

- [7] The applicant contends that the admiralty in rem jurisdiction of this court is established by the conjoint effect of **Section 8** of the **West Indies Associated States Supreme Court (Grenada) Act**¹ and **Section 1** of the **Administration of Justice Act 1956** (hereafter referred to as “the Administration of Justice Act”).

- [8] With respect to personal injuries claims, the applicant asserts that **Section 1(1)(f)** of the **Administration of Justice Act** provides that such injuries must be

¹ CAP 336

sustained, inter alia, as a consequence of an act, neglect or default in the navigation or management of the ship.

- [9] The applicant argues that the respondents' pleaded injuries were not sustained as a consequence of an act, neglect or default in the navigation or management of the Harbour Master, and that the claim does not disclose any reasonable grounds for bringing the respondents' claims in rem.
- [10] The applicant argues further that the admiralty in rem jurisdiction has not been properly invoked in accordance with **Section 3(4)** of the **Administration of Justice Act**, as well as **Section 442** of the **Shipping Act**.²
- [11] The claimants on the other hand contend that the application to set aside is frivolous, vexatious and an abuse of the court's process. The claimants state that the claim falls squarely within the court's jurisdiction within the parameters of **CPR 70.2(i)(ii), 70.3(3), Section 1(1)(f)** of the **Administration of Justice Act** and **Section 442** of the **Shipping Act**.
- [12] The claimants assert that the persons who would be liable in an admiralty claim either in rem or personam would be the owner or charterer or person in possession or control of the Harbour Master, which the respondents state is in accordance with **Section 422** of the **Shipping Act** and **CPR 70.3**.

Administration of Justice Act 1956

- [13] **Section 8** of the **West Indies Associated States Supreme Court Act**³ gives the High Court the following power with respect to admiralty claims:

"The High Court shall have and exercise all such jurisdiction in Admiralty and the same powers and authorities incidental to such jurisdiction as immediately before the prescribed date were vested in the former Supreme Court, and reference to the former Supreme Court in the Admiralty Jurisdiction (Grenada) Order, 1661 of 1964, shall be deemed to be a reference to the High Court."

² CAP 303.

³ CAP 336

- [14] In **Bowen Marine Ltd v The Ship “Nice Vice” et al**⁴, Alleyne J, as he then was, said that:

“The Admiralty jurisdiction of this court is grounded in the Administration of Justice Act 1956 of the UK... Clause 2 applies section 1 of the Act as modified thereby.”

Section 1(1)(f) of the Administration of Justice Act

- [15] **Section 1(1)(f) of the Administration of Justice Act**, as modified, provides as follows:

“(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims –

...

(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship.”

- [16] The applicant submits that the claim ought to be struck out based on the claimants’ failure to satisfy the court that their claim meets the threshold of the injuries allegedly sustained by the respondents are injuries arising out of an act, neglect or default in the navigation or management of the Harbour Master.

- [17] The relevant parts of **Section 1(1)(f) of the Administration of Justice Act** to this claim require the claimants to show that the personal injury sustained are:

⁴ High Court Claim No. 124 of 1996

(1) In consequence of the wrongful act of the owners, charterers or persons in possession or control of the ship, or the master or crew thereof or any persons in possession or control of a ship are responsible; as well as

(2) An act, neglect or default in the navigation or management of the ship, in the loading carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship.

[18] The provisions of Section 1(1)(f) are conjunctive. As the injuries which the respondents suffered were in consequence of the wrongful acts of the crew of the Harbour Master, the first requirement hereinabove is fulfilled. However, the claimants are further tasked to satisfy the second limb to invoke the in-rem jurisdiction of this court.

[19] Given the circumstances of the extant case, it cannot be said that the claimants' injuries were as a result of an act, neglect or default in the navigation of the ship in the loading, carriage or discharge of goods on, in or from the ship.

[20] The issue as argued by both the parties in submissions, is whether the injuries were sustained by way of an act, neglect or default in the management of the vessel.

