

IN THE HIGH COURT OF FIJI
AT LAUTOKA
ADMIRALTY JURISDICTION

Admiralty Action No: 1 of 2009L

Admiralty action in rem against the Yacht
"Jubilant"

BETWEEN : **BAOBAB INDUSTRIES LTD** trading as **BAOBAB MARINE** a
limited liability company having its registered office at Messrs Jay Lal
& Company, Chartered Accountants, 21 Tui Street, Lautoka

Plaintiff

AND : **THE OWNERS** of the **YACHT "JUBILANT"**

Defendant

INTERLOCUTORY JUDGMENT

Of: Inoke J.

Counsel Appearing: Mr. A Patel for the Plaintiff
No Appearance for the Defendant

Solicitors: Messrs S B Patel & Company for the Plaintiff
No Appearance for the Defendant

Date of Hearing: 19 August 2009

Date of Judgment: 19 August 2009

INTRODUCTION

- [1] This is an ex parte application by the Plaintiff under the Admiralty jurisdiction of the High Court for the arrest of the yacht "Jubilant". The Plaintiff alleges that it had done repairs and other work on the yacht but the owners have neglected to pay for them.
- [2] I heard the application ex parte, as is the usual practice in this jurisdiction, and granted an order for the arrest of the yacht. I gave an extempore judgment and promised to give my reasons in writing later. These are the reasons for my judgment.

REASONS FOR JUDGMENT

- [3] The Plaintiff read its Writ of Summons with endorsed claim, ex parte summons, and an affidavit sworn by the Managing Director of the Plaintiff, all filed on 19 August 2009.

JURISDICTION

- [4] I have jurisdiction to deal with this application because the yacht is here at Vuda Point Marina, the repairs and other work were done here on the yacht by a company that is domiciled here. Not only do I have jurisdiction, these facts also support an action *in rem* for the reasons I have stated below.

THE PLAINTIFF'S CASE

- [5] The Plaintiff's affidavit says that the Defendant is the owner of the yacht and names him. Annexed to the affidavit is a copy of the "Inward" report for the yacht showing the named person as the owner.

- [6] The Plaintiff's affidavit also says that at the owner's request, the Plaintiff carried out some repairs and other work on the yacht. The value of repairs and work done on the yacht between 4th and 12th of August 2009 is \$8,277. Copies of invoices showing the work that was done and their value are annexed to the affidavit.
- [7] The affidavit also annexes a series of emails between the parties which recorded that the owner is disputing some of the work done but is prepared to deposit the sum of \$7,243 with the Marina management to be released to the Plaintiff on settlement of all claims after a certain motor is returned in good service order.
- [8] It is not clear from the affidavit material whether this sum has been deposited by the owner as offered. However, Counsel for the Plaintiff advised that his client has not been paid at all and is concerned that the yacht may leave the jurisdiction at any time now. On that basis I was of the view that an arrest was justified and made the order accordingly.

SHOULD THE WARRANT BE LIMITED TO 7 DAYS

- [9] Counsel referred me to the decision of Scott J in **Star Marine Ltd v Nambuk Fisheries Company Ltd [2002] FJHC 16; HBG0004d.2002 (30 July 2002)** with which he respectfully disagreed. That case referred to a practice in Fiji where arrest warrants were limited to 7 days. No explanation was given as to why the practice was so. I must confess that I cannot recall whether there was such a practice when I was at the private bar, having done at least one of these applications myself. I agree with Counsel that once a warrant is issued it is up to the defendant owners to take steps to set it aside. I do not believe that the Court should supervise the resolution of the dispute between the parties, especially at a time when the resources available to the Lautoka High Court, in terms of staff and time, is limited. It is up to the defendant to take the next step

if he disagrees with the plaintiff's claim or entitlement to such an arrest. The plaintiff of course is liable for the costs of the arrest whilst it remains so it is in his interest as well that the dispute is either settled or otherwise disposed of early. I am not able to find any law that supports such a practice as mentioned in **Star Marine Ltd** (supra) so I will not follow it for the reasons I have given.

UNDERTAKING AND DEPOSIT FOR ADMIRALTY MARSHALL'S COSTS

- [10] However, I do wish to add that the Plaintiff needs to do more than give an undertaking to indemnify the Admiralty Marshall for the charges and expenses of the arrest. In future, I would suggest that the plaintiff must deposit into Court a sum which the Admiralty Marshall shall decide as sufficient to cover such charges and expenses. I think this sum should not be fixed as each arrest is different and it should be left to the Admiralty Marshall to decide on each case. I understand that a deposit of \$2,000 or more is the norm in the Central and Eastern Division of the High Court, but I think this could be a rather large sum in some instances and a litigant should not be deprived of access to the Court simply because he is unable to pay a sum that has been arbitrarily fixed.
- [11] In saying this I am mindful of the Court of Appeal decision in **Wasawasa Fisheries Ltd v Admiralty Marshal of Fiji** [2002] FJCA 54; **ABU0025U.98S (23 April 2002)**, a copy of which was supplied to the Court by Counsel, in which the Court said that the Admiralty Marshall is entitled to the scheduled fee of \$20 per day whilst the arrest subsists. That decision does not, in my interpretation, limit the sum to be paid to the Admiralty Marshall to \$20 per day. If a "ship keeper" is appointed, either by the Admiralty Marshall or by the Plaintiff on a special arrangement with the Admiralty Marshall, then the Plaintiff must pay for the ship keeper's expenses as well.

ACTION IN REM

[12] Counsel also referred me to the decision in **Donald Pickering & Sons Enterprises Ltd v Karim's Ltd** [1997] FJHC 20; [1997] 43 FLR 41 (6 February 1997) in which Fatiaki CJ discussed at length the law concerning an action *in rem* and the Court's jurisdiction. In this case, the plaintiff claimed that his right to arrest the vessels arose "as a regular incident of Admiralty procedures in an *in rem* action". His Lordship came to the conclusion that despite the claim not being based on a maritime lien, the plaintiff repairer was entitled to bring an action *in rem*. At page 11 His Lordship said this:

"If I should be wrong however, in the above analysis of the historical origins and ambit of the Admiralty, Courts jurisdiction to arrest a vessel in an action 'in rem' unsupported by a maritime lien, then the relevant provisions of the Administration of Justice Act 1956 (Imp) as applied to the High Court of Fiji puts paid to the defendant's submission as to the Court's jurisdiction.

In this regard Section 1(1) of the Administration of Justice Act 1956 provides (as modified) :

"The Admiralty Jurisdiction of the High Court of Fiji shall be as follows, that is to say, jurisdiction to hear and determine any of the following ... claims -

...

(m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance.

(n) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues ;"

Plainly in my view the plaintiff company's claims in the absence of any serious challenge to their nature, falls fairly and squarely within the above paragraphs, especially '(n)', and having been incurred in respect of the defendant company's vessels, represents, in my view 'maritime debts' properly brought within the purview of the Courts admiralty jurisdiction.

As for the form or mode in which such claims may be brought or taken by the plaintiff, Section 3(4) of the Administration of Justice Act 1956 relevantly provides:

"In the case of any such claim as is mentioned in paragraphs (d) to (r) of Subsection (1) of section one of the Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner ... of, or in possession, or in control of, the ship, the Admiralty Jurisdiction of the High Court ... may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against -

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

[13] Finally, I wish to express my appreciation for Mr Patel's candidness and assistance to the Court. It is refreshing to see that the high standard of ethics and practice of Counsel of old is still very much alive and I commend him for that.

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Sosefo Inoke
Judge