

IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
(CIVIL)
A.D. 1990

SUIT NO.84 OF 1989

BETWEEN:

KENNETH WAYNE GUYNES

Plaintiff

and

1. CORNELIUS PAUW
2. THE MOTOR VESSEL "AMIZADE"

Defendants

J U D G M E N T

delivered by

Hon. Justice A.N.J.MATTHEW

December, 1990.

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Defendants

Mr. S. Commissiong and Mr. G. Bollers for Plaintiff
Mr. A. Saunders for Defendants

1990: NOVEMBER 6, 7, 8, 12 and 13;
DECEMBER 2/ .

J U D G M E N T

MATTHEW J.

On February 24, 1989, the Plaintiff filed a writ of summons against the Defendants claiming a debt in excess of U.S.\$353,000.00 spent to renovate, repair and refurbish the Second-named Defendant and for other services under an agreement made between the Plaintiff and the First-named Defendant on January 15, 1986.

On the same day the Plaintiff caused the "Amizade" to be arrested.

The Defendants entered appearances on February 28, 1989. On that

day the Defendants took out a summons asking that the suit against them be dismissed under the provisions of Order 75 of the U.K. Supreme Court Practice because, as they alleged, the Plaintiff's single action was brought in two different jurisdictions of the High Court, namely, the Admiralty Division and the ordinary Civil Division and Order 75 did not permit that. On March 3, 1989, Singh J. made an Order on the summons and since one issue in the case is the interpretation of that Order I shall set out in full the material portions. The Parties in Chambers may have been persuaded by Section 8 of the Eastern Caribbean Supreme Court Act which sets out the jurisdiction of the High Court in admiralty matters.

The Order referred to above is as follows:

"UPON HEARING COUNSEL for the Plaintiff and for the Defendants.

IT IS ORDERED that leave is given to and the Defendants do hereby withdraw the application made herein to strike out these proceedings.

IT IS FURTHER ORDERED that the Plaintiff will release the vessel AMIZADE on Friday 3rd March, 1989."

The Plaintiff filed his statement of claim on March 16, 1989. In it he alleged that the Plaintiff and the Defendant entered into a written contract whereby the First Defendant gave to the Plaintiff ten percent interest in the Amizade and in return the Plaintiff would live on the vessel, maintain and protect it and among other things, to be responsible for all matters concerning the vessel. The Plaintiff also alleged that there was an oral contract whereby the Plaintiff was to complete the construction

of Amizade, furnish and refurbish it from the income derived from charter operations of the Amizade.

The Plaintiff alleged that in reliance on that oral agreement he expended large sums of his money on the vessel and just when he had organized the business of the Second Defendant and had put it in a state where it could earn and was earning money, the First Defendant came to St. Vincent and immediately demanded recovery of the Second Defendant.

The Plaintiff therefore claimed the following:

- "(a) the sum of \$380,363.41 as monies due and owing to him for expenses incurred on the Second Defendant for necessities, ship's stores, necessary repairs, renovations, and other incidental expenses;
- (b) his share of 10 per cent of the Second Defendant based on its current market value;
- (c) costs;
- (d) any other relief as the Court may seem fit."

On May 10, 1989, the Defendants filed their defence and counter-claim. In their defence the Defendants admitted the written contract but denied the oral one. They alleged that the First-named Defendant repeatedly requested periodic full and accurate accounts of the income and expenses of Amizade but Plaintiff always neglected or refused to render them. They denied liability for the Plaintiff's expenses on the adult son of the First Defendant. They denied taking over the vessel from the Plaintiff as well as the sums which the Plaintiff claimed.

In their counterclaim they alleged that the Plaintiff was in breach of the terms of the agreement when he took the vessel from

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Tortola to St. Vincent and was in further breach that the Plaintiff neglected to live on the Amizade or to be its captain. The First Defendant seems to have abandoned this claim. And this is right, for on the facts I find that the circumstances had changed when it was expected by both Parties that the Amizade would go on charter tours and the Plaintiff could not be expected to leave his job and be on those tours, certainly not initially. And if the vessel had to be chartered he could no longer live on the vessel nor could the vessel remain anchored in Tortola.

One other counterclaim is for negligence on the part of the Plaintiff for allowing the vessel to run on reefs on two occasions.

Another counterclaim is that the Plaintiff had wrongfully refused to release the vessel in accordance with the Order of the Court made on March 3, 1989. The Defendants alleged that as a result of the wrongful refusal to release the vessel it was prevented from fulfilling contracts it had concluded with various tour operators.