[21] The claimants assert that the injuries sustained were because of an act, neglect or default in the management of the ship in the disembarkation of persons from the ship.

[22] In the case of **Gosse Millerd Limited v Canadian Government Merchant Marine Limited**⁵, Hailsham LC relied on the case of *The Glenochil* (2)⁶ wherein it was stated by Gorell Barnes J that:

"I think that where the act done in the management of the ship is one which is necessarily done in the proper handling of the vessel, though in the

⁵ [1929] AC 223

⁶ [1896] P 10

particular case the handling is not properly done, but is done for the safety of the ship herself, and is not primarily done at all in connection with the cargo, that must be a matter which falls within the words 'management of the said vessel'."

[23] It was further stated by Sir Francis Jeune in *The Glenochil* (2)⁷, as referred to by Hailsham LC, that:

"It seems to me clear that the word 'management' goes somewhat beyond - perhaps not much beyond - navigation, but far enough to take in this very class of acts which do not affect the sailing or movements of the vessel, but do affect the vessel herself."

[24] In the case of **Gosse Millerd Limited v Canadian Government Merchant Marine Limited**⁸ Viscount Sumner further opined that the words "of the ship" within the section would be rendered otiose if it is negligent management alone that matters.

[25] In addition, the applicant refers to the text **Maritime Law**⁹, wherein the authors state as follows with respect to collision liability:

"... when considering collision liability a distinction between negligence in the navigation of the ship and negligence in the management of the ship must be drawn. The former refers to faults by the master, pilot or crew while the latter is concerned with faults caused either by the crew and the master or the company in ensuring the ship is safe to sail and operate.

...

Negligence in management involves operating at an equivalent standard which could perhaps be termed "good shipownership". This consists of compliance with statutory provisions as well as acting in a manner that a reasonable shipowner would do with respect to the ship's operation and navigational arrangements. **There is a broad spectrum of duties involved in the management of the ship. Compliance with statutory provisions providing for the safety of the ship and its equipment and undertaking the required maintenance and inspections provide broad areas where statutory and managerial duties must be discharged. Particular codes for ships implementing the international**

⁷ [1896] P 10

⁸ [1929] AC 223

⁹ 5th edn page 249

conventions applicable to specific classes of vessels in ways which are appropriate also exist and are developed by ship registers under powers granted by the relevant conventions. Ensuring the appropriate crewing for the ship with seafarers that have appropriate training and hold the required certifications is also an important duty to be discharged by the ship's management... Ensuring familiarisation of the crew with the ship's equipment and procedures, making the ship's manuals available to the crew in a language they can understand and ensuring the crew can communicate with each other are also important requirements, with equivalent standards for the shore office of the ship owning or operating company. Negligence in observing these duties and any other statutory duties imposed on the owners, managers or operators of a ship could result in liability for collision damage, if causative. In addition, all actions in breach of statutory or other duties to maintain, keep up, provide for the ship and her equipment, documentation, charts etc may also result in liability for the collision." [emphasis added]

- [26] While the above is specific to collision liability and collision damage, it is instructive on the concept of management with respect to vessels, and how same is interpreted in maritime law. It is evident from the authorities, that management with respect to in rem proceedings concern that of the vessel, as opposed to cargo or passengers.
- [27] Accordingly, the claimants have failed to demonstrate in what way the act, neglect or default in the management of the vessel, Harbour Master, caused them injury. It cannot be found that the claimants alleged injuries arose because of a failure to maintain the vessel, and there is no assertion that the alleged injuries were sustained as a consequence of faults caused either by the master, crew and/or the shipowners in ensuring that the vessel was safe to sail and operate.
- [28] The claimants claim therefore fails to satisfy the conjoined requirements of Section 1(1)(f) of the Administration of Justice Act.

Section 3 of the Administration of Justice Act

- [29] Both counsel for the applicant and the claimants refer to **Section 3(4)** of the **Administration of Justice Act** in relation to this court's jurisdiction to determine the claim.

