

**THE EASTERN CARIBBEAN SUPREME COURT
ST. LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SLUHCV2018/0014

BETWEEN:

DOUGLAS ANTROBUS

Claimant

and

RODNEY BAY MARINA LIMITED

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Gerard Williams for the Claimant

Mr. Andre McKenzie with Ms. Danielia Chambers for the Defendant

2019: October 31;
December 6; (written submissions)
2020: July 31; (written submissions)
December 17.

JUDGMENT

[1] **CENAC-PHULGENCE, J:** This is a claim by the claimant, Douglas Antrobus (“Douglas”), a Vincentian national, against the defendant, Rodney Bay Marina Limited (“RBM”) for damages to his vessel, Sun N Sea (“the vessel”), allegedly caused by the negligence of RBM. RBM is a registered company which operates a boatyard at Rodney Bay (“the Marina”) providing docking and dry dock services to patrons. I have referred to the persons involved in this matter by their first names simply for convenience and mean no disrespect by it.

The Claim

- [2] Douglas' claim is based on the primary allegation that he personally presented himself to RBM as the only person who had authority over the vessel. For storage of the vessel at the Marina, he paid RBM a prescribed fee of US\$25.44 daily or US\$763.20 monthly.
- [3] The facts as alleged by Douglas are that on or about 4th June 2017, the vessel was dry docked at the Marina and left in the care of his mechanical engineer for the purpose of being repaired. On completion of the repairs, he paid the requisite service fees in advance for launching the vessel in accordance with RBM's policy. He instructed RBM to launch the vessel and personally attended the launch ("the first launch"). When the vessel was launched, Douglas discovered that the vessel was leaking through the stern tube and was at risk of sinking. He then instructed RBM's agent to return the vessel to dry dock for further servicing.
- [4] Douglas alleges that he left Saint Lucia on 7th April 2017 and left the vessel at the Marina in the care of his engineer (whom he does not name) for the purpose only of effecting any necessary repairs to the vessel until his return. He never gave any implied or express authority to his servant, the engineer, to act on his behalf. Neither did he instruct RBM, whether written or orally, impliedly or expressly to accept his engineer as having any authority to act on his behalf during his absence. He further alleges that it was a requirement of the contractual relationship between himself and RBM that he personally instruct RBM to take any action regarding the vessel.
- [5] Douglas alleges that RBM negligently launched the vessel on 21st July 2017 without his instructions ("the second launch"), and because of a leak, the vessel sank moments after it was launched. As a result, the vessel suffered considerable damage. The vessel was subsequently floated on 29th July 2017 by Complete Marine Services Limited ("CMS") on RBM's instructions.

- [6] Douglas alleges the following particulars of negligence against RBM:
- (a) failing to satisfy itself that it had the requisite authority to launch the vessel by ensuring that his servant had the specific authority to act as agent for or on his behalf and that he had authorised the vessel's launch;
 - (b) failing to ensure the seaworthiness of the vessel prior to the launch.
- [7] Douglas alleges that, as a result of RBM's negligence, he suffered loss and claims special damages of \$448,288.50 being the cost of repairs to the vessel, general damages, interest and costs.

The Defence

- [8] RBM for its part disputes Douglas' claim and avers that at no time did he instruct nor communicate to it that he was the only person authorised to deal with the vessel. RBM avers that the usual course of dealing between the parties was that instructions for dealing with the vessel were sent to RBM through his agents, Lyndon Jeffrey ("Larry"), caretaker and/or Antoine Georges ("Tony"), mechanic. In Douglas' absence from Saint Lucia, the vessel was left in the care, custody and control of the caretaker and mechanic, who were represented by him as having authority to act on his behalf. RBM further avers that Douglas acknowledged and ratified the instructions given by his caretaker and/or mechanic by, among other things, the payment of requisite fees to RBM for services rendered at the request of the caretaker or mechanic.
- [9] In relation to the first launch, RBM avers that despite advice from his caretaker about the leak, Douglas, who was present in person and in a haste to have the vessel back on the water, on about 5th April 2017, instructed RBM to launch the vessel. In accordance with RBM's 'no cash no splash policy', Douglas was informed, through his agents, that before the vessel could be launched, all outstanding fees owed had to be settled. Douglas, in accordance with the policy, paid the outstanding fees on 6th April 2017 and the vessel was launched by RBM in his presence on 12th April

2017 and not 4th June 2017 as alleged. RBM agreed to waive the fees which had accumulated from 7th April to 12th April 2017 at Douglas' request.

[10] The launch on 12th April 2017 was unsuccessful, as upon contact with the water, the vessel was leaking, and as a result it was immediately removed from the water and placed on dry dock to undergo further repairs "while in sling". After the launch on 12th April 2017, RBM avers that Douglas returned to Saint Vincent, leaving the vessel in the care of the caretaker and mechanic who were attending to repairs to the vessel. Prior to his departure, RBM avers that Douglas instructed that he wanted the vessel back on the water as quickly as possible. He subsequently contacted the caretaker and mechanic via telephone to follow up on the status of the vessel and instructed that the vessel should be relaunched once the repairs had been completed.

[11] In relation to Douglas' allegation that the vessel was again launched on 21st July 2017, RBM avers that the second launch took place on 24th April 2017 and that it was launched pursuant to Douglas' instructions given on 24th April 2017, via telephone to the caretaker to have RBM launch the vessel. RBM avers that the vessel sank 66 days after the launch and not moments later as alleged by Douglas. RBM states that any damage caused to the vessel was not a result of the launch.

[12] RBM further avers that prior to the second launch, it informed Douglas, through the caretaker, of the outstanding fees owed in the sum of \$1,063.51 for electricity use, dry dock storage, and lifting the hard top of the vessel, which needed to be settled. RBM avers that on 13th April 2017, Douglas personally remitted the outstanding fees and made arrangements by or through the caretaker for the second launch. As before, RBM waived fees accumulated between 14th and 24th April 2017 at Douglas' request.

[13] Upon the second launch, Douglas was informed by the caretaker that the vessel was not starting, as the batteries were dead. The vessel remained in the water

overnight while the batteries were left to charge. RBM avers that the following morning, after the caretaker had performed his checks, the vessel was started. It was discovered that it was not going forward and as a result had to be towed to J dock by another motorboat, captained by Jason Theobalds. RBM avers that Douglas was informed by the caretaker of the need to pay Jason Theobalds for this service.

- [14] After the second launch on 24th April 2017, the vessel remained in the water at J dock until 30th June 2017, when it sank and during which time it continued to incur docking charges. RBM avers that at no point during that period did Douglas object to the vessel being launched or remaining in the water, and at all times, he was aware of the launch and that the vessel was in the water at J dock, as he made arrangements for and followed up on repairs and negotiated docking rates.
- [15] Further, RBM avers that the vessel was subsequently floated in Douglas' presence by CMS on 16th July 2017 and not 29th July 2017 as alleged by Douglas. RBM avers that CMS was contracted by Douglas, on its recommendation and not by it, as alleged by Douglas.
- [16] After the vessel was floated on 16th July 2017, it was lifted out of the water and placed on the dry dock for storage, preservation and/or repairs on Douglas' instructions and approval. RBM avers that after the vessel was lifted out of the water, Douglas personally visited RBM's premises on numerous occasions to check on the status of the vessel and to commence repairs while it was in storage. All this time, the vessel continued to incur charges for its storage.
- [17] RBM denies that the sinking of the vessel was as a result of any negligence on its part and states further that it did not owe any duty to Douglas to ensure that the vessel was seaworthy prior to its launch.

Counterclaim

- [18] RBM filed a counterclaim for the total sum of \$55,471.05 for breach of contract comprising the balance owed for (i) dry dock storage fees for the period 16th July 2017 to 1st April 2018 (\$53,943.83) and (ii) haulage fee for lifting the vessel on 16th July 2017 (\$1,527.22) in accordance with Douglas' instructions. RBM alleges that Douglas was aware that storage of the vessel attracted a daily fee of \$208.28 and he approved same. RBM also claims storage fees for dry dock storage continuing at the rate of \$208.28 daily from 2nd April 2018 until the date of removal.
- [19] RBM alleges that despite its repeated demands for payment of the outstanding dry dock storage and haulage fees and signature of the requisite dry storage agreement, Douglas has refused and/or neglected to pay the outstanding sums which remain due and owing or to sign the dry dock storage agreement.

Reply and Defence to Counterclaim

- [20] In his reply, Douglas states that he never represented to RBM expressly or impliedly that Larry or Tony were authorised to act on his behalf in his absence. He also avers that the vessel was not in the custody and control of either Larry or Tony. Tony was responsible only for the repair of the engine. He further states that the general care, custody and control of the vessel was with RBM as he paid monthly for the security of his vessel.
- [21] In his reply, Douglas alleges that the particulars of negligence which he pleaded are in relation to the second launch. Douglas alleges that contrary to that averred by RBM, he did not pay outstanding fees in accordance with the 'no cash no splash' policy in relation to the second launch and therefore could not have authorised the launch on that occasion. Douglas maintains that the vessel did not remain sunken for 66 days and alleges that efforts were made by him and RBM, independent of each other, to float the vessel.
- [22] Douglas alleges in his reply that following the sinking of the vessel, RBM unilaterally increased the docking charges without his knowledge or consent. He also alleges

that at no time did he speak to or engage CMS to float his vessel save when his attorney wrote on his behalf disputing the charges. He says it was clear by that letter that he did not engage CMS' services and therefore that their bill should be directed to RBM. He further alleges that the vessel was floated not by CMS but by one 'Elvis'.

