

THE EASTERN CARIBBEAN SUPREME COURT  
SAINT VINCENT AND THE GRENADINES  
IN THE HIGH COURT OF JUSTICE

SVGHAD2017/0001

BETWEEN

WARREN MITCHELL  
Of Bequia

CLAIMANT

AND

“MV TENACITY 1”  
and the owners of and parties interested  
in the motor vessel “MV TENACITY 1”

DEFENDANTS

**Appearances:**

Mr. Duane Daniel with Ms. Chanté Francis and Ms. Jenell Gibson for the Claimant

Ms. Vynnette Frederick for the Defendants

Claimant Warren Mitchell, present

Defendants’ representative Sylvester Cammeron, present

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2021: 18<sup>th</sup> May  
27<sup>th</sup> May  
22<sup>nd</sup> July  
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**JUDGMENT**

**Byer, J.:**

- [1] This matter involves a claim *in rem* for damages for wages arising out of the employment of the claimant as a seaman/seafarer by the defendants onboard the defendants’ vessel. The matter also involves a claim *in rem* for damages for disbursements incurred by the claimant on behalf of the defendants for expenses incidental to the operation and maintenance of the MV Tenacity 1.

- [2] The MV Tenacity 1 is a vessel built in Canada in 1957, but subsequently registered in Kingstown, St. Vincent and the Grenadines on 9 August 2016. The vessel is owned by SS Marine Transporter, a company with its registered address as No 121 Orchard Gardens, Chaguanas in the island of Trinidad and Tobago. The Director of the said company is Mr. Sylvester Cammeron.
- [3] In his Statement of Claim filed on 9 August 2017, the claimant averred that he was employed by the defendants' vessel as the Operations Manager thereof in August 2016 and it was agreed that he would be paid US\$2,000.00 (XCD\$5,377.80) monthly when the ship was not in operation and US\$2,500.00 (XCD\$6,722.25) when the ship was operational. The claimant also maintained therein that he was actively involved in the events leading up to the purchase of the defendants' vessel in Canada and was onboard for the journey from Canada to the Caribbean in August 2016. The claimant also claimed that the defendants vessel did not pay him his wages of US\$17,500.00 (XCD\$47,055.75) up to July 2017 and continuing.
- [4] The claimant also claimed that, in the course of his duties, he disbursed and expended sums on behalf of the defendants for the operation of the defendants vessel, which sums were disbursed and expended upon the request of the owners of the defendants vessel with the understanding that he would be reimbursed. The claimant now claims a total of US\$17,956.23 for disbursements paid by the claimant on behalf of the defendants' vessel.
- [5] A request for Warrant to Arrest the defendants vessel was filed by the claimant on 9 August 2017, and the vessel was arrested on 14 August 2017. The arrest prompted an application for Bail of the defendants' vessel and an application for Security for Costs by the defendants, which were filed on 21 August 2017. The former was granted on 13 October 2017 on the condition that Peter Ollivierre secured bail in the sum of \$120,000.00. The latter application was withdrawn by the defendants on 1 December 2017.
- [6] In a Defence filed on 4 October 2017, the defendants contended that the claimant was never employed by the owners of the defendants' vessel and rejected all claims by the claimant for disbursements and wages.
- [7] The defendants further contended that the claimant never accounted to the owner of the defendants' vessel nor presented any bills or receipts for items paid for or for any expenses, which the claimant alleged were incurred by the vessel. As a result, the defendants rejected the claim for damages for disbursements.
- [8] The defendants however counterclaimed for the sum of XCD\$54,338.00 expended in retrieving the defendants vessel from Tortola because of its detention while the claimant was on an alleged frolic of his own. The defendants also counterclaimed *inter alia* for loss of use of the defendants vessel while the defendants vessel was arrested in Tortola in the sum of \$292,322.00; loss of use while the vessel was arrested in St. Vincent in the sum of \$150,000.00; and crew wages while the defendants vessel was detained.