[30] **Section 3(4)** of the **Administration of Justice Act 1956** states that:

“In the case of any such claim as is mentioned in paragraphs (d) to (r) of subsection (1) of section one of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court ... may... be invoked by an action in rem against-

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; ...”

[31] **Section 442** of the **Shipping Act**¹⁰ to which both the parties rely is in similar language and provides as follows:

“In any case in which an action may be brought against any ship, other than actions arising from claims to the possession or ownership of a ship or to the ownership of any share therein, or any claim in respect of a mortgage or charge on a ship or any share therein, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of the ship, the admiralty jurisdiction of the High Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in rem against—

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; ...

but in determining whether a person would be liable on a claim in an action in personam it shall be assumed that he or she has his or her habitual residence or a place of business within Grenada.”

[32] The elements of **Section 3(4)** of the **Administration of Justice Act** include that the claim must be one as is mentioned in paragraphs (d) to (r) of **Section 1(1)** of the **Administration of Justice Act**. This court is of the view that is such a claim.

[33] It is a further condition that the ship intended to be made the subject matter of the action in rem is, at the time when the action is brought, beneficially owned in respects of all the shares by the person(s) who would be liable in an action in

¹⁰ **CAP 303**,

personam, and who was, at the time when the cause of action arose, the owner or charterer or in possession or control of the ship.

- [34] Smith J in **Bimini Boat Yard of Miami Inc v Lady Marian Aka Zigan (owners), The Lady Marian**¹¹ said :

“To vest in [the Supreme Court] jurisdiction in rem it is necessary that both the liability in personam and beneficial ownership of the whole ship should be vested in the same person.”¹²

- [35] Counsel for the applicant cites the authors of **Admiralty Jurisdiction and Practice**¹³:

“In The ‘I Congreso del Partido’ Robert Goff J held that the words ‘beneficially owned’ in the corresponding provisions of the Administration of Justice Act 1956, referred only to cases of equitable ownership, whether or not accompanied by legal ownership, and were not wide enough to include cases of possession or control without such ownership, however full and complete such possession and control may be. He said: “the intention of Parliament in adding the word ‘beneficially’ before the word ‘owned’ ... was simply to take account of the institution of the trust, thus ensuring that, if a ship was to be operated under the cloak of a trust, those interested in the ship would not thereby be able to avoid the arrest of the ship.” In that case the relevant person was the operator and manager and the ship was held not to be beneficially owned by them.”

- [36] The claimants in order to pursue the extant claim in rem are required to satisfy the court that the party liable in personam is, or was, also the beneficial owner of the vessel, the Harbour Master, at the commencement of the action.

- [37] The claimants at paragraph 5 of their statement of claim, paragraph 5 of the claimants’ arrest affidavit filed on 12th August 2022, and paragraph 4(c) of the second claimant’s affidavit filed on 23rd November 2022, assert that the beneficial owner of the Harbour Master is Tall Ships (Barbados) Inc. and that the vessel is operated by Harbour Tours Limited. The applicant on the other hand contends that the registered owner of Harbour Master is Harbour Tours Limited which is a company incorporated pursuant to the laws of St. Lucia, but that the beneficial

¹¹ (No. 433/1969), [1965-1970] 2 LRB 402

¹² 2015/COM/ADM/FP0002 Odebrecht Amdiental v Owners and Parties Interested in the Motor Vessel “Golden Miller

¹³ Nigel Meeson and John A. Kimbell, Routledge, 5th Edition, 2017

ownership of the vessel was vested in Harbour Tours Limited, a company incorporated pursuant to the laws of Trinidad and Tobago.

[38] On a dispute as to jurisdiction, the burden of proof is on the party seeking to persuade the court to exercise its discretion in their favour¹⁴. The applicant presented a “Certificate of Registry” which gives particulars of the registration of the Harbour Master at 12th December 2016 as “Harbour Tours Limited, 20 Micoud Street, Castries, St. Lucia”.