- [23] In his defence to the counterclaim, Douglas denies that he instructed RBM to lift the vessel out of the water and place it in storage or that he owes RBM any monies as alleged and contends that due to RBM's negligence, the consequential charges for docking or haulage ought to be borne by it. He otherwise puts RBM to strict proof of the averments as relates to making demands of him for the outstanding charges and of his refusal to pay.

Reply to Defence to Counterclaim

- [24] RBM filed a reply to Douglas' defence to the counterclaim and in relation to his denial that the caretaker and mechanic were authorised to act on his behalf says: (a) the vessel was docked at the Marina for about three years and during that period, instructions were given to RBM by him through the caretaker and/or the mechanic who were responsible for the overall care and custody of the vessel in Douglas' absence; (b) during that period the caretaker would on many occasions, on Douglas' behalf, discuss rates and logistics about the vessel with RBM staff; (c) Douglas would settle the invoices for services rendered in relation to the vessel by RBM pursuant to the caretaker's instructions and at no point intimated that the caretaker and/or mechanic was not authorised to issue instructions in relation to the vessel.
- [25] In relation to Douglas' allegation that the vessel was left in the care, custody and control of RBM, RBM states that had this been the case all works and payments in relation to the vessel would have been done through its offices but that was not the case. All contractors were paid directly for the work done on the vessel either through Douglas and/or the caretaker.

[26] RBM, in relation to Douglas' allegation that he did not pay for the second launch and therefore could not have authorised same, states that the only charges that were not paid were those which accrued between 14th April 2017 and 24th April 2017 as those fees were waived at the caretaker's request. Further, in relation to Douglas' allegation that RBM unilaterally increased the docking fees without his knowledge or consent, RBM avers that normal docking charges were applied from 2nd July 2017, there being no further agreement between the parties in relation to reduction of the rates.

Issues:

Factual Issues

[27] It is not disputed from the evidence that the vessel was launched twice, and that Douglas was present at the first launch. What is in contention are the dates of the two launches. The factual issues are therefore (a) whether the vessel was launched in April or June 2017? and (b) when did the vessel sink?

Legal Issues

[28] The legal issues are as follows:

- (a) whether RBM was authorised to carry out the second launch of the vessel –
 - (i) whether Douglas' mechanic/mechanical engineer Tony was acting as Douglas' agent in authorising RBM to carry out the second launch?
 - (ii) If not, whether Douglas ratified the second launch of the vessel?
- (b) Whether RBM owed a duty of care to Douglas to ensure that Tony was authorised to act on his behalf or that the vessel was seaworthy before undertaking the second launch?
- (c) If so, whether there was a breach of that duty?
- (d) If so, did Douglas suffer loss and damage?
- (e) Whether Douglas is liable to RBM for breach of contract for storage of the vessel?

The Evidence

Douglas Antrobus (“Douglas”)

- [29] A witness summary was filed on Douglas’ behalf which he confirmed was his evidence in the matter. He was the only witness in support of his claim.
- [30] Douglas is ordinarily resident in Saint Vincent and the Grenadines. His evidence is that he is the owner of the vessel which was acquired in about November 2013 as part of a business venture that he wished to pursue; a wish that is yet to materialise. After purchase, the vessel was transferred to dry dock at the Marina for repairs and refurbishment. His obligation to RBM, he says was to ensure that the monthly docking fees were paid according to the invoices issued. He says the fee was US\$28.00 per day, a reduced rate agreed between himself and RBM from three years prior when his first vessel, Offshore Manor was dry-docked there. Douglas says he was personally billed and would personally present himself to RBM’s office to settle the bills. Otherwise, if he was unable to travel to Saint Lucia, he would wire the monies to RBM’s bank.
- [31] His time is spent between Saint Vincent and Saint Lucia and he visits Saint Lucia at least once a month. He hired Elvis Michaud (“Elvis”) to work on the body of the vessel. He admits to knowing Larry who was familiar with electrical work and whom he asked to rewire the entire vessel and overhaul the engines. Larry recommended Tony, a mechanic, to do the engine overhauling. Douglas says he is a very meticulous person and would not leave his property in the control of anyone else.
- [32] He refutes, what he says is RBM’s claim, that Tony was his caretaker. Douglas says there was no reason to have anyone in charge of his vessel as he was always available to handle any matter concerning the works to be done and he hardly knew Tony.

- [33] Douglas says that Tony had indicated that the repairs to the vessel would take 6 weeks but instead it took 38 months to complete the work. He says he constantly had to ask Tony to complete the work since he was paying RBM rent to store the vessel on their docks. Tony finally completed the work in the first week of June 2017. He says he took Tony at his word and made arrangements to launch the vessel. Douglas says he is familiar with the 'no cash no splash' policy and therefore he settled the outstanding bill for \$4,095.00 on 4th June 2017. He says he had paid the sum of \$1,063.51 during the early part of April 2017 which was for use of RBM's resources such as water for cleaning the vessel, electricity, and using the forklift for lifting the hardtop off the vessel.
- [34] Douglas says that RBM's interpretation of the date on the receipt, "4/6/2017", as being 6th April 2017 is incorrect and is used by RBM to mislead. He says it is not the practice in the Caribbean to read or write the date with the month first as seen from other receipts exhibited by RBM.
- [35] His evidence is that he made arrangements to be in Saint Lucia for the launch of the vessel during the month of June as he wanted to be personally present to manage and oversee the operation. RBM launched the vessel in the middle of June 2017 upon his instructions, and upon doing so, it was apparent that there was a leak through the stern tube. He says he immediately requested that the vessel be placed back on the dock and instructed Tony to attend to the problem. Douglas says the length of time that Tony took to work on the vessel and the additional delay as a result of the leak was costing him additional charges. He says he was extremely upset with Tony over 'the sinking' as he had wasted a trip and incurred needless expense. He had some sharp words with him about fixing the vessel and then left for Saint Vincent.
- [36] On 9th July 2017, Douglas says he received a call from Mr. Sean Devaux ("Devaux") informing him that the vessel had sunk two days before. He says Devaux asked him who was in charge of his vessel and he told him no one; that he was the only

one dealing with it. Douglas says he never put Larry, Tony or Elvis in charge of the vessel as he had no need to; his vessel was secured at RBM's dry dock and he had a direct line of communication with Devaux. He did not advise RBM that he was placing anyone in charge of the vessel.

[37] On being informed of the sinking by Devaux, Douglas travelled to Saint Lucia a day later on 10th July 2017 to attend to his vessel. He says he learnt that the vessel was launched on the Friday, 7th July 2017 and he says he was called two days later, on the Monday. Earlier he had said he had been called on the Sunday, 9th July 2017. He says on his arrival, attempts were already in progress to salvage the vessel. CMS, which he did not contact, was already attempting to raise the vessel but their efforts were unsuccessful. He says the vessel was finally raised with the assistance of Elvis and the damage was significant.

[38] It is Douglas' evidence that once he levelled blame at RBM for the sinking of the vessel, his efforts to mitigate his loss were frustrated as he was prevented from having anyone accompany him to work on the vessel. He was eventually allowed to, once he identified the person who would work on the vessel and represented that the person had 'full care, custody and control'.

[39] Douglas says RBM demanded that he pay CMS' bill which he did not agree to since he had never engaged or contracted CMS and RBM was responsible for his vessel sinking. The parties agreed to allow Mr. Christopher Kessel, a specialist in marine surveys to estimate the damage to the vessel.

[40] Douglas says he never asked for any reduction in fees. He says the evidence shows that RBM has not once reduced its fees and has consistently billed him for the vessel's storage on the dock. He exhibits an invoice dated 5th October 2017 for the period 1st July to 5th October 2017 as evidence that he has consistently been billed US\$28.00 daily as docking charges.

[41] Douglas says this invoice shows that he never paid for the second launch of the vessel in keeping with RBM's 'no cash, no splash' policy prior to launch, as he says 'haul out vessel' charges appeared on that invoice. He is of the view that the docking charges incurred was due to RBM frustrating his efforts to repair the vessel so it could move out. RBM had no authority from him to launch his vessel and if it is that RBM is claiming that he gave someone else authority, then RBM should have asked for that authority in writing or otherwise confirm any such representation with him. As a result, Douglas says he is not indebted to RBM for any storage charges.

[42] There were three witnesses on behalf of the defendant.

Mr. Antoine Georges ("Tony")

[43] Tony gave evidence that he has been a marine engineer for over 30 years. He has been working on boats at the Marina from May 1993 and has known Douglas for about five years. He was introduced to Douglas by Larry who he says is a marine technician. He worked with Larry on Douglas' previous boat Offshore Manor, which was docked at the Marina. Larry had primary responsibility for Offshore Manor and he provided assistance where necessary.