- [9] An application for relief from sanctions and extension of time was filed by the claimant on 13 November 2019 for an extension of time to file and serve a Reply and Defence to Counterclaim of the defendants, which application was granted on 7 February 2020.
- [10] A Reply to the Defence and Counterclaim of the defendants was filed on 9 May 2019, in which the claimant's original claims were maintained.
- [11] Another application for relief from Sanctions and Extension of Time was filed by the claimant on 17 April 2020 in respect of Witness Statements/Witness Summaries, which was granted on 18 December 2020.
- [12] The defendants filed an application for relief from sanctions and extension of time to file its Witness Statements/Witness Summaries on 1 January 2021, which application was heard on 19 February 2021 and dismissed. This resulted in the defendants having no evidence before the court at trial.
- [13] At the trial of the matter, the defendants being unable to give evidence this matter proceeded on the sole evidence of the claimant and his witnesses. The court has also had sight of the submissions and the pleadings filed by both sides in this matter and has distilled the following as the issues to be determined by the court.
- i. Whether the claimant was an employee of the defendants and if so in what capacity
  - ii. If the claimant was an employee and worked for the defendants, is he entitled to be paid monies claimed as salary?
  - iii. Was the trip to the British Virgin Islands unauthorized by the defendants? If not, is the claimant entitled to be reimbursed for the sums claimed as expended by him?
  - iv. Are the defendants entitled to any sums as damages upon the arrest of the ship by the claimant during these proceedings?

**Whether the claimant was an employee of the defendants and if so in what capacity**

- [14] Although it was clear in this court's mind as the trial progressed, that the defendants did not appear to question whether there was in fact a relationship of employee and employer as between the claimant and the defendants, the pleadings of the defendants, which were not amended clearly raised this as an issue in contention. By paragraph 4 of the Defence<sup>1</sup> the defendants pleaded it thusly, "the defendants say claimant Mitchell has never been employed by SS Marine Transporter Limited and is nowhere recorded as Operations Manager of the said vessel. There is no such position in the company."

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<sup>1</sup> Filed 4/10/17

- [15] At trial the defendants not having led any evidence seemed to have abandoned this position but rather directed their questioning of the claimant as to his duties in the position he stated he held as “operations manager” and the trip that included the stop and ultimate detention in Tortola.
- [16] Neither did the defendants submit to the court on this pleading as made.
- [17] As the court had no official indication from the defendants that this pleading had been abandoned, it is in this court’s mind still necessary to make a determination on this issue, since part of the claimant’s claim is in fact for salary as an employee of the defendants.
- [18] Therefore in considering this issue, the court accepts that there is uncontroverted evidence that the claimant worked for the defendants. This court further accepts that the claimant’s period of engagement extended past the initial period of advising the defendants on the type of vessel to purchase and the assistance rendered to bring the said vessel to the Caribbean from Canada, but included his presence on the vessel as it started its voyages within the region as in the words of the claimant himself “he knew the ship inside and out.”<sup>2</sup>
- [19] Additionally, this court accepts that the claimant was in fact an employee of the defendants responsible during that first voyage up the chain of islands, to ensure that the new crew learnt the running of the ship and would have been able to undertake the voyages without him<sup>3</sup>.
- [20] To confirm who will be considered an employee, the courts have attempted to create a test that would or could definitively make that determination. Mainly the question must be asked, as to whose benefit the actions of the purported employee were done. However, as Mummery J in the case of **Hall v Lorimer**<sup>4</sup> made it clear, even in this assessment, the task of the court is not to conduct a “mechanical exercise of running through items on a check list to see whether they are present or absent from a given situation ...it is a matter of evaluation of the overall effect of the detail which is not necessarily the sum total of the individual details.”
- [21] Thus, when this court considers overall the actions undertaken by the claimant over the relevant period of the voyage in 2017, this court is satisfied that all of the duties that the claimant performed were all done to the benefit of the defendants. Even if when this court considers the allegations contained in the defence that the claimant acted on his own behalf by collecting monies for cargo taken on board, not only does this court accept on a balance of probability that the claimant did not in fact receive any sums for the carriage of cargo to any of the ports of call of the “MV Tenacity”. This court also accepts that if this allegation was intended to demonstrate that the claimant was therefore not an employee but somehow a charterer (a point that this court will deal with shortly) the mere fact that the defendants sought an accounting of those monies clearly indicates that this was only sought because the claimant was considered an employee. Therefore taken in the round

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<sup>2</sup> Cross examination of the claimant at trial on 18/5/2021

<sup>3</sup> Evidence elicited from Martin Lee on cross examination at trial on the 18/5/2021

<sup>4</sup> [1994]1 All E.R. 250

this court finds that the claimant must be categorized as an employee with the title as indicated as operations manager.