[39] The claimants also through their evidence deposed in the affidavit of the second claimant, that by the instruction of the Grenada Ports Authority and the Immigration Department, a certificate of inspection lodged by the applicant identified Tall Ships (Barbados) Inc. as the beneficial owner of the Harbour Master, and Harbour Tours Limited as responsible for its operations.

[40] Given that the events which gave rise to the injuries sustained by the claimants were through the operations of Harbour Tours Limited, it could be found that Harbour Tours Limited is a party liable in personam in the extant matter. It would have to be therefore, that the said Harbour Tours Limited was the beneficial owner of the Harbour Master at the time of the commencement of this action in order for this court to have jurisdiction in keeping with the requirement of the **Administration of Justice Act** and the **Shipping Act**. It is noted that as at the date of the issuance of the certificate of inspection which expires on 25th August 2023, the claimants by their own evidence have demonstrated Tall Ships (Barbados) Inc. to be the beneficial owner of the vessel, Harbour Master.

[41] The court in **Bowen Marine Ltd v The Ship “Nice Vice” et al**¹⁵, held that an action in rem was not maintainable by reason that the defendant owner of the ship was not the person who would be liable for the claim in an action in personam, and declared the proceedings to be outside the jurisdiction of the court.

¹⁴ “Challenging Court Jurisdiction – overview” LexisPSL Dispute Resolution Overviews

¹⁵ High Court Claim No. 124 of 1996

[42] This court applying the jurisprudence to the claimants pleaded case accordingly lacks jurisdiction to deal with the claimants' claim against the defendant, the Harbour Master.

Whether CPR 70.3(3)(i) overrides the Administration of Justice Act 1956 and the Shipping Act CAP 303

[43] Counsel for the claimants submits that pursuant to **CPR 70.3(3)(i)**, a personal injury claim can be brought in rem against a ship if at the time when the claim is made, the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise.

[44] **CPR 70.3(3)(i)** reads:

“In the case of any such claim as is mentioned in rule 70.2(c) to (g), (i) to (k), (m) to (p), (r) and (u), where –

(a) the claim arises in connection with a ship; and

(b) the person who would be liable in a claim in personam was, when the cause of action arose, the owner or charterer, or in possession or in control, of the ship; a claim in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought against –

(i) that ship, if at the time when the claim is made the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; ...”

[45] **CPR 70.2(i)**, which is referred to in **CPR 70.3(3)(i)**, on which the claimants also rely, provides that:

“The following claims, questions and proceedings, namely –

...

(i) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or fault of –

(i) the owners, charterers or persons in possession or control of a ship;
or

(ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible;
being an act, neglect or default in the navigation or management of a ship or in the loading, carriage or disembarkation of persons on, in or from the ship;”

- [46] Counsel for the claimants further submits that the **CPR** governs the procedural rules for the exercise of admiralty actions in the Caribbean, that it significantly mirrors most of the provisions in the Administration of Justice Act, and that both function concurrently. Counsel in support relies on the Jamaican case of **Matcam Marine Ltd v Michael Matalon (the registered owner of the Orion Warrior formally Metcam 1)**¹⁶, wherein Sykes J set out the historical roots of the High Court of Admiralty in Jamaica at paragraph 22:

“22. From all this, it is clear that the Admiralty jurisdiction of the Supreme Court of Jamaica is grounded in section 2(2) of the Colonial Court of Admiralty Act of 1890 as modified in section 1 of the Administration of Justice Act. The Admiralty Order in Council of 1962 also applied sections 3,4,6,7 and 8 to Jamaica. No statute or any other law has repealed or altered these statutes or Order in Council in relation to Jamaica. The Supreme Court Act of 1981 (UK) has repealed section 1 and the entire Part I of the 1956 Act but that 1981 Act does not apply to Jamaica. Procedural rules for the exercise of Admiralty jurisdiction of the Supreme Court came into being in 1893. These rules have now been repealed and replaced by Part 70 of the CPR. Let there be doubt no more.”