[44] Tony's evidence is that in 2014, Douglas spoke to him regarding certain works he wanted him to do on the vessel. He says during the time he worked on the vessel, he would inform Douglas of the parts needed and Douglas would then ask Larry to assist in locating them. He says when Douglas was off island, he would contact him via telephone and inform him of what needed to be done.

[45] This is Tony's version of what transpired as far as the launches of the vessel are concerned. His evidence is that on 12th April 2017, Douglas was in Saint Lucia and together with Larry and himself, attended the first launch of the vessel. He says Douglas wanted the vessel launched as it needed to be in the water so that the engines could be tuned, and regular standard launch checks could be carried out

e.g. whether there were any leaks due to the length of time the boat was on dry dock.

- [46] The first launch was unsuccessful as upon contact with the water, while still in the sling, the vessel began to leak. It was removed from the water and placed on dry dock. After the first launch, he says Douglas returned to Saint Vincent and requested Larry and him to carry out the necessary repairs to facilitate its relaunch at the earliest.
- [47] He says whilst Douglas was off island, he communicated regularly with him via telephone and he gave him instructions and in turn he would provide Douglas with updates on the progress of repairs. He says Douglas told him that he wanted the vessel relaunched very soon so that he could take it out of Saint Lucia and have it back on the water. He says Douglas instructed that the vessel should be relaunched once the repairs were completed.
- [48] On 23rd April 2017, Tony says he spoke to Douglas and informed him that the repairs were complete and the vessel could be relaunched the following day and Douglas agreed. He says he also spoke with Larry who indicated that Douglas had also told him to have the vessel relaunched. That same day, Tony says he went to RBM's office and advised them that Douglas wanted the vessel to be relaunched the following day, 24th April 2017.
- [49] On the morning of 24th April 2017, Tony says he spoke to Douglas via telephone about the launch and advised the RBM office that Douglas wanted the vessel to be the last one launched for the day so that a proper assessment could be done, given the leaks on the last occasion. The vessel was relaunched on 24th April 2017.
- [50] On the second launch on 24th April 2017, Tony says when the vessel was put in the water it did not start and he and Larry discovered that the batteries were low. The batteries were left to charge overnight whilst the vessel remained in the water. Tony

says he telephoned Douglas that evening and informed him of this. On the following morning, he and Larry checked the vessel for leaks. There were no leaks but when started, the vessel was not moving forward and was only reversing. Tony says he and Larry thought that it might have been a transmission issue. With the assistance of Jason Theobalds, the vessel was towed to J-dock. After the vessel was towed, Tony says that he informed Douglas of what had transpired that morning.

[51] Whilst the vessel was at J-dock Tony says Douglas asked him to attend to the transmission issue. He says he diagnosed that the transmission pressure pump was bad and conveyed this information to Douglas who then asked him to check the serial numbers on the transmission pressure pump so he could order the part. He says he gave Douglas the serial number, but he took a while to order it. Tony says as far as he is aware, the vessel remained at J-dock until it sank.

[52] On Friday, 7th July 2017, Tony says Douglas called him and asked him to check on the vessel as he had been informed that it sank. He says he did and confirmed that the vessel sank. He says Douglas called him later that day to advise that the vessel would be lifted from the water and requested his assistance in flushing the engines when it was lifted.

[53] Tony's evidence is that since the first launch of the vessel on 12th April 2017, he and Douglas remained in constant communication via telephone regarding the vessel until 16th July 2017. He maintains that at all times he acted in accordance with Douglas' instructions and communicated same to RBM when necessary. Douglas never complained about the second launch until after the vessel sank. Tony says Douglas was aware of the second launch on 24th April 2017 and that the vessel was at J-dock as he issued the instructions for that launch and further, he was in constant contact with him regarding resolution of the transmission issue. Tony says Douglas never asked him to conduct repairs to the vessel after it sank.

Elvis Michaud (“Elvis”)

- [54] Elvis has been a fibre glasser for over thirty years specifically trained to work on boats. His evidence is that he was introduced to Douglas in 2016 by Larry. Douglas asked him to carry out certain works and repairs on the vessel and he has worked on the vessel from 2016.
- [55] He says that Larry and Douglas had a close relationship, and he was often present when Larry, Douglas and sometimes Tony would have telephone conversations about the vessel and the works required to be done. He says as Douglas was often off-island, Larry usually requested updates from him on the works he was doing on the vessel in order to update Douglas. He says Douglas would also call him via telephone for information on the vessel.
- [56] He says sometime in 2017, whilst the vessel was at J-dock after being launched, Douglas asked him to carry out further works on the vessel including repairing the stern gate. He says he asked a member of his work team to assist and for two days they attended to those repairs. He says he learnt that sometime in the summer of 2017 the boat sank while in the water at J-dock.

Mr. Sean Devaux (“Devaux”)

- [57] Devaux is currently the General Manager of RBM and has been from November 2015. He has worked with the company since 2012 when he started as Boatyard Manager and subsequently as Operations Manager from 2013 to November 2015. As General Manager he is responsible for the management of all the facilities provided by RBM and its daily operations.
- [58] The relationship between RBM and Douglas commenced in 2014 when he purchased his first boat, Offshore Manor which remained at RBM until it was moved to Saint Vincent. During that time Douglas conducted repairs and upgrades to Offshore Manor using Larry and Tony who would assist with the repairs under Larry’s direction. He says Larry, Douglas and himself would meet from time to time

to discuss repairs, rates and other matters related to Offshore Manor. On several occasions when Douglas was off island, Larry would act as Douglas' representative by negotiating rates with him, paying invoices in cash and arranging haul outs and launches for Offshore Manor and this was the case until Offshore Manor was moved to Saint Vincent.

[59] In relation to the vessel, Devaux says that after its purchase in 2014, it was placed in dry-dock storage and Douglas commenced repairs to it using Elvis and Tony at first. It is his evidence that the relationship between Douglas, Larry, and Tony continued in much the same way as it had been in relation to Offshore Manor.

[60] Devaux gave evidence that when Offshore Manor was stored at RBM, the agreed rate was a reduced rate of US\$0.44 per ft per day from the usual rate of US\$0.52 per ft per day. In relation to the vessel, Devaux says Douglas personally and through Larry requested a reduction in the usual rate on the basis that the vessel was larger than Offshore Manor and Douglas indicated that he could not afford the cost of storage at the usual rate given that he had to do the refurbishments to the vessel. RBM agreed the reduced rate of US\$0.44 per ft per day and that this rate would apply until the first launch of the vessel.

[61] In terms of communication regarding the vessel, Devaux says that all arrangements for storage fees were made verbally between Larry and himself or Douglas and himself, as Douglas was mostly off island and had represented that he had no access to e-mail. In Douglas' absence, Larry or Tony communicated with him or the office as regards the services required for the vessel, such as hauling out services, crane services and utilities (electricity and water). Costs for these services were invoiced by RBM and paid for by Douglas.

[62] Devaux's version of events relating to the launches of the vessel is as follows:

- (a) In April 2017, Douglas wanted to launch the vessel and in accordance with the no cash, no splash policy, he paid all outstanding invoices. Receipt no. 237159 in the sum of \$4,095.00 was exhibited.
- (b) The vessel was launched for the first time on 12th April 2017 but was unsuccessful as it started to leak upon contact with the water. The vessel was lifted out of the water and placed on dry dock for repairs to be carried out by Larry and Tony. Douglas left Saint Lucia shortly thereafter.
- (c) Whilst the vessel was being repaired, he was approached by Larry about a waiver of the charges for the lifting of the vessel after the first launch and storage fees for the period between the first and second launches which he estimated would be short given the progress of the repairs. RBM agreed to waive the fees.
- (d) The repairs to the vessel were carried out by Tony and when they were completed and the vessel was ready to be relaunched, due to the waiver of the fees, upon instructions given on behalf of Douglas by Tony, RBM made arrangements to launch the vessel.

[63] Devaux says that once on J-dock, mechanical works were carried out by Tony and during the period of repairs, parts were ordered through Larry. RBM assisted in clearing these parts and the charge for this service was invoiced in May 2017 along with the water storage for the vessel at J-dock. The invoices related to these charges were exhibited.¹ Devaux says Douglas settled all these invoices on 10th February 2018.²

[64] Devaux says Douglas was aware of the second launch and that the vessel was in the water at J-dock undergoing repairs as he had issued instructions for its launch, he had been in communication with Tony and Larry about the state of repairs, he had ordered new transmission pumps and he had instructed Elvis to repair the vessel's stern gate.

¹ (a) See SD6 at page 86 of the Bundle-Invoice No. 242390 dated 28th April 2017 in the sum of \$895.57 for dock charges from 26/04/17-10/05/17; (b) SD7 at page 87-Invoice No. 243824 dated 31st May 2017 in the sum of \$2,388.12 for dock charges from 10/05/17-31/05/17 and customs/brokerage clearance for pump kit; (c) SD8 at page 88- Invoice No. 244882 dated 29th June 2017 for dock charges from 31/05/17-01/07/17 water for 29/06/17 and environmental surcharge.