**If the claimant was an employee and worked for the defendants, is he entitled to be paid monies claimed as salary?**

[22] The court having found that the claimant is an employee, it would indeed be an incongruous finding that the claimant was then not entitled to claim for salary as an employee.

[23] The question however must be as to the quantum that must be ascribed to this claim.

[24] The pleadings of the claimant made a claim for the period January to July 2017. This claim is supported by the pleading at paragraph 5 of the Statement of Claim, which states:

“The last payment made by the defendants in respect of wages was for the month of December 2016. Despite repeated requests for satisfaction of outstanding wages the defendants has failed and or neglected to satisfy same. The claimant was actively on the boat up to May 2017 and has not been discharged of duties. As such, the claimant claims the sum of US\$2,500.00 for the months of January 2017 to July 2017, a period of seven (7) months the sum of US\$17,500.00 and continuing.”

[25] In the evidence of the claimant, he also claimed that period. Paragraph 11 of his witness summary states as follows,

“The last payment made by the owners of the defendant vessel in respect of wages was for the month of December 2016. Despite repeated requests for satisfaction of outstanding wages the defendants has failed and or neglected to satisfy same. I was actively on the boat up May 2017 and have not been discharged of duties. As such, I claim the sum of US\$1,500 for the months of January 2017 to April 2020 and continuing”.

This was a position he also maintained on cross-examination.

[26] Although this court is of the opinion that the claimant is by right entitled to the payment of a sum representing salary, the court is unable to decipher the rationale for the period as claimed although it does accept that indeed the defendants have not formally dispensed with the services of the claimant. However, this court must be cognizant of the position of the defendants given through their pleadings that as far as they are concerned, there was no employment to terminate.

[27] That being the defendants’ position, it is clear that in their minds no letter of termination would have been required, however it is evident that the claimant is no longer concerned with the operations of the defendants’ vessel and it is that time period that this court will have to determine to place an end point in the timeline as to his employment.

- [28] When this court considers the evidence and the pleadings, it is clear to the court that the ship was in fact detained in Tortola for a period of about two months before release, that is January 2017 and February 2017. Once the same was released, it is also accepted by this court that a crew was sent to Tortola to sail the ship back to Trinidad leaving the claimant and Mr. Lee, the captain at the time, to face and defend the court proceedings in Tortola.
- [29] Although that date was not given in the evidence of the claimant or his witnesses, the pleading of the defendants in their defence<sup>5</sup> as to a period of 60 days during which the ship was detained was not denied or disputed by the claimant.
- [30] In those circumstances this court cannot accept the contention of the claimant that he was active on the ship until July 2017 and the court further accepts that once that ship left Tortola without the claimant on board and he has not returned to date, that any employment the claimant had with the defendants came to an end.
- [31] As such I award the claimant the sum of USD\$5,000.00 representing the months of January and February 2017, based on the sum of USD\$2,500.00 which the claimant contended he was to be paid per month once the ship was working.<sup>6</sup>

**Was the trip to the British Virgin Islands unauthorized by the defendants? If not, is the claimant entitled to be reimbursed for the sums claimed as expended by him?**

