

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVG/HAD/2003 of 0003

BETWEEN:

AUA CORPORATION

Claimant

and

**THE MOTOR TUG
"R.V.GLORITA"**

and

**THE OWNERS OF AND PARTIES INTERESTED IN
THE MOTOR TUG " R.V. GLORITA"**

Defendant

Appearances:

Ms. Nicole Sylvester with Mr. Richard Williams for the Claimant
Mr. John Horace Bayliss Frederick for the Defendant

2003: October 17, 30,

2004: April 2

JUDGMENT

BLENMAN J: (Chambers).

[1] This is an application by the Owners of and Parties interested in the Motor Tug "R.V. Glorita" (hereafter R.V. Glorita) to strike out the AUA Corporation (hereafter the Corporation) statement of case and to set aside the arrest of the "R.V. Glorita".

- [2] By Authority to Act dated 9th September, 2003 Mr. Anselm Connor, Managing Director of the Corporation requested Mr. John Horace Bayliss Frederick (hereafter Mr. Frederick) to act on its behalf.
- [3] The Corporation filed a statement of claim against the "R.V. Glorita" claiming damages as a consequence of the "R.V. Glorita's" alleged damage to its Fishing Trawler "Captain Winston". Attached to a Statement of Claim was a Certificate of Truth by Mr. Frederick in the following terms:
- “ (a) The claimant believes that the facts set out in this Statement of Claim are true and correct.
- (b) This certificate is given on the Claimants instruction”.
- [4] The Corporation has filed a Warrant of Arrest against the Owners of Parties interested in The Motor Tug "R.V. Glorita". The application for the Warrant of Arrest was based on an Affidavit deposed to Mr. Frederick on the 9th day of May, 2003.
- [5] On the 9th September 2003 Counsel for the "R.V. Glorita" filed with the Registrar's Office a Request for the Warrant of Arrest, an request for the Warrant of Arrest to be duly served on the "R.V. Glorita" and a caution to other persons. In addition, Mr. Frederick on the 9th September filed an undertaking to pay all expenses that the Marshall incurs in respect of the arrest of the R.V. Glorita.
- [6] By notice of Application dated 1st October, 2003 R.V. Glorita has applied to have the Corporation's Statement of Case struck out and for the arrest of the R.V. Glorita to be set aside. It also seeks damages from the Corporation for wrongful arrest.

[7] The grounds of application are as follows:-

- (1) The Corporation has failed to comply with the Civil Procedure Rules 2000 in particular Parts 3.12 (4) and 3.12 (8); Part 70.3 (3) and Part 70.9 (3).
- (2) The Corporation has failed to comply with section 4 (4) of the Admiralty and Prize Jurisdiction Act chapter 12 of the Revised Edition of the Laws of St. Vincent and the Grenadines.
- (3) The Warrant of Arrest has not been executed by the Admiralty Marshall and is therefore invalid.

[8] I have to determine the following three issues namely:-

- (1) Whether or not the Corporation has not complied with the CPR 2000, and if so is this non compliance fatal to its case.
- (2) Whether the Corporation has failed to comply with the Admiralty and Prize Jurisdiction Act Chapter 12.
- (3) Whether "R.V. Glorita" was wrongfully arrested.

[9] **CIVIL PROCEDURE RULES 2000**

The "R.V. Glorita" contends that the Corporation has violated Part 3.12 of CPR 2000 since the Legal Practitioner gave the Certificate of Truth. It asserts that for the Legal Practitioner to be able to do this he must state that the statement is given on the client's instructions and provide the reason why it is impractical for the client to do so. Mr. Frederick has provided no reason why his client could not provide the Certificate of Truth. It contends that the Part 3.13 (1) enables me to strike out the statement of case and that this provision is mandatory.

[10] The Corporation rebuts these contentions and asserts that the "R.V. Glorita's" application to strike out its statement of case should be rejected. The improper wording of the Certificate of Truth is a technical defect and is an insufficient basis

on which to strike out the claim. It asserts that the overriding objective of the CPR would militate against the Court striking out its Statement of Case on this ground.