² See receipt no. 250443 for \$5279.47 dated 10th February 2018.

[65] Devaux says the charges for water storage of the vessel at J-dock varied for different periods as Douglas had initially requested a reduction in the storage rate from the usual rate of \$105.39 to \$63.97 for two weeks. The reduced rate was therefore applied from 26th April to 10th May 2017. After the two-week period, the usual rate was reapplied from 10th May to 31st May 2017. The rate was again reduced from 31st May to 1st July 2017 at the request of Larry on behalf of Douglas. After 1st July 2017, the usual rate was reapplied.

[66] In relation to the sinking, this is Devaux's evidence:

- (a) After the second launch, and on the morning of 25th April 2017, the vessel was towed to J-dock where it remained until it sank. The vessel sank on 7th July 2017 at J-dock six weeks after its launch. On that day, Devaux says he received a call that the vessel was sinking. He says he tried to call Larry but did not get through and then tried to reach Douglas by phone and informed him about the vessel. He says he told Douglas that he was on his way to the vessel and would update him when he got there. He says Douglas told him he would try to get Larry. When he arrived at the Marina, he observed that the vessel was at least three-quarter way sunken and he started implementing RBM's protocols to avoid oil spills and for the protection of property. He says Larry then called him and informed that he was on his way to the Marina.
- (b) When Larry arrived, Devaux says he asked him about the plans to float the vessel. They discussed some options which included contacting CMS. Larry informed him that he had no credit on his phone and asked him to contact CMS, which he did, to obtain an estimate of the fees to float the vessel. On that same day, CMS provided an estimate of EC\$4,000.00, which Devaux says he conveyed to Douglas. Douglas, he says, agreed with the estimate and indicated that CMS should be engaged on his behalf. Douglas, he said, informed him that he would come to Saint Lucia shortly, and Devaux says he asked CMS to deal with Douglas or Larry.

- [67] Devaux says after about four days of unsuccessful attempts to lift the vessel, RBM's Shipyard Supervisor suggested an alternative option to float the vessel since lifting it was taking some time and it was in RBM's interest to have the vessel floated as soon as possible as it was obstructing RBM's docks. He instructed him to discuss this option with CMS but not to incur any expense to remove the vessel and that all expenses should be charged to CMS. The vessel was eventually floated and hauled to the boatyard for storage approximately eight days after sinking. Once the vessel was in dry dock storage, he says Douglas sought his advice as to a good mechanic to repair the engines and preserve them. Devaux says it appeared to him that the relationship between Douglas and Larry and Tony had deteriorated after the vessel sank.
- [68] Devaux says he stopped all communication with Douglas as it related to providing assistance in repairing the vessel due to his offensive attitude. He says that since the vessel has been on dry dock, Douglas and persons working on the vessel have visited to conduct repairs to it and used equipment and other services provided by RBM. At all times, he says Douglas was made aware that charges for dry dock storage were accruing at the rate of EC\$208.28 per day, the usual rate of storage. As at 17th June 2019, Douglas owes RBM the sum of \$152,579.58 which represents (a) dry dock storage from 16th July 2017 to date; and (b) haulage fees for lifting the vessel out of the water and placing it on dry dock for storage after it was floated.³
- [69] Devaux says that at no time was RBM responsible for carrying out repairs to the vessel or ensuring its seaworthiness.

³ Invoice dated 16th June 2019 at page 78 of the Bundle.

Analysis

Factual Issues: (a) was the vessel launched in April or June 2017; and (b) when did the vessel sink?

- [70] In Douglas' statement of claim, he speaks to the first launch being on 4th June 2017 and the second being on 21st July 2017. The latter date, he also alleges, is the date the vessel sank, as he says it sank only minutes after the second launch. I note that although Douglas insists in his statement of claim that the first launch was in June and not April, in describing the series of events, he mentions the first launch – discovery of the leak and the need for further repair; and then proceeds to state, curiously, that he left the island on 7th April 2017, leaving the vessel at the Marina in the care of his engineer to attend to the necessary repairs until his return. In his evidence in chief he says the second launch was on 7th July 2017, as opposed to 21st July 2017 pleaded, and maintains the vessel sank moments later.
- [71] All of RBM's witnesses are consistent and, in both the pleadings and evidence, say the first launch was on 12th April 2017 and the second on 24th April 2017. They also all agree, in the evidence in chief and cross examination of each of them respectively, that the vessel sank on 7th July 2017. I do note however, that in the pleadings, RBM stated that the vessel sank on 30th June 2017.
- [72] Douglas made much of the actual dates of the launches, even stating that RBM and its witnesses sought to mislead the Court. In that regard, he produced a receipt dated "17/2/2017" in an attempt to show that RBM was in the habit of writing the day followed by the month, thus "4/6/2017", indicated that the vessel was launched on or about 4th June and not 6th April. However, I note that there are many invoices in evidence in which RBM, wrote the month followed by the date, which renders the receipt produced by Douglas inconclusive. It appears that RBM had no set practice or policy in how it dated invoices and receipts.
- [73] I also note that as between his pleadings and evidence, Douglas was inconsistent as to the date of the launches and sinking of the vessel. His mention of returning to

St. Vincent on 7th April, leaving the boat for repair after the unsuccessful first launch suggests that the first launch was in fact in or about April 2017 and not June 2017.

[74] I believe that Douglas' cross-examination quickly puts to rest the issue of the date of the first launch. The exchange was as follows:

"Counsel: You stated that you were present at the first launch of the boat... Is it not true that you left for Saint Vincent on the same day of that launch, 12th April 2017?
Douglas: No, that's not true.
Counsel: You deny that the launch of the boat was on 12th April 2017?
Douglas: I think that was the time, yeah, I came to launch the boat around that time.
Counsel: According to your witness summary and exhibits, you left Saint Lucia on 12th April 2017, the same day of the launch.
Douglas: I probably did.
Counsel: [Exhibit DA6] shows that you left Saint Lucia on 12th April and arrived in Saint Vincent on 12th April.
Douglas: Yes.
Counsel: Paragraphs 13-15 of your witness summary does not coincide with your passport entries.
Douglas: What you just said is not my own words. I did not give anyone permission to launch.
...
Counsel: You will agree that what is stated in paragraph 15 as to the date of the first launch being in June 2017 is not correct?
Douglas: June 2017 is not correct.
...
Counsel: After all that on 12th April 2017, did you return to Saint Lucia before July when you heard the boat sank?
Douglas: No, I came back when I heard the boat sank."

[75] Douglas admitted under cross examination, only after being confronted with the incontrovertible evidence of the entry and departure stamps in his passport, that the first launch took place in April 2017. His passport showed him departing Saint Lucia and arriving in Saint Vincent on 12th April 2017 and that there was no other entry/departure stamps until 10th July 2017, when he returned after hearing that the vessel sank. He then categorically denied the statements in his witness summary as to the first launch being on 7th June 2017 as being his own. He appeared to be suggesting he knew nothing of the 7th June 2017 date, after insisting upon it all

along, even in the very cross examination before the relevant pages of his passport were put to him.

- [76] His counsel, Mr. Gerard Williams (“Mr. Williams”) tried to downplay the issue of the date in submissions after having made much of it initially, by saying that it does not matter when the launches took place because, in any event, Douglas did not give permission for the second launch. I disagree with him. The issue of the date is relevant to the extent that it negatively impacts Douglas’ credibility.
- [77] I believe the evidence of RBM’s witnesses as to the date of the second launch as well, being 24th April 2017. Douglas’ evidence is that he was eager to get the repairs done, as he continued to incur expense whilst the vessel was being stored at the Marina. He was initially of the understanding that the repairs to the vessel would take 6 weeks, only to find, to his dismay, that it was taking some 38 months. I am of the view that these repairs referred to by Douglas refer to the initial repairs to the vessel after its purchase in 2013 and not to the repairs after the first launch. This is evident as Tony in his evidence did indicate that he was approached to conduct repairs on the vessel in 2014. Douglas clearly muddled the sequence of events.
- [78] Douglas was, in his words, “extremely upset with him [Tony] over the first ‘sinking’, as this was a wasted trip and needless expense. I had some very sharp words with him about fixing my vessel and left for Saint Vincent.” This clearly refers to the first launch when the boat was leaking and had to be pulled out of the water and he gave instructions to Tony to attend to and correct the problem.
- [79] Thus, it is more likely that the repairs were undertaken by Tony after the first launch, and upon completion the vessel was launched for the second time just under two weeks later, on 24th April 2017 rather than two and a half months later on 7th July. This is consistent with Tony’s evidence that Douglas was eager to get the boat back on the water. It is not in dispute that the vessel sank on 7th July 2017, which means, by my calculation, that the vessel sank some 74 days after the second launch.

Legal Issues:

(a) Whether RBM was authorised to carry out the second launch of the vessel:

(i) Whether Douglas' mechanic/mechanical engineer Tony was acting as Douglas' agent in authorising RBM to carry out the second launch?