- [32] This issue is central to the claim of the claimant. It is on this trip to Tortola that the claimant and the captain were arrested for possession of a firearm and ammunition found in the general cargo area of the ship. It is on this trip that the claimant and crew were allegedly left to fend for themselves and on which trip the claimant states that he incurred expenses on behalf of the defendants for which he is seeking reimbursement. Those sums expended will be examined shortly by the court.
- [33] However, as much as this issue is central to the claimant's claim before the court, the entire defence of the defendants is that this trip was not authorized. That the claimant had deviated from the planned route and that having done so, the defendants' contend that any contractual arrangement that existed with the defendants and the claimant had ended. Therefore, any monies that the claimant seeks to recoup should be denied.
- [34] It was indeed passing strange to this court that the defendants sought to make extensive submissions on the meaning of deviation, that the voyage to Tortola satisfied that definition and that the claimant having done so should not be able to benefit from his own wrong which all seemed to suggest to the court that despite the defendants' pleading that the claimant was not even an employee with the defendants, that somehow the claimant had breached the contract that

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<sup>5</sup> Paragraph 7 (b) of the Defence and Counterclaim filed 4/10/17

<sup>6</sup> Amplification of paragraph 11 of the Witness Summary of the claimant at trial on the 18/5/2021

he had with the defendants by making this voyage. The court was therefore left to draw the conclusion that as it has already noted that the defendants' position was now that the claimant did have a contract with the defendants, that that contract was to take the ship to certain ports, of which Tortola was not one, and as such by his own actions, the claimant exposed himself to the expenses incurred and those expenses could not now be passed onto the defendants.

- [35] Indeed the defendants has sought to classify the relationship between the claimant and the defendants as one of a charter party<sup>7</sup>. However, this court is not so persuaded that this is applicable to the way the claimant undertook the voyage aboard the "MV Tenacity". When this court considers the definition of a charter party, it is clearly meant to refer to a "contract by which the owner of the ship lets it to others for the use in transporting a cargo. The ship owner continues to control the navigation and management of the vessel but the carrying capacity is engaged by the charterer."<sup>8</sup> It is also described as "a contract by an owner or disponent owner to make the capacity of an entire vessel or some principal part of her available to another person, the charterer, for a voyage or series of voyages ...the owner has effectively divested himself of all control over the ship and over the master and crew, **his sole right being to receive the hire specified in the charter party** and to take back the ship when the charter party is at an end."<sup>9</sup> (My emphasis added)
- [36] In the instant case, there is no pleading by the defendants that suggests that this was the arrangement as between the claimant and the defendants, that the defendants had hired his ship out to the claimant to carry cargo and for which the claimant was to make a payment to the defendants. Rather it is clear from the pleadings that the defendants claimed that there was never any need for the claimant to spend his money and that the claimant was in fact required to account to the defendants for monies he said the claimant earned<sup>10</sup>. In this court's mind, this is entirely contrary to the creation of a charter party and the court wholeheartedly rejects this submission.
- [37] That being said, it is therefore clear that the central point that must first be determined is whether the trip to Tortola was within the contemplation of the defendants and was therefore one that was authorized. It is only when that determination has been made that the question will then arise as to whether the sums expended are recoverable by the claimant.
- [38] In this court's mind, the issue of the trip to Tortola is fact sensitive and as such, this court must examine the evidence that was led on this by the claimant and his witnesses.
- [39] From the evidence of the claimant on cross-examination, the claimant made it clear that the trip to Tortola was always part of the initial reason for acquiring the vessel. He made it clear that at the time the vessel came into operation there was only one other vessel that took cargo to Tortola and

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<sup>7</sup> Submissions filed by the defendants 25/6/2021

<sup>8</sup> [www.brittanica.com](http://www.brittanica.com)

<sup>9</sup> Words and Phrases Legally Defined -C- Charter party

<sup>10</sup> Paragraph 13 of the defence filed 4/10/17 – "Claimant Mitchell has never given an account to the Defendants of monies earned by or spent by him personally in relation to the boat. On every occasion that Claimant Mitchell has gone on a voyage with the boat the boat had been provided with provisions, monies and fuel to make the voyage."

that it was therefore a good opportunity to capitalize on that fact. He stated that the route from the beginning was always Trinidad-St. Vincent-Dominica-St. Kitts-St. Maarten-Tortola.

