

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(ADMIRALTY DIVISION)

CIVIL SUIT NO. 328 OF 2000

BETWEEN:

DELONORE COREA

PLAINTIFF

AND

The Owners and Parties interested in the
M/V WINDWARD

DEFENDANTS

Appearances:

John H. Bayliss Frederick for the Plaintiff
S. Commissiong for the Defendants

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2001: May 9
June 13 and 21
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JUDGMENT

- [1] **WEBSTER, J. (*acting*)**. This is a claim by the Plaintiff for salvage fees in respect of salvage operations in rescuing the M/V Windward on March 14, 2000.

Facts

- [2] The Windward is a 924 ton passenger and cargo vessel trading up and down the Caribbean. On March 13, 2000 she set sail from St. Vincent bound for Trinidad. About 10 miles south-west of Point Salines, Grenada, her power failed and the vessel started to drift in 3 to 6 knot winds and 2 to 3 meter seas. Her captain, Wilfred Simmons, radioed the Plaintiff's vessel, M/V Geronimo, for help. At 9:30 am on the 14th March the Geronimo set

sail from Union Island in the Grenadines to render assistance to the Windward. At 10:30 am the Geronimo received a message from the Windward, relayed by another vessel, the "Hound Dog", to proceed directly to Grenada and pick up two 12 volt marine batteries for the Windward. Shortly after the Geronimo received another message via the Hound Dog instructing the Geronimo to proceed directly to the Windward because she was taking on water. The Geronimo promptly responded and went "*fullest speed*" to the Windward, an expression that means the fastest speed the Geronimo could travel.

[3] The Geronimo reached the Windward approximately 40 miles south west of Grenada. On arrival she passed a 3 inch suction pump and hoses to the Windward to assist with the incoming water. The Windward was completely without power. At 8:30 pm on the 14th the Geronimo took the Windward in tow and set sail for St. Georges, Grenada. At about 2:00 am the following morning the tow rope burst and the Geronimo had to circle back and attach another tow rope to the Windward. The Windward was towed safely to St. Georges. She arrived at 8:10 am on the 15th. The salvage operation lasted just short of 12 hours. Power was restored to the Windward in St. Georges and she proceeded to Trinidad under her own power.

[4] On October 13, 2000 a consent judgment for salvage fees to be assessed was entered for the Plaintiff. The assessment was referred to the Court under **the Wrecks and Salvage Act, Cap. 375** to determine the salvage fee in accordance with the guidelines set out in **Section 16 (2)** of the Act. **Section 16 (2)** provides as follows:

"In determining the amount of salvage the Court shall consider –

- (a) the measure of success obtained, and the efforts and deserts of the salvor;
- (b) the dangers run by the vessel saved, by her passengers, crew and cargo;
- (c) the danger run by the salvor and salving vessel or craft;
- (d) the time spent, the expenses incurred and the losses suffered and the risks of liability and other risks run by the salvors, and also the value of the property exposed to such risks, due regard being had to the special appropriation (if any) of the salvor's vessel for salvage purposes; and

(e) the value of the property saved before the commencement of salvage operations.”

I will now apply these considerations to the facts of this case.

Measure of Success

- [5] It is clear that the salvage operation was completely successful. The Windward was picked up and apart from the breaking of the tow rope, was towed safely to St. Georges. The Plaintiff's efforts would have started at about 9:30 am on the 14th when the Geronimo received the distress call and commenced preparations to sail to the Windward; continued through the trip to the Windward from 10:30 am to 8:45 pm; and finally the actual salvage operation from 8:45 pm on the 14th to 8:30 am on the 15th. There was no extraordinary or unusual effort in the entire operation.

Danger to the Windward

- [6] There is no evidence of passengers or cargo being on board the Windward and so the Court is only concerned with danger to the Windward and her crew. The Windward is an electrified vessel and she was completely without power, drifting and taking on water, albeit slowly. It is logical to assume that if the vessel was not rescued, or had not restored its power, it would eventually have sank. However, I accept the evidence that she was in a busy shipping lane, and there is therefore a high probability that another vessel would have rendered her assistance before she actually sank. In fact, the captain of the Windward refused help from a passing Shell tanker, knowing that the Geronimo was on the way. I therefore find that there was potential but not imminent danger to the Windward and her crew.

Danger to the Salvors

- [7] The salvage operation was carried out in relatively calm seas and good weather, and there was no unusual danger to the salvors or the salving vessel.

- [8] I have already dealt with the amount of time spent by the salvors and the risks that they undertook. There is no evidence of the value of the Geronimo.

Value of the Windward

- [9] The Plaintiff's evidence of the value of the Windward was provided by Captain Brenan King, Harbour Master and Director of Maritime Affairs, St. Vincent and the Grenadines. Captain King is a qualified and experienced assessor who did the assessment of the Windward without remuneration. He was commissioned by the Defendants and did the assessment on February 5, 2001. He gave copies of his report to the Defendant's agent in St. Vincent, and to the Plaintiff's Solicitor. The Plaintiff produced the report in evidence as an exhibit to the affidavit of Vertille Ferdinand, the managing clerk of the Plaintiff's Solicitor. Learned Counsel for the Defendants objected to the admission of the report but it was admitted and the Court treated Captain King as an expert assessor. Captain King assessed the value of the vessel at \$600,000.00. The Defendants' evidence of value came from Captain Simmons in paragraph 11 of his second affidavit filed on April 3, 2001. He assessed the value at \$250,000. I accept the valuation of \$600,000.00 in Captain King's report and I will treat this amount as the salvage value in accordance Section 16(2)(e) of the Act.

Assessment of Salvage Fees

- [10] The task of assessing salvage fees has never been simple. The court is required to reward the salvors for undertaking the risk of saving a vessel in distress. The amount awarded should be an encouragement to the salvors to continue to perform this very valuable service, and not simply to compensate them for time spent and effort. The cases cited by learned Counsel for the Defendants indicate that the salvage fees are determined by considering the factors in **Section 16(2)**, and making an assessment of the salvage fee, an exercise which is at best unscientific. The only case cited with facts that are similar to the present is **the "Geertje K"** [1971] 1 Lloyd's L. R. 285. The Geertje K ran aground off the south coast of England and was left stuck on a reef. It was rescued by the *Charles Henry* and towed safely to Portsmouth. Mr. Justice Brandon found that if the Geertje K had not been salvaged it would have suffered appreciable bottom damage and there was a

remote risk that it would have been lost. However, he did not think that would have happened because it would not have been left without assistance for very long. He also found that the salvage services were of a simple character involving no great skill or unusual difficulty or danger. On a salvage value of £42,000.00 the Learned Judge awarded £1,000.00 or approximately 2.4% of the salvage value. I have not been referred to any local or West Indian decisions on salvage fees. In paragraph 11 of the Defendants' affidavit filed on April 3, 2001 the Defendants' estimated the value of the Windward at \$250,000.00 and the salvage fee at no more than \$12,000.00 to \$15,000.00, or 4.8% to 6% of the value. Learned Counsel for the Plaintiff submitted that the fee should be 10% of the value of the Windward, or \$60,000. However, I have not been provided with an authority with similar facts where the fee was close to 10% of the value of the saved ship. Further, I do not think an award of \$60,000 would be fair on these facts.

[11] Having regard to the value of the Windward, the absence of imminent danger, the duration of the salvage operation, the English authorities and the Defendants' assessment of the value of the salvage, I award salvage fees of \$24,000.00, or 4% of the salvage value of \$600,000.00.

[12] The Plaintiff will have his costs to be taxed if not agreed.

Paul Webster
High Court Judge (Ag.)