The Defendants claimed special damages for loss of income at US\$3,723.00 per week from February 24, 1989 to May 8, 1989 and continuing. They further asked for damages for negligence in the amount of such sum or sums of money as is required to put the Amizade in the condition it was before the negligent acts of the Plaintiff. They asked for an order for account; costs; and such other relief as the Court may see fit.

In his reply and defence to the counterclaim filed on October 13,

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1989, the Plaintiff denied negligence on his part and said that Dnthony Pauw, the son of the First-named Defendant, steered the Second Defendant onto reefs in the Grenadines waters while he was in control of it with the knowledge and consent of the First-Defendant.

In respect of the Court's Order the Plaintiff alleged that the release was conditional upon good faith and honesty being shown by the First Defendant, and the Defendant had intended, as was his history of dealing with his business problems, to run away.

On December 21, 1989, the Judge in Chambers made an Order that the action be set down for hearing on a date to be fixed at the next call-over day to be tried before a Judge sitting alone and that both parties were to agree on a bundle of documents.

On March 6, 1990, Singh J. made an Order by consent that Coopers and Lybrand examine and report on the accounts presented by the Plaintiff and that there be separation of the accounts to show distinctly the period before any charters of the Amizade was made and the period after the first charter.

On June 30, 1990, the Plaintiff re-arrested the Amizade.

At the trial apart from Peter Alexander, ACCA, a chartered accountant and partner of Coopers and Lybrand who tendered a report on the Plaintiff's account's the only other witnesses were the Plaintiff and the First Defendant. Their respective evidence-in-chief, cross-examination and re-examination were lengthy. I shall not analyse their evidence separately but will

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go straight into the issues and refer to their evidence where necessary.

It is quite obvious that the first matter which calls for deliberation is the construction to be placed on Exhibit K.G.1, the written contract entered into by the Plaintiff and the First-named Defendant on January 15, 1986. Indeed in their final addresses Counsel on each side dealt with this matter firstly. The contract was drawn up by Cornelius Pauw himself. The essential portion of it is as follows:

"THAT I, CORNELIUS PAUW WILL OFFER KENNETH W.GUYNES A 10% (ten per cent) OWNERSHIP IN MY YACHT (TRIMARAN) 'AMIZADE' IN RETURN FOR THE FOLLOWING:

THAT KENNETH W.GUYNES WILL LIVE ON MY YACHT 'AMIZADE' MAINTAIN AND PROTECT IT. BE RESPONSIBLE FOR THE HANDLING OF ALL MATTERS CONCERNING 'AMIZADE', WILL BE THE SKIPPER AND THAT 'AMIZADE' WILL REMAIN AT THE CYS MARINA, TORTOLA, B.V.I. UNTIL FURTHER NOTICE."

The background to this contract can be gleaned from the evidence more fully. In brief, it is that Pauw after several years in the Azores constructing his vessel sailed across the Atlantic to St.Thomas. The skipper of the vessel for the occasion was a Frenchman, Francois. At St.Thomas he got another skipper, Puccino, to sail the boat to Tortola about December 1985 and there he met the Plaintiff. It is not disputed that Pauw had no money to run the vessel. He did not have a regular captain and indeed it was the Plaintiff who paid Puccino US\$500 for sailing the vessel from St.Thomas to Tortola. Pauw lived on his vessel for a few weeks. He was expecting money from his children in the U.S.A.. He met the Plaintiff who was at the time Manager of

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C.Y.S., Tortola. A friendship developed and it was agreed that rather than wait for a cheque from the U.S.A. which could take a long time, the Defendant and his fiancée should proceed to the U.S.A. The Plaintiff paid for their plane tickets and he also gave Pauw US\$200 pocket money. As the Defendant admitted under cross-examination, the Plaintiff rescued him in Tortola. On further cross-examination he stated: *"I admit I was penniless for the greater part of my relationship with Mr. Guynes. I admit Plaintiff spent some money on Amizade. Amizade is my only real asset at the moment."*

I do not read into the agreement that the Plaintiff would be expected to spend large sums of money on the vessel changing it from the Defendant's original plan as something for the family to enjoy into a yacht for charter cruising on the basis of his 10 per cent ownership. In like manner, I do not agree that the 10 percent ownership was a gift. The Defendant was in a financially precarious situation and he needed some one essentially to maintain and protect the vessel and in return he gave up 10 per cent ownership rather than risk losing the full hundred per cent. The agreement required the vessel to remain at the C.Y.S. Marina in Tortola. It envisaged a safe keeping operation where the Plaintiff would be able to use the vessel for short runs and be responsible for payment of normal maintenance of engine and body generally.