- [47] The simple response to this counsel’s proposition is that the **Civil Procedure Rules (CPR)** governs the requisite procedural aspect for civil matters in this jurisdiction. **CPR 70.3(3)(i)** indicates that proceedings may be brought against the ship, if at the time when the claim is made the relevant person is the charterer of it under a charter by demise. Counsel for the claimants seeks to persuade the court that the “relevant person” in this instance is the charterer of the Harbour Master under a charter by demise, making this claim appropriate to be brought in rem.

- [48] **The Administration of Justice Act** and the **Shipping Act** are clear so as to exclude the option of a claim a rem where the relevant person is the charterer of

¹⁶ Claim No 0002/2011 unreported judgment 6th October 2011

the ship under a charter by demise, making the **CPR** inconsistent with the applicable statutory provisions in the extant case.

- [49] The suggestion, however, that the **CPR** expands the requirements of the **Administration of Justice Act** and the **Shipping Act** is unsupported in law. The authors of **Halsbury's Laws of England**¹⁷ state that:

“The Civil Procedure Rules are a form of delegated or subordinate legislation, and the Civil Procedure Rule Committee is empowered to make rules only within the strict limits defined by statute, whether contained in the Civil Procedure Act 1997 or any other Act¹⁵. Like the Rules of the Supreme Court and the County Court Rules before them¹⁶, the rules are mere rules of practice and procedure, and their function is to regulate the machinery of litigation; they cannot, unless authorised by specific legislation, confer or take away or alter or diminish any existing jurisdiction or any existing rights or duties¹⁷. Since they are procedural in character and effect, they cannot enable a claim to be brought which could not otherwise have been brought.”

- [50] Further, in **Richard Thomas v Anthony Marine Services Limited**¹⁸, it was held that the CPR is meant to complement and not override substantive law. It is settled law that the **Civil Procedure Rules (CPR)** are subsidiary to statutory provisions and cannot override the primary legislation.

- [51] The Civil Procedure Rules cannot be used to validate proceedings which were otherwise a nullity as a matter of substantive law. **CPR 70.3(3)(i)** therefore does not enable a claim to be brought which could not otherwise have been brought under the relevant statute governing the admiralty in rem jurisdiction. The Rule cannot, in the absence of express words in the statute, be read as authorising that the commencement of actions for the purposes of the Act. **CPR 70.3(3)(i)** only applies in jurisdictions where there is no substantive law as in the Shipping Act or the law makes a different provision making the Rule applicable.

- [52] Consequently, the procedural aspect of **CPR 70.3(3)(i)** for proceedings against a ship, if at the time when the claim is made the relevant person is the charterer of it under a charter by demise, is proscribed in this jurisdiction by the **Shipping Act**.

¹⁷ (5th edn., 2020) vol. 11, para 6

¹⁸ CV 2020-00070

CONCLUSION

[53] This court applying the provisions of **Section 3(4)** of the **Administration of Justice Act** and **Section 442** of the **Shipping Act** is of the view that the claimants have failed to meet the jurisdictional thresholds of **Sections 1(1)(f)** and **3(4)** of the **Administration of Justice Act** and **Section 442** of the **Shipping Act CAP 303** in order to engage the in rem jurisdiction of this court. The court has no jurisdiction in respect of an action in rem which is not brought within the section and the proceedings should be set aside¹⁹ and is so ordered.

ORDER

[54] For the foregoing reasons, it is ordered and declared as follows:

- (i) The application by Harbour Master to set aside the claimants' claim for want of jurisdiction is granted as prayed.
- (ii) Costs to be assessed, unless otherwise agreed.
- (iii) Failing settlement, the parties shall file and exchange submissions with authorities on the issue of costs.

Agnes Actie
High Court Judge

By the court

Registrar

¹⁹ 2015/COM/ADM/FP0002 Odebrecht Amdiental v Owners and Parties Interested in the Motor Vessel "Golden Miller"