[80] I have extracted relevant paragraphs from **Halsbury's Laws of England** on the law of agency:

"The relation of agency typically arises whenever one person, called the 'agent', has authority to act on behalf of another, called the 'principal', and consents so to act. **Whether that relation exists in any situation depends** not on the precise terminology employed by the parties to describe their relationship, but **on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent.**⁴

The relation of agency is created by the express or **implied agreement of principal and agent**. The relation can also be created **by ratification by the principal of the agent's acts done on his behalf**. Express agency is created where the principal, or some person authorised by him, expressly appoints the agent, whether by deed, by writing under hand, or orally. **Implied agency arises from the conduct or situation of the parties**, or by operation of law, for example from necessity.⁵

The doctrine of 'holding out', also known as apparent or ostensible authority, is based on estoppel. Such agency by estoppel arises where one person has acted so as to lead another to believe that he has authorised a third person to act on his behalf, and that other in such belief enters into transactions with the third person within the scope of such ostensible authority. In this case the first-mentioned person is estopped from denying the fact of the third person's agency under the general law of estoppel, **and it is immaterial whether the ostensible agent had no authority whatever in fact, or merely acted in excess of his actual authority. The principal cannot set up a private limitation upon the agent's actual authority so as to reduce the ostensible authority, for, so far as third persons are concerned, the ostensible authority is the sole test of his liability.** If, however, the agent is held out as having only a limited authority to do, on behalf of his principal, acts of a particular class, the principal is not bound by an act outside that authority even though it is an act of that particular class. **The onus lies upon the person dealing with the agent to prove either real or ostensible**

⁴ Halsbury's Laws of England/Agency (Volume 1 (2017))/1. Nature and Formation/(1) The Relation of Agency/1. Nature of the relation of agency.

⁵ Halsbury's Laws of England/Agency (Volume 1 (2017))/1. Nature and Formation/(4) Formation of Agency/(i) Circumstances in which Agency may Arise/14. How agency is created.

authority, and it is a matter of fact in each case whether ostensible authority existed for the particular act for which it is sought to make the principal liable. Holding out is something more than estoppel by negligence; it is necessary to prove affirmatively conduct amounting to holding out. No representation made solely by the agent as to the extent of his authority can amount to a holding out by the principal.⁶

As has been previously stated, the authority of the agent may be derived expressly from an instrument, either a deed or simply in writing, or may be conferred orally. **Authority may also be implied from the conduct of the parties or from the nature of the employment.** It may in certain cases be due to the necessity of circumstances, and in others be conferred **by a valid ratification subsequent to the actual performance.** In addition, **a person may appear to have given authority to another, and acts within such apparent authority may effectively bind him to the third party.** There would also, in certain circumstances, appear to be the possibility that the court will imply an equitable agency where no agency exists at common law.⁷

The authority of an agent may be confined to a particular act or be general in its character. **It will extend not only to acts expressly authorised but also to subordinate acts which are necessary or ordinarily incidental to the exercise of the express authority and to acts within the agent's ostensible authority...** As between the agent and his principal, an agent's authority may be limited by agreement or special instructions, but, **as regards third persons, the authority which the agent has is that which he is reasonably believed to have, having regard to all the circumstances, and which is reasonably to be gathered from the nature of his employment and duties.**"⁸ (my emphasis)

[81] Counsel for RBM, Mr. Andre McKenzie ("Mr. McKenzie") submitted that relevant to this case is actual authority. Actual authority results from a manifestation of assent expressly or impliedly made by the principal to the agent that the agent should represent or act for the principal. It may be given by means of words or writing. Actual authority is solely focused on the relationship between principal and agent to which the third party is a stranger. Although founded in the principal's assent, the

⁶ Halsbury's Laws of England/Agency (Volume 1 (2017))/1. Nature and Formation/(4) Formation of Agency/(iv) Agency by Estoppel/25. Apparent authority.

⁷ Halsbury's Laws of England/Agency (Volume 1 (2017))/2. Authority of the Agent/(1) Derivation and Extent/29. Derivation of agent's authority.

⁸ Halsbury's Laws of England/Agency (Volume 1 (2017))/2. Authority of the Agent/(1) Derivation and Extent/30. Extent of agent's authority.

conferral of authority is judged objectively and where the authority of an agent is given orally, it is to be construed liberally with regard to the object of the authority and to the usages of trade or business. Counsel does not dispute that there was no express written authority given to Tony by Douglas to act on his behalf, however, submits that the evidence is that their dealings were conducted orally, thus this issue turns on whether Tony was given oral authorization by Douglas. He goes on to submit how, applying a liberal construction, the evidence supports oral authority having been given.

[82] It appears that Mr. McKenzie's submission is that there is here a question of express oral authority as to the relationship of agency. I do not quite agree. There is evidence to suggest that Douglas gave Tony verbal instructions to request RBM to launch the vessel, but no evidence was presented suggesting that Douglas orally gave Tony authority to act as his agent on his behalf in relation to the vessel or otherwise. As a matter of fact, Douglas denies this. There is a slight but important distinction, as even if it is proved that Douglas gave Tony instructions to request the second launch, the question still remains whether RBM was entitled to act on Tony's request without more. RBM could only properly do so, if it is established that there was a relationship of agency between Douglas and Tony.

[83] Based on the paragraphs of **Halsbury's** cited above, the question here appears to be really one of ostensible/apparent authority – whether Douglas acted so as to lead RBM to believe that he authorised Tony to act on his behalf in relation to the vessel, and RBM, in such belief, entered into transactions with Tony that were within the scope of such ostensible authority. To determine this, one must examine the nature of the relationship between Douglas, Tony and RBM and the conduct and situation of the parties; and assess therefrom the authority which RBM could reasonably have believed Tony to have, having regard to all the circumstances.

- [84] I agree with Counsel for RBM's submission that the evidence does suggest that Tony, in all the circumstances, had authority to act on behalf on Douglas in authorising RBM to launch the vessel albeit on a different basis.
- [85] Douglas' evidence is that he bought the vessel for a business venture and that he was losing money by not being able to operate the business for which he had purchased it. Further, he continued to incur more costs and charges the longer the vessel remained at RBM's premises whilst it was being repaired. Douglas stated that as a result, he wanted the vessel repaired quickly and that he was upset with Tony because of the length of time the repairs were taking and that the work was only completed after he verbally threatened legal action against him. In fact, Douglas' evidence was that to his dismay, the repairs had already taken some 38 months, whereas, Tony had advised him, and he expected that the repairs would have taken only 6 weeks to complete. Furthermore, it is Douglas' evidence that he already paid Tony a \$10,000.00 deposit, representing more than half the total agreed cost for the repairs. I believe that Douglas would have wanted the vessel launched as soon as possible and made that known.
- [86] I find also that Douglas knew Tony and Tony had been working on the vessel for more than three years before it sank. It is fair to say that this was sufficient time for Douglas and Tony to have developed a relationship and it is not, as Douglas alleges, that he and Tony were strangers. Thus, it is not implausible that he could have given Tony authority to instruct the launch of the vessel on his behalf or that he may have appeared to have that authority.
- [87] It is Douglas' evidence that he is ordinarily resident in Saint Vincent and visits Saint Lucia once per month. The evidence from his passport, actually shows that he visited less frequently – he did not visit Saint Lucia between April and July 2017, some three months between the unsuccessful first launch and when he heard the boat sank, a critical period. Thus, it is unlikely that Douglas would have always been available to handle any matter concerning the vessel as he alleges. It would also

be reasonable for RBM to believe that there would be someone on island who had some authority, however limited, to give instructions in relation to the vessel on his behalf or to be caretaker of the vessel in Douglas' absence. There were two persons whom Douglas had given instructions to work on the vessel and who did so regularly over the years, being Larry and Tony. Douglas confirms this. I note that on several occasions, in both pleadings and evidence, Douglas refers to leaving the vessel in either Larry or Tony's 'care'.

[88] I also note the seemingly very informal manner in which they appeared to have operated, not only as between Douglas and Tony and Larry, which could be expected based on the nature of their work and business, but more unusual, as between RBM and Douglas as well. Tony's evidence was that communication between himself and Douglas was always oral – either in person or by telephone and that he was always in contact with Douglas whilst conducting repairs to the vessel both prior and subsequent to the second launch. Douglas would give him oral instructions in person or via telephone and he would in turn provide updates as to the status of his work in similar manner. Tony also stated that communication between the three – himself, Douglas and RBM was also oral. Similarly, Devaux's evidence was that the usual course of dealings and communication between Douglas and RBM was oral, either in person or by telephone; or by instructions received through the persons working on the vessel on Douglas' instructions, being Larry and Tony. Douglas had represented to RBM that he had limited access to email, and it was difficult to contact him via email.

[89] More specifically, Tony gave evidence that he spoke with Douglas via telephone on 23rd April 2017, the day before the second launch and during that conversation, Douglas instructed him to make arrangements for re-launch of the vessel and that he wanted the vessel to be the last one launched that day to give more time for the necessary checks to be made, given the leakage discovered on the first launch.