- [40] In fact, the claimant indicated that when the vessel left Trinidad on that trip in December 2016, there was cargo on the vessel for Tortola and when it left St. Vincent; the trip to Antigua was made, as there were also goods on the vessel taken on by the agent in St. Vincent for Antigua. On cross-examination, the claimant maintained the position that once cargo was accepted by the agent for any island along the chain of islands up to Tortola, the cargo would be accepted and taken on board. Thus, the trip to Tortola was always planned and the defendants knew that from the start.
- [41] This version of events was corroborated by the evidence of Martin Lee who this court found as a straightforward and forthright witness. Mr. Lee or Captain Lee told this court on cross-examination that it was the claimant who approached him to captain the vessel. He also told the court that when he was offered the job it was clearly stated to him that the vessel would journey up from Trinidad in the south to Tortola in the north and that the claimant knew that he had the experience of entering all the ports along the island chain. It was after having been approached by the claimant that he then went to Trinidad to meet the owner and he was the one who sailed the vessel from Trinidad. It was in Trinidad he told the court that they accepted cargo for Tortola so he would have been very surprised if the Tortola trip was not authorized, as it was clear that the vessel was to travel to Tortola from its inception.
- [42] The evidence of the third and final witness Josias Robinson also spoke to this fact. However, the manner in which this witness conducted himself before the court left a lot to be desired. Nevertheless, however, this court accepts that it was well known to the owner of the vessel that the ship was going to Tortola as a scheduled stop.
- [43] This court therefore is satisfied on a balance of probabilities that the trip to Tortola was one that fell within the ports of call for the vessel and as such, it is now for the court to examine whether the claimant is entitled to be reimbursed for the sums, he says he expended there.
- [44] In relation to the question of reimbursement, the law by the Admiralty and Prize Jurisdiction Act<sup>11</sup> makes it clear that there are only a specific group of individuals who can claim for disbursements. By section 3(1) (n), the Admiralty jurisdiction of the court is empowered to hear questions and claims in relation to “any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship.” This provision is also contained in Part 70 of the CPR 2000 which dictates the manner in which Admiralty claims are to be commenced before the court and at Part 70.2 (f) the claims that can be dealt with under the said Part are to include a claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship.
- [45] When this court therefore considers the claim of the claimant it is clear to the court that the claimant is not making a claim as the master or a shipper and this court has already found that he

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<sup>11</sup> CAP 16 of the Revised Laws of Saint Vincent and the Grenadines

was not a charterer, the sole consideration must therefore be, is the claimant an agent for the purposes of making a claim and if so were the sums claimed “made on account of a ship.”

### **Is the claimant an agent?**

- [46] On this question, it was readily apparent that there was uncontroverted evidence before the court that clearly pointed towards the claimant having the authority to act on behalf of the owner and thereby the vessel.
- [47] Mr. Lee in his uncontroverted evidence told this court that even though he captained the ship and under normal circumstances he would have been the one who made all decisions on the ship, since this voyage was the first one for the vessel, it was the claimant as operations manager who he answered to in terms of how the ship ran. He told the court that he spoke to the claimant as if he was speaking to the owner and he would answer to him. The claimant himself described himself as being the person who made sure that all the persons who were on the vessel had what they needed for the voyage and indeed, he described the arrangement as between himself and the defendants as one where he would disburse monies on behalf of the ship for which the defendants agreed to repay him.
- [48] What this court does accept, is that the claimant was on the vessel in the capacity of more than merely a crew member, a fact that was in fact supported by correspondence from the defendants in writing in a letter dated 24 February 2017 on the claimants behalf stating that he was the manager of the shipping department of the vessel Tenacity <sup>12</sup>. Further the court accepts the evidence of Mr. Lee who clearly states that the presence of the claimant was as representative of the owners of the vessel. The court therefore finds that the owners of the vessel did clothe the claimant with the authority to act on their behalf and to represent their interests on the voyage as undertaken. In this court’s mind, the claimant was therefore the agent of the owners for the purposes of the voyage and as such is entitled to make a claim for disbursements if those sums were expended on account of the ship.