But I do not think the written agreement tells the full story. I believe that additionally, there was agreement between Guynes and

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Pauw that the former would spend money on Amizade to prepare it for the charter business, that the Plaintiff would keep proper accounts to that effect and that he would be repaid from the revenue derived from the charters. I believe the Plaintiff that the vessel, though relatively new, was not in a charterable condition and that he spent large sums of money to refurbish it. My view that there was a further parol agreement is fortified by Cornelius Pauw's evidence-in-chief where he stated:

"Through the next three weeks he convinced me the vessel was excellent for chartering and since he had such expertise I trusted the man. I altered my original plan after a period of five to six weeks since I met Mr. Guynes..... We discussed the disbursements of funds for the vessel. We came to agreement. The arrangement was that he would be reimbursed for the things that would be needed to get the vessel ready for charter. He was to be reimbursed from the chartering revenue he was going to create for us. I told him I had no future and I had to re-establish myself and he should not expect funds from me for this chartering business for it was not built for that."

I believe the written contract was modified. It is not insignificant that at paragraph 14 of the Defence and Counterclaim the Defendants were alleging that the Plaintiff was in breach of contract in taking the Amizade to St.Vincent without prior notification of the Defendant. That counterclaim seemed to have been abandoned for it did not feature at the trial.

In the middle of 1986 the First-named Defendant sent his adult

son to join the vessel, no doubt, to protect his interest. If it was intended that the vessel should have remained secure in one location save for occasional runs to keep the engines functioning, why would he send his son to joint the vessel? How would he be maintained?

I believe that the entire contract created a partnership between the Plaintiff and the First-named Defendant where the former was to obtain funds to put the Second-named Defendant in a condition ready for the charter business and that Plaintiff would manage the business with the First-Defendant was kept regularly informed of the general condition of the boat and the business generally. It is pertinent to note that there is no evidence of hostility and/or disagreement between the Plaintiff and Anthony Pauw in the almost three years they remained working together.

So I hold that the 10 per cent ownership was consideration for the things covered by K.G.1 but there was further agreement that the partnership would borrow money from the Plaintiff and such repayments would be made from the earnings of the vessel. I reject the submission that whatever the Plaintiff spent was in consideration for the 10 per cent ownership given to him. Learned Counsel for the Defendants went on further to submit that whatever the Plaintiff spent was to be noted and reimbursement would be from the earnings of the vessel so that the time for repayment has not yet arrived. In my view the manner stipulated for repayment was a convenient way for the Plaintiff to be reimbursed. The Defendant had "no future" and was unlikely to be

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in a position to pay towards the renovation/repairs. It could not be contemplated that if Amizade never made money Plaintiff could not recover his money. It was Defendant, in my view, who brought the arrangements to an end, and following this the Plaintiff arrested the ship. Towards the end of 1988 the Plaintiff and the Firstnamed Defendant began to have serious discussions about the expenses of the vessel. I believe the First-named Defendant who was absent for most of the relevant period wanted to take over the management of the funds and vessel and relegate the Plaintiff to the post of captain without a satisfactory arrangement as to how the Plaintiff would be repaid for the expenses over the previous two years. In early 1989 the parting of the waves occurred.

Learned Counsel for the Plaintiff submitted that the the filing of the Suit was effective notice of the termination of the partnership and he referred to:

"Sections 28(1) and 34(c) of the Partnership Act;

Lindley on Partnership 13th edition, page 153 MOSS v ELPHIC 1910 1 K.B. 465 and 846;

MORRIS SYERS v DANIEL SYERS L.R.A.C. 1875-1876 page 174; 178-182."

Learned Counsel for the Defendants conceded that notice to dissolve the partnership was properly given.

It follows that the partnership between the Plaintiff and the First Defendant became effectively dissolved on February 24, 1989 and their respective rights determined as of that date.

Learned Counsel for the Defendants made a further submission to

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... that there was a precondition arising from the Plaintiff's own pleadings that the Plaintiff would keep reliable accounts. I note that the Defendants denied that part of the Plaintiff's statement of claim but even then what are reliable accounts is relative to the maker. Coopers and Lybrand has put those accounts in as reliable form as possible and it is to that document I would turn presently.