[90] I also take into account the fact that Tony is a mechanic or marine engineer and (by whatever name called and whether formally trained or not) he was employed by Douglas to carry out certain repairs to the vessel. According to Tony, the repairs involved overhauling the engine. Tony stated in his evidence in chief that Douglas wanted the vessel to be launched, the purpose being that “it needed to be in the water so that the engines could be tuned and regular standard launch checks could be carried out e.g. whether there were any leaks due to the length of time the boat was on dry dock.” Douglas, on the other hand, stated that he left Tony with instructions to repair the stern tube and transmission pump. Regardless of what the specific repairs to be done were, it appears that it was necessary and incidental to completing the works that the vessel be launched, and this fact would have been known generally. This was confirmed by Douglas in cross examination wherein he agreed that the only way to know if the stern tube and transmission pump were repaired was if the vessel was placed in the water. Therefore, it is not as if launching the vessel was completely extraneous to the work Tony was employed to do. Given that the launch was necessary to confirm that the work had in fact been properly and finally completed, RBM could reasonably have believed that Tony had authority to make the request to relaunch. I do not agree with Mr. Williams’ submission that the Court ought not to consider this fact because the case advanced was that the second launch was instructed because Douglas was eager to have the vessel back on the water. All the circumstances of the case must be considered.

[91] Further, Douglas admitted in cross examination that he was in contact with Larry between the first and second launch as to the status of the repairs and he had been told prior to the second launch that the repairs were complete. I find it hard to believe, in circumstances where completion of the repairs had been communicated to Douglas, that there was no mention of any arrangements being made or to be made to re-launch the vessel.

[92] On the basis of the foregoing, I find that it was reasonable for RBM to have believed that Tony had authority to give instructions in relation to the launch of the vessel on

behalf of Douglas by the nature of their relationship, the situation, and their conduct; and that RBM complied with Tony's instructions to launch the vessel on the strength of that apparent authority. I do not agree with Mr. Williams' submission that such authority was conditional on Tony possessing a boating license to operate the vessel. I will, however, go on to consider the issue of ratification, in case I am wrong.

(ii) If not, whether Douglas ratified the second launch of the vessel?

[93] In relation to ratification in particular, the following passages have been extracted from **Halsbury's Laws of England**:

"Under certain conditions an act which, at the time it was entered into or done by an agent, lacked the authority, express or implied, of a principal, may by the subsequent conduct of the principal become ratified by him and made as effectively his own as if he had previously authorised it.

Where the act has been done by a person not assuming to act on his own behalf, but for another, though without his precedent authority or knowledge, and is subsequently ratified by that other person, **the relation of principal and agent is constituted retrospectively, and the principal is bound by the act whether it is to his advantage or detriment, and whether liability therefor is founded in contract or in tort, to the same extent and with all the same consequences as if it had been done by his previous authority.**

A ratification may be of one act or a series of acts; and as a general rule every act, other than one which is void at its inception, may be ratified, whether legal or illegal, provided that it was capable of being done by the principal himself.⁹

A ratification may be express, whether in writing or oral, or may be implied from conduct.¹⁰

Ratification is an unilateral act of will. The principal does not need to inform the agent, or indeed any other person, that ratification has taken place. Nevertheless, ratification must be evidenced either by clear adoptive acts², or by acquiescence equivalent thereto. The act

⁹ Halsbury's Laws of England/Agency (Volume 1 (2017))/4. Ratification/(1) General Principle of Ratification/58. Principal's retrospective ratification of agent's acts.

¹⁰ Halsbury's Laws of England/Agency (Volume 1 (2017))/4. Ratification/(4) Manner of Ratification/66. Form of ratification.

or acts of adoption or acquiescence must be accompanied by full knowledge of all the essential facts, and must relate to a transaction to which effect can be given, unless the principal shows an intention to take all risks, but it is not necessary that he should know the legal effect of the act ratified.¹¹

Although a ratification must be clear and must bear distinct reference to the facts of the particular case, it need not necessarily be proved by positive acts of adoption. In certain cases it is sufficient evidence of ratification that the intended principal, having all material facts brought to his knowledge and knowing that he is being regarded as having accepted the position of principal, takes no steps to disown that character within a reasonable time, or adopts no means of asserting his rights at the earliest time possible.

Acquiescence is stronger evidence of ratification where the relationship of principal and agent previously existed between the parties, and the act to be ratified was rather one in excess of the agent's authority than one which was totally unauthorised.¹²

An effective ratification places all the parties in a position similar to that which they would have occupied at the material time if the agent had had actual authority to perform the acts ratified. This is expressed by the maxim *omnis ratihabitio retrotrahitur et mandato priori aequiparatur*.¹³

[94] These principles were adopted by the Eastern Caribbean Court of Appeal in the case of **Skynet Limited et al v Global Skynet International Ltd. and another**¹⁴ cited by Mr. McKenzie.

[95] I find that there were several acts of ratification of the second launch by Douglas. Firstly, on the evidence, I find that Douglas was aware of the second launch contrary to what he contends. Tony stated that he was in constant communication with Douglas, providing him with updates on the status of repairs both before and after the second launch. His evidence is that he was in contact with Douglas on the

¹¹ Halsbury's Laws of England/Agency (Volume 1 (2017))/4. Ratification/(4) Manner of Ratification/67. Essentials of ratification.

¹² Halsbury's Laws of England/Agency (Volume 1 (2017))/4. Ratification/(4) Manner of Ratification/69. Ratification by acquiescence.

¹³ Halsbury's Laws of England/Agency (Volume 1 (2017))/4. Ratification/(5) Effect of Ratification/70. General effect of principal's ratification of agent's unauthorised act.

¹⁴ AXAHCVP2018/0012 (delivered 3rd October 2019)

evening of the second launch and the following morning and communicated what had transpired when various checks were made on each occasion. At the very least, Douglas admits that he was in contact with Larry as to the status of the repairs. According to Tony and Devaux, Larry was present at the second launch and was aware that the vessel remained in the water thereafter and that repairs were continuing. Douglas would therefore have had knowledge of the second launch and that the vessel remained in water. Despite that knowledge, Douglas never objected to the second launch or challenged Tony's authority to instruct it, until after the vessel sank some 74 days later.

[96] Further, it is Tony's evidence that he informed Douglas that he believed the vessel might have had a transmission problem, this being a possible reason for its inability to move forward when the engines were started on the morning following the second launch. On the basis of that diagnosis, Douglas requested him to provide the serial numbers for the transmission pump kit so that he could order a new one. Douglas ordered the new transmission pump kit which arrived in May 2017. This is confirmed by Devaux who stated that RBM actually assisted Douglas with customs' clearance of the kit as evidenced by the invoice for duties issued by RBM dated 31st May 2017 and exhibited. Douglas eventually settled this invoice. After the transmission kit arrived and whilst the vessel remained in the water following the second launch, Tony worked on repairing the transmission. Douglas was aware of and in communication with Tony concerning these repairs.

[97] Thus, I do not believe Douglas' evidence that he became aware of the transmission issue on the first launch of the vessel, which he conveniently mentions for the first time in cross examination. This is inconsistent with his pleadings and evidence in chief, in which he says that as soon as the vessel entered the water on the first launch, a leak was discovered, and it was immediately removed to dry dock. This is supported by the evidence of Tony and Devaux who confirm that as soon as the vessel entered the water and while it was still in the sling, a leak was discovered, as a result of which it was immediately removed from the water. It was Devaux's

evidence that the engines were never started on the first launch. RBM would never and did not permit the engines to be engaged, that is to move forward or backward, whilst the vessel was in the sling, as it risked the straps becoming entangled in the vessel's propeller which could cut the straps and cause damage to the vessel as well. The engines were therefore never started or engaged on the first launch, which is the only way in which the transmission issue could have been discovered. The transmission issue was discovered on the second launch of which Douglas was aware and which he ratified by purchasing parts to repair the defects discovered with the transmission as a result of that second launch without objection.

[98] One subsequent act may suffice to effectively ratify a prior action taken without the requisite authority and bind the principal. Given my findings above that Douglas was aware of the second launch which he ratified by his conduct in relation to the transmission repair, it is not strictly necessary to make a finding on other alleged acts of ratification. However, much attention was given to it, so I will address it briefly. The other alleged acts surround Devaux's evidence that Douglas, on two occasions – the first by himself and the second through Larry, negotiated and eventually settled rates and charges for water-docking of the vessel whilst it was undergoing repairs, following the second launch up to the date it sank. RBM produced invoices issued by it in respect of these expenses which show the vessel as being stored in the water. Douglas on the other hand denies that he requested or was given reduced docking rates, and further disputes that he was aware that the vessel was on water. He suggested in cross examination that he only became aware of the invoices after the vessel sank and that the invoices do not clearly indicate that they were in respect of water storage, despite reading 'water J-dock storage' as part of the description on at least one of the invoices following the second launch.