### **On account of the ship?**

- [49] In this regard, for the expenses as claimed to be considered “to be on account of the ship” two questions that have been posed must be answered in the affirmative. These are<sup>13</sup>, i. had the particular articles [expense] actually been applied to the use of the ship and ii. whether these articles [expenses] were such as the necessities of the ship justified and required. Indeed, as the

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<sup>12</sup>Exhibit WM2 to the Reply and Defence to Counterclaim filed 9/5/19

<sup>13</sup>*The Feronia* (1868) L.R.2 A & E 65 at 75

court in **The Riga**<sup>14</sup> stated these are matters, which the owner would have undertaken or ordered himself if he was present at the time.

[50] **What were the expenses of the claimant as claimed?**

a) **Fuel-** the court accepts that this must amount to an expense that was not only applied to the ship but was justified and required. This sum was the total of two trips made from Tortola to Trinidad in 2016<sup>15</sup>. The sum of US\$11,000.00 is therefore allowed

b) **Ship Registry in Tortola-** there is no doubt in this court's mind that the vessel had been detained in Tortola for breach of safety equipment. The ship was allowed to leave Tortola and there was a fee payable for the release from detention. The date of the payment was 27 January 2017 one week after the claimant and Mr. Lee were arrested. There is no evidence before the court that the claimant was in fact out of custody to make the payment. What the court must infer is that at the time of the detention of the vessel the claimant was in fact the person who would have been in contact with the authorities in Tortola up until his arrest. Further, on cross-examination the claimant contended that he had not been bailed until 4 April 2017. I therefore do not accept that he made this payment. This sum of USD\$900.00 is denied

c) **Medical Expenses-** when this court examines both the receipts for the payment of medical expenses there is no indication as to who paid the sums or more importantly who is in fact the named individual on the said receipt. Neither the claimant nor any of his witnesses gave evidence as to the individual who was the recipient of this medical care. The sum of US\$92.00 is denied

d) **Groceries-** the evidence of the claimant is that these groceries purchased were for the use of the crew during the month of February 2017. However, it is clear that this would have been within the period before the claimant, on his own admission, was bailed on the charges for which he was arrested. I have no doubt that food was purchased for the use of the crew and therefore would have been a disbursement to the use of the ship, however there is nothing before the court to support that it was in fact the claimant who made the payment for the same. The sum of USD\$766.93 is denied

e) **Hardware Supplies-** once again the date of the receipt is during the period that the claimant was in custody and the ship had not yet left Tortola. This sum of USD\$17.30 is denied

f) **Hotel Accommodation-** this expense was, in the evidence of the claimant, for the accommodation of the ship inspector that came from Trinidad to survey the ship so that the same would be released from detention. This was also the date of the arrest of the claimant but on a balance of probabilities, I accept that the claimant was in a position to make this payment, which would have been required for the ship to be released. This sum of USD\$90.00 is accepted.

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<sup>14</sup> (1872) L.R. A & E 516

<sup>15</sup> Which was borne out by the stamps in the passport of the claimant exhibited to Witness Summary of the claimant at page 139 of the Trial Bundle

g) **Legal Fees-** generally this court accepts that once legal fees were paid due to the position the claimant had with the ship, that is, that he was exposed to legal consequences directly related to his employment, legal fees are a legitimate disbursement that can be recouped<sup>16</sup>. In the case of the claimant, this court also accepts that the legal difficulties that the claimant found himself, and charges for which he was acquitted, resulted solely because he was the operations manager on the ship where these illegal items were found. As such, this court is satisfied that the claimant is entitled to make a claim, the question must however by necessity be, whether the sums in fact claimed were not only paid by the claimant but also paid in relation to the matter that he was facing before the court. In assessing the fees, that the claimant has claimed seeking reimbursement it is clear to the court that the claimant seems to have incurred fees at three different law firms, GRR Gordon, Alliance Law and Denjen Law.

GRR Gordon- there is a claim made by the claimant to this law firm for the total of USD\$2,290.00. However, the court has only seen three receipts dated 1/2/17, 3/3/17 and 9/6/17 in the total sum of USD\$1,540.00. There was no explanation as to the dates of the receipts or in what aspect this attorney provided their services. However, I accept that the same were incurred and paid however only in the sum of USD\$1,540.00.

Alliance Law Partnership Ltd- there is claim for the sum of USD\$1,300.00 paid to this legal firm, however the receipts clearly state that the sums were paid by Lazarus Shipping Agency. When the claimant was questioned on this at trial his response was that Lazarus was the agent for the ship in Tortola and that they made the payment on his behalf but that he repaid them the sums and hence the fact that he had possession of the said receipts. This court is unable accept this explanation given by the claimant in all the circumstances, especially given the fact that Lazarus was in fact the agent for the ship. This sum of USD\$1,300.00 is denied.

Denjen Law- the receipt presented for this law firm clearly showed the disadvantage that can be caused to the court by the failure to produce legible documents or the originals. This receipt in this court's mind was totally undecipherable as to the sum, the date or the purpose of the payment. This sum of USD\$1,500.00 is denied.

**Are the defendants entitled to any sums as damages upon the arrest of the ship by the claimant?**

- [51] This claim is solely based upon the contention of the defendants that the claimant having arrested the ship, during the course of the proceedings that the defendants suffered consequential loss for which they are entitled to be compensated.
- [52] Beyond the fact that the defendants were unable to substantiate this claim having been barred from giving evidence, this contention also raises the issue of whether a claimant who in admiralty proceedings arrests a ship can in fact be held liable for any loss that may be suffered by the ship.

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<sup>16</sup> **The James Seddon** (1866) L.R.1 A & E 62 at 65 per Dr. Lushington

- [53] In the comprehensive submissions of the claimant, the claimant submitted that sums would only be payable on such an arrest if the said arrest had been without cause. In the case of **The Cella**<sup>17</sup> Fry LJ put it thusly, “the arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment.”
- [54] So the question that must be answered before the issue of loss suffered upon an arrest of a ship is this “is there or is there not reason to say that the action was so unwarrantably brought or brought with so little colour or so little foundation that it rather implies malice on the part of the plaintiff or that gross negligence which is equivalent to it?”<sup>18</sup> Thus, it is clear that unless the action was taken with some extent of malice or there was nothing to justify the arrest, then and only then will the issue of damages arise<sup>19</sup>.
- [55] In the case at bar the defendants have not pleaded any malice or gross negligence on the part of the claimant in the action save and except to plead<sup>20</sup>:
- Defence
- “15. Claimant Mitchell is believed by the Company to be a man of straw and this arrest of the vessel is nothing more than an attempt to claim wages which he is not owed, for a time when he took the vessel on a frolic of its own and ended up arrested and detained along with the vessel.”
- Counterclaim
- “6. The Claimant Mitchell arrested the boat without having the means to maintain security on the vessel or to provision the vessel with fuel so that it can be started every day as is required during an arrest and the vessel is now at risk of being damaged or lost given the weather systems passing through the region.”
- [56] Of course not having led evidence, the defendants were unable to make any further statements. However, even on these pleadings it is hardly likely in this court’s view, that the defendants would have been in a position to establish that the claimant would be liable in damages.
- [57] In any event, there has been no pleading on the part of the defendants as to how the sum they claimed was in fact calculated and this claim must be denied.

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<sup>17</sup> (1888) 13 P.D.82 at 88

<sup>18</sup> **The Evangelismos** (1858) XII Moore P.C. 352

<sup>19</sup> **Walter Turnbull v The Owners of the Ship Strathnaver** (1875) 1 App. Cas.58

<sup>20</sup> Paragraph 15 of the Defence filed 4/10/2017 and Paragraph 6 of the Counterclaim filed 4/10/2017

**The order of the court is therefore as follows:**

1. The defendants are to pay to the claimant the following sums at the rate of conversion of USD\$1 to XCD\$2.6889:
  - a) As salary - USD\$5,000.00- XCD\$ 13,444.50
  - b) As disbursements- USD\$12,630.00- XCD\$33,960.81.
2. Prescribed costs on the sum of XCD\$47,406.31 is awarded to the claimant.
3. The counterclaim is dismissed in its entirety.
4. Prescribed costs on the counterclaim on the sum of XCD\$442,322.00 as claimed is awarded to the claimant.

**Nicola Byer**  
**HIGH COURT JUDGE**

By the Court

Registrar