The Plaintiff's claim falls essentially under three heads:

- "(a) sums of monies for expenses incurred on the Second-named Defendant for necessities, ship's stores, necessary repairs, renovations and other incidental expenses;
- (b) his share of 10 per cent of the Second-named Defendant based on its current market value;
- (c) costs."

In his evidence the Plaintiff attempted to widen his claims. It is trite law that the evidence must relate to the pleadings. One such claim was for his services as skipper of the ship which his Counsel eventually conceded was not maintainable in view of Section 26(f) of the Partnership Act.

The report of Coopers and Lybrand indicate that the Plaintiff did not have documentary evidence to support all his expenditures. Quite apart from that I have formed the view that the claims have been exaggerated. I have already referred to the Plaintiff's claim as skipper of the vessel. Then he has claimed for air fare tickets he paid for in January 1986. As learned Counsel for the Defendants asked him: *How is it he never asked for such refund*

In my view the payment of tickets as well as the US\$200.00 given by the Plaintiff to the First Defendant as pocket money was never intended to create legal relations. It seemed to me to have been one of the inducements to obtain the Plaintiff's 10 per cent ownership. After all the Plaintiff saved US\$300 a month for living quarters in Tortola when he began to live on the Amizade.

Coopers and Lybrand also observed that even where there were documents it was not possible to establish in all cases whether an item of expenditure was in fact incurred. At page 3 of their report they state:

"Whilst there can be no question that a passenger air ticket in the name of Mr. Cornelius Pauw pertains to Mr. Cornelius Pauw it was not possible to establish whether food, beverage and supplies purported to have been incurred on the boat were so incurred or that lumber purchases for repairs and maintenance on the boat were in fact used on the boat."

I have made some observations on the exhibits to which I will refer below but I could not help noticing over the period the frequency with which repairs were done. I shall have to watch that head closely as well as the food bills especially for the period when the boat was not on charter; that is the period before September 17, 1987.

The report continues at page 4:

"(5) In addition to our comments in (2) above and having regard to the fact that it is not possible to determine the consumption of items such as food, beverage, supplies, cigarettes etc. or the use to which equipment

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or other purchases are put it is not possible to categorically state whether expenditures for consumables were for Mr. Guyne's personal use or not."

I do not intend to accept every claim put forward by the Plaintiff in its entirety. It must also be borne in mind that the Amizade earned revenues and for most of the time those monies were paid to the Plaintiff. In one instance he admitted that he obtained an amount of US\$23,076.00 before the boat account was opened and he placed it in his pockets to help to off-set the expenses. But how do I know that the expenses which were claimed to be off-set are not still appearing as debt to the Plaintiff? In this connection, page 4 of the Coopers and Lybrand Report states:

"(10). There are no means available to us to determine whether all revenues earned by the boat are accounted for due to the absence of documents prepared independent of Mr. Guyne's during the period of charters to corroborate, or otherwise, charter revenues."

Although I have made routine examination of the exhibits I shall be referring to the Schedules to the Coopers and Lybrand report, Exhibit P.A.1., where possible in my comments on the exhibits. Coopers and Lybrand only examined and reported on Exhibits K.G.2-17. It is my view that the Order of the Court made on March 6, 1990, by consent was that they should have examined and reported on all the accounts presented by the Plaintiff, notwithstanding what is said in the report in the fifth paragraph of page 3 to which Counsel for the Plaintiff referred at the trial.

I turn to exhibit K.G.2 which represents expenses paid by the Plaintiff from January to August 1986. This is referred to at

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Schedule A of P.A.1. The amount claimed is \$19,544.33 but the extent of the claim not supported by documents is \$9,947.91. The Plaintiff stated that the vessel did not earn any money whatsoever in the period. Anthony had joined the vessel in or about June. As regards the first item, the Plaintiff was responsible to maintain the vessel and only that portion of the claim which relates to repairs and improvements are allowable. I do not entertain the portion of the debt for which there are no supporting documents. The electricity was for the Plaintiff's convenience. There were no charters so for whom did he spend \$1,843.66 for food, beverage and supplies? Whom did he telephone? I allow the Plaintiff \$2,500 for repairs; \$2,500 for equipment purchases; \$500 for accommodation of Pauw and his girlfriend who lived on the vessel, \$3,318.52 for boat clearing and docking fees, \$848.25 for charts and \$700 for food and beverages making a total of \$10,366.77.

I turn to K.G.3. This exhibit represents an estimate of expenditure for the period August 1986 to June 1987. As Schedule B states: *"Mr. Guynes used an estimate because the bulk of the original documents were lost"*. He claimed the sum of \$6,280.09. This was a period before September 1987 and before the vessel began to take on charter cruises. I allow the Plaintiff the sums claimed for diesel \$601.30 and for food and beverage \$909.78 amounting to \$1511.08. An amount given for \$4,769.01 is disallowed. As Schedule B states: *"No details or receipts other than 'payment on account' for \$4,769.01 was given."*

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I turn to K.G.4 Schedule C. This represents a claim for \$16,945.48 for the period July and August 1987. The charter period had not yet begun. As the Plaintiff stated: "The yacht had not earned any money". I find the trip from St.Vincent to Tortola was extravagant. I allow the cost of equipment purchases at \$5,000; repairs and improvements \$1,000 and food and beverage \$2,000 making a total of \$8,000.00. The other claims are rejected. The Defendant did not deny that restaurant and bar charges for Anthony was incurred so I allow an additional \$1,500 out of the sum of \$1,744.87 claimed.

I turn to K.G.5, Schedule D. This is for the period September and October 1987. Since the vessel concerned operations on September 17, 1987, the expenses claimed for that period was split according to Schedule D. I allow \$1,000 for repairs and improvements; \$6,671.78 for purchase of equipment; \$29.00 for radio licence, \$918.93 for food and beverage in respect of the period September 1 to 16, 1987. In respect of the period September 17, 1987 to October 31, 1987, I allow \$1,000 for repairs and improvements; \$147.54 for boat clearing and docking fees; \$1,000 for towels and sheets; \$1,700.00 for food, beverage and supplies; and \$632.01 for diesel. I reject the other claims including those for Anthony Pauw's bar and restaurant charges. The total amount allowed for the period is \$13,099.26.

I turn to K.G.6 referred to at Schedule E of P.A.1. This represents a claim for the period November and December 1987.

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there are still more repairs. The amount here is as high as \$11,718.23 but the extent of the claim not supported by documents is \$3,317.60. I allow the sum of \$5,000 for repairs and improvements, \$87.60 for boat clearing and docking fees; \$4,878.16 for equipment purchases; \$190.00 for stationery; \$572.00 for scuba tank rentals and fills; \$9.60 for water; \$2,500 for food, beverage and supplies; \$10.00 for flags; \$220.00 for advertising and \$799.36 for diesel.

Under cross-examination the Plaintiff stated that he did not deny the amount for medical expenses of Andre Pauw because Andre had told him so. Under this head I allow a total sum of \$14,448.72.

I turn to exhibit K.G.7 referred to at Schedule F of Exhibit P.A.1. This represents a claim of \$6,556.52 for the months January, February and March 1988. I observe that even when the vessel is earning revenue the expenses exceed the revenue. The total claim was for \$9,556.52 but was reduced by a payment of \$3,000 from the boat account. I allow the sum of \$3,000 for food, beverages and supplies; \$81.56 for an attache case; \$20.00 for miscellaneous items; \$1,000 for repairs and improvements, omitting maintenance; \$478.00 for air fare for Andrew Pauw; and \$2,041.65 for a five burner stove. This amounts to \$6,641.21 less \$3,000 leaving a final sum of \$3,641.21. I note that although there are bills in this Exhibit they do not refer to Amizade. They could be for anything else.

I turn to K.G.8 referred at Schedule G of P.A.1. The exhibit shows that \$1,073.71 is due from Mr. Guynes. I accept this. I

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-- help observing that when he gave evidence the Plaintiff inflated the expenses to \$13,924.20 as distinct from \$10,084.72 in Schedule G and he concluded that "Amizade paid its expenses this time". I do not accept the Plaintiff's evidence in so far as it departs from Schedule G.

I turn to K.G.9 referred to at Schedule H of P.A.1. This indicates a summary of a claim in the sum of \$5,868.74 for the period June and July, 1988. In evidence the Plaintiff stated that the total expenses were \$17,557.52 of which Amizade paid \$13,938.52 leaving a difference of \$3,619.00. Although I find that the amount of \$10,033.57 for repairs, maintenance and improvements is quite high, I allow the sum of \$3,619.00 claimed here.

I turn to K.G.10 found at Schedule I of P.A.1. This represents a claim of \$669.98 for the period August and September 1988. In evidence the Plaintiff stated under this head: "An amount of \$296.20 was never paid to me." I allow that amount of \$296.20.

I pass on to K.G.11 referred to at Schedule J of P.A.1. This represents a claim in the amount of \$1,178.01 for the months of October and November 1988. The extent of the claim not supported by documents is \$167.00, so I allow the Plaintiff \$1,010.41 under this head. I reject the evidence of Plaintiff where he claimed \$1,621.91.

I turn to K.G.12 referred to at Schedule K of Exhibit P.A.1. This is in respect of a claim for December 1988. This involves

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... relation to a trip to Grenada to pick up supplies sent by the First-named Defendant. The amount of the claim in the Schedule is \$6,600.64 but in evidence the Plaintiff stated that he paid the sum of \$6,635.64 to cover the expenses not paid by the Amizade. Under this head I allow the Plaintiff \$64.41 for food and beverages; \$4,000 for advertising and \$418.95 for equipment making a total of \$4,483.36.

I pass on to K.G.13 referred to at Schedule L of P.A.1. It represents a claim of \$3,558.48 for the month of January, 1989. The actual expenses were \$1058.48 out of which there was a sum of \$15.08 not supported by documents. The Schedule states that an amount of \$2,500.00 was transferred from the Plaintiff's Barclays Bank account to the Boat's bank account but in my view this does not necessarily mean that the Defendants are indebted to him for that amount. He could have collected revenue in cash from the Amizade, placed it in his pockets and paid in a cheque to cover the amount to the Boat's account. I allow the Plaintiff \$1,043.40.

K.G.14 is referred to at Schedule M to P.A.1 and represents a claim of 10 per cent of the inventory on board the M.V. Amizade. This shows how the Plaintiff is determined to squeeze every ounce of blood from the Defendant's veins. If he has 10 per cent of the boat this means 10 percent of the whole including the inventory as at January 11, 1989. The amount of the inventory was given at \$3,195.67 and as the Schedule indicates it seems to refer to groceries and the like which may very well have been debited already. I reject this claim as being speculative. The

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Plaintiff was still on the vessel at or about January 11, 1989.

K.G.15 referred to at Schedule N of P.A.1 relates to the settlement of the law suit by John Tempio and Veradero Carib C.A.. Although it has not been established by documentary evidence that the Plaintiff paid US\$20,259.25 in settlement of the law suits and related legal expenses I allow him \$50,000.00 under this head.

At Schedule O reference is made to Exhibit K.G.16 which represents a claim of \$40,612.19 in respect of the period before and after the vessel commenced operations. So this indicates that besides periodical expenses there is another claim for other expenses not supported by documents. I notice a list of equipment purchased for \$26,445.37 and since it has not been challenged that the equipment was purchased, I allow a sum of \$30,000 under this head.

In respect of a related claim, Exhibit K.G.17, found at Schedule F of P.A.1, I allow the sum of \$5,186.92 after deducting the amount not supported by documents.

Coopers and Lybrand examined and reported only on Exhibits K.G.2-17. In evidence the Plaintiff tendered K.G.18 making a claim for \$25,207.15 as expenses paid from his cheque book for a period May to September 1988 in part. I do not know that these have not already been included in the bills charged by C.Y.S. I do not believe the Plaintiff that this is a legitimate claim. This claim is rejected.

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K.G.19 was also admitted in evidence. It represents disbursements from the Plaintiff's bank account in Tortola. There is a note from Will in Tortola to the Plaintiff but the claim shows little connection to the Amizade. I reject that claim as well.

In K.G.20 there is a claim for expenses resulting from the seizure of the boat. It is a claim for \$45,985.01. The allowance or rejection of this claim will depend on my view of the Order of the Court made on March 3, 1989 which will be dealt with below.

I reject the claim of US\$1,597.00 for air fares for Cornelius and Martin for these, as I have stated, were not intended to create legal relations. I likewise reject the claim for US\$294.00 for food and water in Tortola and the claim of US\$7,500 for the Plaintiff's services as skipper of Amizade. I referred to this last claim above.

By K.G.21 the Plaintiff claims 10 per cent of revenue arising from a document dated February 17, 1989. If this claim is valid then it means the First-named Defendant would be entitled to 90 per cent of the \$23,000 approximately which the Plaintiff put in his pocket before the boat account was opened. In any case, his pleadings do not disclose that he is claiming revenue. The picture of the business of Amizade showed that there was a total loss where expenses exceeded revenue. This claim is rejected.

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By K.G. 22 the Plaintiff claimed an amount of \$3,721.85 for his own equipment placed on the boat. But the First-named Defendant had sent goods for the boat as well. In his evidence in chief the Plaintiff stated: "Mr. Pauw never sent money. At sometime in October 1988 he sent several items for completion of some of the systems." And under cross-examination he stated: "Mr. Pauw brought in October 1988 a desalination plant for the boat..... It is quite expensive..... The equipment Pauw sent that we loaded from Grenada is about US\$9,000. I was aware he purchased others that did not arrive." That claim is rejected.

By K.G.23 the Plaintiff claims an amount of \$234.82. I allow this head.

By K.G.24 the Plaintiff claims an amount of \$1,764.02 for hotel room at C.Y.C. Yacht club for the period November 26,1989, through December 5, 1989. I am not told why the Defendants have to pay the Plaintiff's hotel bill for services nine months after he brought this action. This claim is rejected.

By K.G.25 the Plaintiff claimed \$6,250.00 for overdraft on the Amizade account. I allow that amount.

By K.G.26 the Plaintiff claims an amount of \$2,814.30 for telephone bills. When this exhibit is examined one observes a bit of yellow writing paper with a lot of "x"es and figures, memo pad with numbers and accounts. There is nothing to show any connection with a telephone company or the Amizade. This claim is rejected.

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This seems to end the Plaintiff's evidence on his expenses. I have already stated that there is no claim for revenue and in fact I find there are no profits over-all for which a claim could be made. I should just make some brief comments on K.G.27 to K.G.32.

K.G.27 is related to Schedule II and represents the amount of \$2,3076.00 collected by the Plaintiff. K.G.28 is a cheque register. It is not clear what this is saying. K.G.29 shows bank statements from February 1989 to May 1989. There is also a lodgment book and check stubs. Coopers & Lybrand did not comment on that. The Plaintiff stated that K.G.29 is a summation of the two earlier exhibits. These are just figures on several pieces of yellow paper. No receipt or document from any third party. In so far as there is a claim for 10 per cent of \$4,892.82 the claim is rejected.

K.G.31 shows revenue to be \$85,831,90 for period 1988 to 1989. I cannot see any claim arising here since I find it is from that same revenue that the expenses of the Amizade were paid.

K.G.32 simply indicates that the Plaintiff used a cheque book to pay many different people during the years 1987 and 1988. The cheque stubs do not indicate the purpose of the payments. This exhibit also indicates that C.S.Y. sent the Plaintiff bills for 1987, 1988 and 1989.

I should now add up the total for the portions of the Plaintiff's claim which I have allowed as follows:

K.G.2	-	10,366.77
K.G.3	-	1,511.08
K.G.4	-	9,500.00
K.G.5	-	13,099.26
K.G.6	-	14,488.72
K.G.7	-	3,641.21
K.G.9	-	3,619.00
K.G.10	-	296.20
K.G.11	-	1,010.41
K.G.12	-	4,483.36
K.G.13	-	1,043.40
K.G.15	-	50,000.00
K.G.16	-	30,000.00
K.G.17	-	5,186.92
K.G.23	-	234.82
K.G.25	-	6,250.00

		154,731.15

I reject the submission by learned Counsel for the Defendant that the Defendant is not personally responsible for the debt.

The Defendant has counterclaimed for negligence on the part of the Plaintiff for causing the vessel to run on to reefs on two occasions. On this issue the Plaintiff stated in evidence: "There were two separate occasions when the boat struck reefs. There was one event when myself and Tony and crew were approaching the harbour in Mustique late at night and through misjudgment on approaching the boat went on the reef outside the harbour.....

The second event was during a charter. We were exiting from South Whistle Bay early in the morning at low tide and we also bumped a reef, additionally fracturing the hull. We did not go hard aground. We did not stick but it bumped over and it did fracture the hull;"

Under cross-examination he stated:

"The boat hit a reef twice. I was the captain on both occasions. The boat suffered damage and the bilges had to work more than normal for the boat took in water. As captain of the ship I failed to keep clear off the reefs... The damage done to the ship has not yet been repaired fully."

The Plaintiff estimated that \$7,500 to \$9,000 would be the cost of repairs. The First-named Defendant stated that it would cost US\$75,000 to repair the damage. There was no detailed examination of the damage.

In my judgment, from the evidence of the Plaintiff himself, there is a clear admission of liability for negligence. Nowhere in the evidence is there any suggestion that Tony was at the wheels at the time of either of the incidents. Both Parties have given estimates of the amount it would take to repair the fractured hull consequent upon the acts of negligence. The Plaintiff would be inclined to keep the amount as low as possible and the Defendant would enlarge it as much as possible. Doing the best that I can I award the Defendant \$25,000 for the damage caused to the hull.

The First-named Defendant has also counterclaimed for damages for wrongful refusal to release the ship. Learned Counsel for the Defendants submitted that on March 3, 1989 the Court made an Order to release the ship but the Plaintiff has not obeyed the

Order. Counsel asked for damages for wrongful refusal to release the ship. Counsel for the Plaintiff contends that the Order shows that something else had to be done. Counsel further submitted that the Judge by the Order was inviting the Parties to go and talk and that is why he did not say that the boat "shall be released" but he used the words "will release the vessel".

I notice that the Parties were before the learned Judge on Friday, March 3, 1989. The Order indicated that the vessel was to be released on the same day. I cannot see anything in the Order to suggest any condition precedent to the release of the vessel. It was an Order of the Court even though the word "shall" was not used. I hold that the Plaintiff has wrongfully refused to release the boat and the Defendant is entitled to damages. The Defendants claimed damages at US\$3,723.00 a week based on a charter price which was being paid to the Amizade at the time.

Under cross-examination the Plaintiff stated:

"When the boat was arrested it was in the process of fulfilling charter obligations. The value was about US\$3,700 gross, not nett, per week. This was a maximum guarantee that would cover our expenses. It is the best arrangement I could get under the circumstances."

I accept the Plaintiff's gross figure. I have to determine what profits the boat could have made, if any. I take into consideration the boat would not have been on charter throughout the period. I allow the Defendant \$4,000 per month under this head.

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From February 24, 1989 to the end of the year would be about 22 months, so I allow the Defendant \$88,900 under this head.

I accept also that the vessel has depreciated since the wrongful detention. The Parties have given very different figures as to the present value of the vessel. I assess the value to be somewhere between the figure of US\$400,00 given by the Plaintiff and US\$200,000 given by the Defendant. I assess the value to be US\$300,000.

I award the Plaintiff the sum of \$75,000.00 for depreciation consequent upon the wrongful detention of the vessel.

In his prayer to the statement of claim the Plaintiff has claimed 10 percent of the Second Defendant based on its current market value. Following upon this I award the Plaintiff US\$30,000 or roughly EC\$~~7~~80,000.

I have not bothered to concern myself about a number of claims emanating from the evidence but which were not pleaded. This applies to both Parties. For example, when he was cross-examined, the Plaintiff stated:

"I ended up paying him from my funds monies way in excess of what I would pay him if there was a properly drawn up agreement."

The quotation above was with reference to John Tempro. Quite apart from it being liable to be considered an error of management, the Defendants have not in their counterclaim asked for

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damages for this injury.

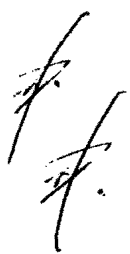
There is also no counterclaim from the circumstances that the vessel remained in Venezuela for three months to do something which would normally have taken two weeks. There was no counter-claim for the engine of the Amizade blowing up yet alot of time was taken at the trial on this issue.

The Defendant has not counterclaimed for any revenues from the vessel which did not or may not have found place in the boat accounts.

It is only left for me to compute the final figures.

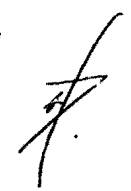
The Defendants are ordered to pay the Plaintiff the following:

a)	monies due and owing to the Plaintiff	\$154,731.15
b)	10 % of ownership in Amizade	\$180,000.00
		<u>\$234,731.15</u>



The Plaintiff is ordered to pay the Defendant the following:

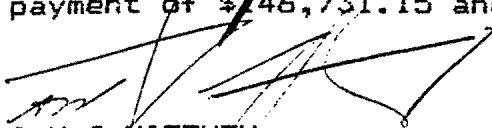
a)	Damages for negligence	\$25,000.00
b)	damages for wrongful refusal to release ship	\$88,000.00
c)	damages for depreciation	<u>\$75,000.00</u>
		<u>\$188,000.00</u>

By deducting the latter amount from the former, I order the Defendants to pay the Plaintiff ~~\$146,731.15~~ and fifty per cent of 

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the Plaintiff's costs to be taxed, if not agreed.

For the avoidance of doubt my order is to the effect that the First-named Defendant is to have the Amizade all to himself upon payment of \$46,731.15 and the Plaintiff's costs.



A.N.J. MATTHEW
Puisne Judge.