[99] In similar vein, Douglas, in an attempt to convince that he was unaware of and did not authorize the second launch, pointed out that he did not pay for the said launch beforehand, in accordance with RBM's 'no cash no splash policy' as he had done

in respect of the first launch. He pointed out that contrary to the policy, the charges for the second launch appeared on a subsequent invoice. RBM's evidence is that Douglas, through Larry, requested a waiver of the lifting charges to remove the vessel from the water after the first launch and storage fees for the period between the first and second launch, in view of the expectation that the period of repair would be very short. RBM agreed to the request, also taking account of the length of time the vessel had already been stored at the Marina from 2014 to 2017. I find RBM and its witnesses to be more credible than Douglas and therefore I am inclined to believe Devaux's evidence as to the waiver of the fees despite the 'no cash, no splash' policy. This is consistent with the relationship Douglas and RBM appeared to have – he had on other occasions negotiated and been granted more favourable rates and waiver of charges. The subsequent invoice for the second launch does not prove anything, as on Devaux's evidence, what was waived was lifting and storage fees, not launch fees. Thus, it makes sense that Douglas would still be billed later for the fees for the second launch.

- [100] Therefore, having found that Tony had apparent/ostensible authority to authorise the second launch on behalf of Douglas; alternatively, that Douglas ratified the second launch, the consequence is that Douglas is responsible for the second launch, including any detriment resulting therefrom. The general rule is that a principal is responsible for all acts of his agent within the authority of the agent. Further, the principal cannot escape liability for acts done by the agent which fall within the apparent scope of his authority.¹⁵ Therefore, Douglas must bear responsibility for the second launch and the sinking of the vessel which he alleges was caused as a result.

¹⁵ Halsbury's Laws of England/Agency (Volume 1 (2017))/6. Relations between Principal and Third Persons/(1) Principal's Liability for Agent's Acts/122. General rule: principal responsible for acts of agent and 124. Effect of limitation of authority.

(b) Whether RBM owed a duty of care to Douglas to ensure that Tony was (i) authorised to act on his behalf or (ii) that the vessel was seaworthy before undertaking the second launch?

[101] Mr. McKenzie submitted that before there can be any question of liability of a defendant to a claimant in negligence, it must be established that the defendant owes a duty of care in relation to the general class within which the claimant and the type of damage that has arisen fall. He submitted that in considering whether such a duty of care exists, the court will consider (i) whether the damage is foreseeable; (ii) whether there is a relationship of proximity between the parties; and (iii) whether the imposition of a duty would be fair, just and reasonable. Counsel states that reasonable foreseeability focuses on the knowledge that someone in the defendant's position would be expected to possess, while proximity focuses on the broader relationship between the parties from the perspective of both defendant and plaintiff. He further submitted that it is also a requirement of ordinary reason and common sense that the court must be satisfied that in the circumstances, it is fair and reasonable for a duty of care to be owed to the persons concerned. For these submissions, he relied on **Halsbury's Laws of England**.¹⁶

(i) Duty of care to ensure that Tony was authorised to act on his behalf

[102] From the outset, the analysis of issue (a) above is dispositive of the question whether RBM owed Douglas a duty of care to ensure that Tony was authorised to act on his behalf. It has been established that Tony had apparent/ostensible authority to act on Douglas' behalf. As stated above, once ostensible authority has been established, the principal (Douglas) is estopped from denying the fact of the ostensible agent's (Tony's) agency. It is immaterial whether Tony, in fact, had no authority or acted in excess of his actual authority, as so far as third persons (RBM) are concerned, the ostensible authority is the sole test of liability. Thus, there was no duty on RBM to look behind or beyond that apparent authority.

¹⁶ Vol. 33 at paragraphs 602 – 604.

[103] Alternatively, Douglas ratified Tony's actions, making them effectively his own as though he had previously authorised them. The consequence of that ratification is that it placed all the parties in the same position they would have been had Tony had actual authority at the time. Had Tony had actual authority, there would be no need for RBM, a third party and stranger to the relationship to look behind it.

[104] In the circumstances, there was no duty on RBM to ensure that Tony was authorised to act on Douglas' behalf and therefore consideration of the issues - (c) whether there was a breach on any such duty and (d) whether Douglas suffered loss as a result does not arise.

(ii) Duty of care to ensure that the vessel was seaworthy before undertaking the second launch

[105] This issue can also be disposed of shortly. Douglas presented no evidence to satisfy the Court that there was any agreement, express or implied, between himself and RBM for RBM to repair or otherwise ensure the seaworthiness of the vessel. In fact, Douglas agreed in cross-examination that RBM was never responsible for conducting repairs to the vessel. I agree with Mr. McKenzie that there is therefore no relationship of proximity between Douglas and RBM concerning the seaworthiness of the vessel and, in the circumstances, it would not be fair, just or reasonable to impose a duty of care on RBM.

[106] Douglas confirmed the position as regards repairs to the vessel in cross examination. This was the exchange:

"Counsel:	Who was responsible for conducting repairs to the boat when the boat was at the Marina?
Douglas:	I was paying Elvis Michaud to do repairs to my boat.
Counsel:	Anybody else?
Douglas:	I have a mechanic who was working on the boat at the same time, Tony.
Counsel:	Anybody else?
Douglas:	There was nobody else working on the boat.
Counsel:	You would agree that the Marina was never responsible for conducting repairs to your boat before it sank?
Douglas:	No.

Counsel: The Marina was never responsible for repairing your boat.
Douglas: Not from the beginning. When I put the boat in the Marina,
I did not give them the contract to repair the boat.”

[107] Although, he attempted to resile from it, it is clear, and I am without doubt that at all material times, Tony, Larry and Elvis were responsible for repairs to the vessel. RBM was never responsible for repairs to the boat or ensuring its seaworthiness. Furthermore, after the first launch, which was unsuccessful, Douglas cast blame on Tony, stating in his evidence in chief that “it was also clear that Tony did not install the stern tube correctly given the area the vessel was leaking.” It is noteworthy that Douglas did not blame RBM for the vessel being unseaworthy on the first launch. His statement acknowledges that it was Tony who was responsible for repairs to the boat and ensuring its seaworthiness. Also revealing is that when asked in cross examination whether he checked on the repairs to his boat between the first launch and its sinking, Douglas stated that he had been keeping touch with Larry whom he left to oversee Tony.

[108] Devaux categorically stated in his evidence in chief, that at no time was RBM responsible for carrying out repairs to the vessel or otherwise ensuring its seaworthiness. He stated that from the time Douglas’ previous boat Offshore Manner was docked at RBM, Douglas had employed the services of Larry and Tony, both marine engineers to conduct repairs and upgrades to that boat. After purchase of the vessel, the relationship between Douglas, Tony and Larry continued in the same way, with Tony and Elvis conducting repairs to the vessel. In cross examination, Devaux confirmed that Tony and Larry were independent contractors and not employees of RBM. I understand that to mean contractors employed by Douglas, independently of RBM.

[109] Devaux also indicated in his evidence in chief that the services RBM was contracted to provide included hauling out services, crane services and utilities (power and water). He agreed in cross examination that RBM provided security as part of the

services offered although it did not guarantee 100% safety of all vessels docked there.

- [110] I conclude on all the evidence that RBM had no duty of care towards Douglas to ensure that the vessel was seaworthy. The issues - (c) whether there was a breach of any such duty and (d) whether Douglas suffered loss as a result are therefore moot.

(a) Whether Douglas is liable to RBM for breach of contract for storage of the vessel?

- [111] Douglas agreed in cross examination that he had an agreement with RBM for storage of the vessel and that he was required to pay RBM for that storage. In his evidence in chief, he acknowledged “my obligation to the defendant was to ensure that the monthly docking fees were paid according to the invoices produced by the defendant.”
- [112] In cross examination, however, Douglas admitted that after the vessel sank and was subsequently floated on 16th July 2017, it was placed back on dry dock; yet, since the vessel was placed back on dry dock, he had never paid for storage, although he would assume that storage fees have been accumulating.
- [113] There is no dispute about the contract for storage between Douglas and RBM and Douglas’ general obligation to pay RBM for storage of the vessel. Douglas is challenging his liability to continue paying docking fees after the vessel sank, because, according to him, the fees accumulating thereafter are consequent on RBM’s negligent launching of the vessel and further because RBM frustrated his mitigation efforts to have his vessel repaired and removed from the Marina. RBM denies both these allegations.
- [114] The first allegation has already been determined. Based on the reasoning above, RBM was not negligent in launching the vessel as Tony possessed ostensible

authority to give those instructions, which was in any event subsequently ratified by Douglas. Thus, storage fees accumulating post the vessel sinking cannot be said to be result of any negligence on RBM's part, so as to relieve Douglas of his liability to pay them.

- [115] As to his allegation that RBM frustrated his mitigation efforts, Douglas states, in his evidence in chief, that once he leveled blame for the sinking of the vessel at RBM, he was suddenly prevented from having anyone accompany him to work on the vessel and was denied assistance or access to equipment. He alleges that by email dated 31st December 2017 from Mr. Williams to RBM's head office, complaint was made of RBM's withdrawal of assistance and refusal to render services to him. He says he received no reply.
- [116] Douglas says that subsequently, he and RBM agreed that he would identify someone who would be permitted to access the vessel so that RBM would be aware of all activities in relation to the vessel and who was performing same. Thus, by letter dated 18th June 2018, Mr. Williams wrote to RBM informing of the person he identified to attend to the vessel. I note that this letter states that Elvis had been authorized to conduct repairs and will at times be assisted by his work crew.
- [117] Douglas says by letter dated 23rd August 2018 and received on 8th September 2018, RBM's solicitors replied, indicating that RBM was not prepared to accede to his request on the basis that the letter from Mr. Williams did not say that the representative identified had 'full care, custody and control'. That letter does indeed state that RBM requires Mr. Williams' letter to be amended to indicate that Elvis is responsible for all the work to be carried out on the vessel and in so doing he has full care, custody and/or control of the vessel and the authority to conduct all affairs related to the vessel whatsoever. Douglas says that this was a completely unreasonable position as he did not have to give the person whom he was authorizing to repair his vessel full care, custody and control.