[11] Part 1.1 CPR 2000 provides that the overriding objective is to enable the Court to deal with cases justly. This includes the saving of expense and dealing with cases in ways which are proportionately to the importance of the case while ensuring that the case is dealt with expeditiously.

[12] While CPR 3.12 (4) CPR 2000 enables a Certificate of Truth to be given by the Legal Practitioner it states that he must also certify that the certificate is given on the client's instructions and the reasons why it is impracticable for the client to give the instructions. I must always bear in mind the overriding objectives of this new dispensation. CPR 2000 3.12 (8) provides the form the practitioner must utilize. It reads thus:-

“A Certificate given by the Legal Practitioner for a party must be in the following form-

“I [*name of the individual legal practitioner giving the certificate*] certify that-

- (a) the [*claimant or as the case may be*] believes that the facts stated in this [*name document*] are true; and
- (b) this certificate is given on the [*claimant's or as the case may be*] instructions.

The [*claimant or as the case may be*] cannot give the certificate because [*state reason*]”.

[13] I am of the view that Rule 3.12 (4) of CPR 2000 is mandatory and that the Legal Practitioner's failure to give the Certificate of Truth is detrimental to Corporation's case. However I am not of the opinion that this is the end of the matter.

[14] The overriding objective of CPR 2000 section 3.12 enables me to utilize my discretion when I interpret a rule. In the furtherance of the overriding objective, I

am not of the opinion that the failure of Mr. Frederick to provide the reasons why it is impracticable for his client to give the instructions is fatal to Corporation's case. This defect can be remedied by an amendment to the Certificate of Truth. Accordingly, I do not find that the Corporation's omission to provide me with the necessary reasons is fatal to its case. I am not of the opinion that this is a basis on which I could properly strike out the Corporation's Statement of Case.

[15] It is not disputed that Mr. Frederick has provided a Certificate of Truth in words other than those provided in Rule 3.12 (8) of CPR 2000.

[16] Having ruled that his omission to comply with Rule 3.12 (4) is not fatal to the Corporation's case and that an application can be made to amend that Certificate of Truth in order to bring it in conformity with the Rules, I do not think it is necessary to say anything further in relation to section 3.12 (8) CPR 2000.

[17] **NON COMPLIANCE WITH SECTION 4(4) ADMIRALTY AND PRIZE JURISDICTION CAP 12 LAWS OF SAINT VINCENT AND THE GRENADINES**

In his affidavit in support of the Warrant of Arrest Mr. John Horace Bayliss Frederick states: -

“A Warrant of Arrest is applied for as part of the process to enforce the unsatisfied claim of the claimants for the sum of EC \$30,869.00 being damages for negligence in operating, managing, manipulating and controlling the Tug “R.V. Glorita” on 29th August, 2003 in the Port of Kingstown. The “R.V. Glorita “ is a research vessel of the Port of Kingstown and now lying at Ottley Hall, Kingstown, St. Vincent and the Grenadines”.

[18] The R.V. Glorita contends that the Corporation has failed to comply with section 4 (4) of the Admiralty Prize Jurisdiction Act and it has failed to plead or set out the prerequisites of the Act. Section 4(4) of the Act states:-

“In the case of any such claim as in mentioned in section 3 (d) to (p) being 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 or character of, or in possession or in control of, the ship, the Admiralty Jurisdiction of the Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against –

(c) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares there by that person: or

(d) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid”.

[19] The “R.V. Glorita” has provided me with no authority for this proposition. The Corporation has not addressed this point. I am therefore left with no alternative than to test the accuracy of the “R.V. Glorita’s” submission. In doing this I must bear the overriding objective of CPR 2000. Applying these principles, it seems to me that the Corporation must plead facts that indicate that the owner or charterer or the persons who were in possession or in control of the “R.V. Glorita” would be liable on the claim. The Corporation has failed to do this and would need to amend its Statement of Case so as to bring it into conformity with the CPR 2000 and the Admiralty Prize Jurisdiction Act. Amendments of this nature are always permitted by the Court in the interests of justice.

[20] **WHETHER THE R.V. GLORITA WAS WRONGFULLY ARRESTED**

Counsel for the “R.V. Glorita” asserts that the Corporation wrongfully arrested it and sought to have the alleged arrest set aside together with damages to be assessed.

[21] Let me say right away that the evidence presented to me by both parties was less than adequate to enable me to make a determination of this issue. The undisputed facts are that on the 9th September, 2003, the Corporation filed the relevant documents with the Registry of the High Court and the copies of the document including the Warrant of Arrest were stamped by the Registry Officers and returned to the Corporation's Lawyer. However the Registrar of the High Court who is the Admiralty Marshall did not sign the documents. Meanwhile Counsel for R.V. Glorita maintained that it was wrongfully arrested.

[22] The first issue that I have to determine is whether the Registrar's failure to sign the Notice or the Warrant of Arrest was fatal to their arrest of the R.V. Glorita. Counsel on behalf of the R.V. Glorita contends that in accordance CPR 70.12 (2) that a Warrant of Arrest could only be exercised by the Admiralty Marshall and it is clear from the Affidavit evidence that the Marshal never authorized nor executed the Warrant for the arrest of the R.V. Glorita. I am of the opinion that the Registrar's failure to sign the Warrant can amount to no more than an irregularity. Once the papers were stamped by the Registry's Office and returned to the Corporation's Counsel they could be regarded as being issued by that Office.

[23] In its application "R.V. Glorita" sought to have the Warrant of Arrest of the "R.V. Glorita" set aside. It claimed damages on the basis that the Warrant of Arrest had not been executed by the Admiralty Marshall and was therefore invalid.

[24] The application was supported by an affidavit deposed to by Rochelle Forde of O.R. Sylvester and Co. Ms. Forde does not state that R.V. Glorita was arrested.

[25] The evidential burden lies on the "R.V. Glorita" to prove that it was arrested. This is quite distinct from the fact as to whether or not the Warrant was issued. On the issue of the Arrest, Ms. Forde at paragraph 2 of her affidavit states: -

"That at no time did she execute a Warrant for the Arrest of the "R.V. Glorita". Further the Notice filed by the Claimant's Solicitor which requires

the Registrars signature and which said document is to be affixed on the vessel at the time of the execution of the Warrant of Arrest is still on file and unsigned”.

[26] Mr. Richard Peck, the owner and Captain of the “R.V. Glorita” has filed affidavits in the matter. He does not state in any of the affidavits that the R.V. Glorita was arrested.

[27] Mr. Frederick filed several affidavits on behalf of the Corporation. In none of his affidavits did he state that the Corporation had caused the “R.V. Glorita” to be arrested.

[28] Interestingly, during the oral submissions, Learned Counsel for the “R.V. Glorita” argued that it was wrongfully arrested, whereas Learned Counsel for the Corporation denied that the Warrant of Arrest was even issued more so he maintained that there was nothing for the Court to set aside.

[29] Even though both parties had provided me with written submissions and made oral submissions on the 30th October, 2003. I granted both parties leave to file further submissions if necessary no later than 13th November, 2003. The further submissions were not forthcoming. The affidavits filed on its behalf do not address this issue. The legal burden has not been discharged since there is no evidence of arrest before the Court.

[30] The state of the evidence in this rather is unfortunate; I have no alternative than to find that the “R.V. Glorita” was not arrested. Counsel’s submission in the absence of the evidence of the arrest cannot assist me in my determination of the issue.

[31] In the circumstances, the Court has no choice but to dismiss “R.V. Glorita’s” application. In the exercise of my discretion, bearing in mind that the case was

fought on the basis of a wrongful arrest of the “R.V. Glorita”, I shall order each party to bear its own costs.

Louise Esther Blenman
High Court Judge.