- [118] He says Mr. Williams wrote on his behalf again on 10th September 2018, highlighting that RBM was complicating the matter unnecessarily. Mr. Williams therein stated that his letter of 18th June with its deliberate wording is sufficient for the purpose of the assessment to be carried out. He stated that Elvis was authorized to carry out repairs only and therefore carried all responsibility associated with same. When the issue of control of the vessel arose in relation to it being moved, he would address that issue at that time.
- [119] Douglas says, however, that the level of frustration was so unbearable it forced him to file an application on 18th March 2019 for an injunction preventing RBM from restricting him and his appointed agent from accessing the vessel. At the hearing of the application on 27th March 2019, RBM consented to his request for access to the vessel. However, RBM's continuing attitude towards him caused him to file this claim on 11th January 2018.
- [120] It is Devaux's evidence in chief that since the vessel has been in dry dock storage post sinking, Douglas and persons working on the vessel have visited the vessel to conduct repairs and in so doing have also used equipment and other services provided by RBM. In amplification of his evidence in chief on the day of trial, Devaux was asked to comment on the above summarized paragraphs of Douglas' witness statement. In response, he indicated that it was under the advice of RBM's legal practitioners that RBM refrained from permitting access until the valuation was completed and until Douglas identified a point of contact for any dealings with the vessel. He specifically denied that Douglas was denied access to the vessel at any time. In cross examination, Devaux stated that Douglas was permitted to bring in outside help.
- [121] The correspondence to which Douglas refers does not indicate that RBM withdrew or denied him access and services so as to frustrate his efforts to remove his vessel as he suggests. The correspondence shows that RBM sought to make access conditional upon receiving satisfactory written authorization from Douglas for other

persons to have any dealings with the vessel and to be assured of the full extent of such authority. I cannot say that this is an unreasonable position for RBM to have taken in all the circumstances – given the accusations and allegations Douglas has made against RBM as being negligent in failing to ensure that Tony was authorised to act on his behalf and as his agent and ultimately as being responsible for the sinking of the vessel.

[122] Douglas has, since the sinking of the vessel, insisted that only he was allowed to give instructions in relation to it and RBM ought to have verified with him and received his instructions in writing authorizing anyone else to deal with the vessel. Now RBM is attempting to take the very measures Douglas avers they ought to have taken in the first instance concerning Tony and were negligent in not doing, and Douglas is resisting.

[123] Devaux admits that access was precluded for a period until the valuation was complete. There is no evidence of how long this period lasted, but it was temporary and would appear to have been in the interest of preserving and securing the vessel in its then condition, rather than frustrating Douglas' mitigation efforts.

[124] To my mind, RBM was acting out of an abundance of caution. In any event, as access was not unreasonably precluded if at all, I cannot see how this is sufficient to relieve Douglas of his contractual obligation to pay RBM the storage fees for the vessel while it continued to be stored on RBM's premises.

[125] As to the charges for floating the vessel owing to CMS, Douglas' evidence is that when he arrived on island on 10th July 2017, attempts by CMS were already in progress to salvage the vessel. He did not directly or indirectly contact CMS and he never engaged or contracted with CMS for any services. He says that as RBM was responsible for the sinking of his vessel, he caused his solicitor to write to CMS disputing that their bill should be addressed to him. The letter directs CMS to direct their bill to RBM.

[126] Devaux's evidence is that the same afternoon the vessel sank, he and Larry began discussing a plan of action to have the vessel floated. One option that came up was contracting the services of CMS who operated a barge locally. Larry informed Devaux that he had no credit on his phone and therefore asked him to contact CMS to obtain an estimate of their fees to float the vessel. Devaux says he called CMS and requested an estimate. That same day, CMS provided an estimate in the sum of EC \$4,000.00 which Devaux says he conveyed to Douglas and Douglas expressed his agreement with the estimate and indicated that the services of CMS should be contracted on his behalf. Devaux says that as Douglas had informed him that he would be returning to Saint Lucia shortly, he informed CMS that it should deal directly with Douglas or Larry who acts on his behalf. Devaux stated that having the vessel removed as soon as possible was also in RBM's best interest as it was obstructing its dock. Therefore, when CMS was experiencing difficulty floating the vessel and RBM's Shipyard Supervisor had a suggestion to assist floating the vessel, Devaux says he warned him not to incur any expense for material or labour in removing the vessel and that all expenses should be charged to CMS.

[127] I believe Devaux's evidence on this matter as well. He has been the more forthright and credible to the two. I also take notice of the fact that CMS addressed its bill for floating the vessel to Douglas directly. This, to my mind, is confirmation that it was instructed to do so which would be consistent with Devaux's evidence, or at least was of the impression that it had been contracted on behalf of Douglas. In any event, as it has been established that the sinking of the vessel was not caused by any negligence by RBM and that Douglas must bear responsibility for the second launch and sinking, there is no justifiable reason for RBM to be made to bear the cost of floating the vessel.

[128] Thus, I find that Douglas is liable to RBM on the counterclaim in the full amount claimed, which figure has not been challenged.

Inconsistencies and Credibility

[129] I find it important to state, before closing, that in a case such as this, which is highly fact-sensitive and where there are material differences in the parties' evidence, a strong factor that will weigh heavily in the court's assessment of the evidence and final decision as to which version of events is to be preferred is the apparent credibility of the witnesses. With that said, I recognize that the court must approach the matter of credibility with caution.

[130] In this regard, I heed the words of Lord Pearce in the House of Lords in **Onassis v Vergottis**¹⁷ who offered this compelling guidance on assessing witness credibility:

“‘Credibility’ involves wider problems than mere ‘demeanor’ which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or, though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, **did he register the intentions of the conversation correctly and, if so, has his memory correctly retained them?** Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over-much discussion of it with others? **Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases that, with every day that passes, the memory becomes fainter and the imagination becomes more active.** For that reason, a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the

¹⁷ [1968] 2 Lloyd's Rep. 403 at p.431.

credibility of a witness; they are all part of one judicial process.” (my emphasis)

[131] Having carefully approached the issue of credibility in assessing the evidence presented, I am constrained to hold that in view of the glaring inconsistencies and discrepancies in Douglas’ evidence, which raise serious doubt as to his credibility, I have on a balance of probabilities resolved them in favour of RBM. I find it necessary to highlight only a few of the inconsistencies on his evidence:

- i. In his statement of claim, Douglas alleges that the daily rate was US\$25.44; in evidence in chief, he says it was US\$28.00.
- ii. Douglas, in his witness summary, states that he was upset with Tony due to the length of time the repairs were taking. In cross examination he insisted that he was never upset with Tony. Upon his witness summary being shown to him, he recanted and admitted that he was indeed upset with Tony.
- iii. Though present at the first launch, Douglas initially insisted that the date of the first launch was on or about 4th June 2017 both in his evidence in chief and cross examination. In cross examination only after being shown his passport, he recanted and admitted that the first and second launches were in April.
- iv. He initially suggested that he was not in direct communication with Tony, only with Larry. However, in cross examination he eventually admitted that he had been in contact with Tony, in particular he spoke to Tony and obtained the serial numbers of the transmission pump.
- v. He only mentioned that the transmission issue was discovered at the first launch for the first time at trial stating that he did not see it necessary to raise it before. In his statement of claim and witness summary his evidence was that the vessel began to leak on the first launch as soon as it made contact with the water and was immediately removed. Despite this, in cross examination he insisted that the vessel's engines were started, and the transmission issue discovered. He also sought to deny that RBM assisted with customs clearance of the transmission pump kit and then admitted it when shown RBM’s invoice for customs duties for the said transmission pump kit.

Conclusion and Order

[132] In light of the foregoing discussion, on a balance of probabilities, I find for the defendant on both the claim and counterclaim. I therefore order as follows:

- 1) The claim is dismissed.
- 2) Judgment is granted in favour of the defendant on the counterclaim.
- 3) The claimant shall pay to the defendant.
 - (i) damages for storage fees in the sum of \$53,943.83 for the period 16th July 2017 to 1st April 2018 and continuing at the rate of \$208.28 per day from 2nd April 2018 to the date of removal of the vessel from the defendant's premises;
 - (ii) damages in the sum of \$1,527.22 for haulage fees; and
 - (iii) interest on the total damages payable under paragraph 3(i) and (ii) hereof at the rate of 6% per annum from the date of judgment to the date of payment.
- 4) Prescribed costs pursuant to CPR 65.5 to the defendant on the claim and the counterclaim.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar