

EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

(ADMIRALTY)

CLAIM NO: ANUHAD2013/0001

BETWEEN:

XPZ INTERNATIONAL SEAFOOD TRADING COMPANY LTD

Claimant

and

JUNIE WALKER

Defendant

Appearances:

Mr. Kelvin John, Loy Weste and Lisa John Weste of Thomas John & Co for the Claimant
Ms. Saska Diamond holding papers for Ms. E. Denesia Thomas for the Defendant

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2017: November 16
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JUDGMENT

[1] HENRY, J.: In this Admiralty Claim in Rem the claimant claims against the defendant as follows:

- (1) **A Declaration that the claimant is the sole and lawful owner of the Fishing Boat "V2 – 872 EH (#12 UB-101-5105427)";**
- (2) Delivery up to the claimant of the fish finder, GPS radio and all other fishing equipment associated with the said fishing boat;
- (3) Damages for breach of contract in the sum of EC\$6,512.47;
- (4) Damages for Loss of Profits in the sum of EC\$140,000.00;
- (5) Damages for conversion;

- (6) Interest pursuant to the Eastern Caribbean Supreme Court Act Cap 143 at such rate and for such period as the court thinks fit;
- (7) Costs.

- [2] XPZ International Seafood Trading Company Ltd (XPZ) is a registered company under the laws of Antigua and Barbuda. In its Statement of Claim, it avers that it is the 100% beneficial owner of a 12 meter utility fiber-glass fishing vessel described and registered as V2 – 872 EH (#12 UB-101-5105427), together with all its equipment, having purchased same from Dayne Este on the 31st day of May 2012 in the sum of EC\$80,000.00. However, XPZ states that the defendant (Mr. Walker) is the registered owner of the said fishing vessel and holds same on trust for XPZ.
- [3] XPZ further pleads that by written agreement dated 5th June 2012, XPZ agreed to engage Mr. Walker's services in respect of the harvesting of certain seafood products. It was a term of the agreement that Mr. Walker would provide all fish and seafood products harvested to XPZ. In breach of this agreement, in or about September 2012, Mr. Walker sold the fish and seafood products caught and retained the proceeds of sale amounting to EC\$6,512.47. On the 19th **October 2012, by letter from XPZ's Attorney, XPZ repudiated the contract, and demanded payment** of the sum of EC\$6,512.47 and possession of the fishing vessel. That on or about 26th October 2012, Mr. Walker, without just cause, removed from the vessel the fish finder, GPS and other equipment so as to prevent the vessel from going to sea to catch fish. XPZ made repeated requests to Mr. Walker for delivery up of the said fishing equipment but Mr. Walker has failed and/or refused to do so. XPZ avers that as a consequence, it has been unable to use the vessel for the purpose for which it was bought and has suffered loss and damage.
- [4] In his defence, Mr. Walker admits that he is the registered owner of the vessel but denies that he holds same on trust for XPZ. Mr. Walker states that the vessel was sold by its then owners Linroy Christopher and Dayne Este for the special price of \$80,000.00. He admits that the cheque exhibited by XPZ was used to pay for the vessel, however, he asserts that it was tendered on the understanding that it was a loan to Mr. Walker, which loan was acknowledged by document. This document is in the possession of XPZ.
- [5] Mr. Walker admits that by written agreement dated 5th June 2012, XPZ engaged his services in respect of the harvesting of seafood products. He denies that it was a term of the agreement that he would deliver all fish and seafood products caught to the claimant. He avers that it was specifically agreed that all lobster caught would be delivered to XPZ for export. However, fish would be sold by Mr. Walker on the local market. He denies that in about September, 2012, he sold the fish and seafood products caught and retained the proceeds of sale for himself in the sum of EC\$6,512.47.
- [6] Mr. Walker admits that on 19th October, **2012 by letter from XPZ's Attorney, XPZ repudiated the contract and demanded payment of the sum of \$6,512.47 and possession of the fishing vessel.** Further, Mr. Walker admits that on or about 26th October 2012, he did remove from the vessel a

fish finder; a GPS and a radio. However, he denies that he did so without just cause and that it did prevent the vessel from going to sea to catch fish. He avers that XPZ had changed the locks on the vessel thus preventing its use by Mr. Walker and in order to prevent the loss of these items, he removed them for safe keeping. He states that the said items are his property. He admits that he did refuse to hand over the items to XPZ but did instead turn them over to officers of the Royal Police Force of Antigua at Parham Police Station. Finally he denies that XPZ has suffered any loss as claimed in its Statement of Claim.

[7] Mr. Zhang Ping gave evidence on behalf of XPZ and Mr. Walker gave evidence on his own behalf. No other witnesses were called.

[8] **Mr. Ping's evidence as contained in his witness statement is consistent with his pleadings. With regard to Mr. Walker's claim that the money advanced by XPZ for the purchase of the vessel was a loan to him, Mr. Ping's evidence is that from the moment he met Mr. Walker,** Mr. Walker has always been in a difficult financial position. On many occasions Mr. Walker borrowed money from him personally. Promissory notes evidencing loans advanced to Mr. Walker on 28th March 2011 and 16th February 2012 in the sums of \$5,000.00 and \$15,000.00 respectively were tendered by **Mr. Ping. Mr. Ping's evidence is that because he was acquainted with Mr. Walker's financial position,** he as Director of XPZ, would not have bought a boat for him for EC\$80,000.00 and paid for repairs in the sum of over \$73,000.00 without a written agreement or promissory note providing for repayment. Further it would have been very bad business to loan Mr. Walker, a man with such little means, over EC\$150,000.00.

[9] Mr. Walker in his witness statement describes himself as the Project Manager for XPZ. He describes the duties of the Project Manager as being responsible for everything having to do with the supply and sale of fish to the claimant. His evidence is that he financed the purchase of Fire Ants by way of a loan from the claimant, who entered into an agreement with him and his then partner, Dale Henry for the supply of fish and seafood products to the company. However, while working as Project Manager for the company, he also sold fish and seafood products on behalf of the company to the general public at the request of the claimant. Whatever money he made he gave to Paul, another Manager. The only exception **was a few weeks before they "fell out" he used** money belonging to the claimant to pay for a test for his wife costing \$3400.00. According to him, before using the money he called Paul and explained the situation to him and Paul told him to go ahead and pay it back later. Mr. Walker's evidence is that before he left the company, he had started paying back the said sum by foregoing his share of the proceeds of the catch. The falling **out he says took place over the request by Mr. Ping to have Paul's name beside his on the boat's** registration at the Fisheries Department. When he refused, XPZ took the boat out of the water and it has been on dry dock since then. Mr. Walker denies that he is in breach of any contract. Rather he asserts that it is the claimant that is in breach of their agreement by removing the boat from the water and preventing it from working. He asks that the court dismiss the claim with costs.

Issues for the Court

[10] The following issues fall to be determined by the court:

1. Whether the sums advanced for the purchase of the fishing vessel known as "Fire Ants" were a loan from the claimant to the defendant;
2. Whether the defendant holds the said fishing vessel on trust for the claimant company;
3. Whether either party breached the written agreement dated 12 June, 2012.

Whether the Sums Advanced for the Purchase of the Vessel were a Loan to Mr. Walker

[11] Mr. Walker accepts that there is no written agreement evidencing a loan to him. Despite the absence of a written agreement, Mr. Walker relies on paragraph 3(c) of the agreement dated the 5th June, 2012 as constituting acknowledgement of the loan as well as detailing the manner of repayment.

[12] **The Agreement is stated to be between XPZ Trading Company with registered office at St. Mary's Street (called the Purchaser) of the one part and Dale Henry of New Winthorpes Village and Junie Walker of Belview Estate,(called the Supplier) of the other part. It states:**

"Whereas:

- (1) The Supplier is engaged in the catching and sale of fish and other seafood products.
- (2) The Purchaser is a buyer and seller of seafood products;
- (3) The purchaser has agreed to provide by way of advancement to the supplier one thousand fish traps at the approximate cost of \$30,000 of Eastern Caribbean Currency
- (4) The supplier has agreed to liquidate the cost of the fish traps over a period of no longer than two years."

IT IS AGREED AS FOLLOWS:

- (1) ...
- (2) ...
- (3) The parties agree that the proceeds realized from each delivery of seafood, will be disbursed as follows:
 - (a) Firstly, an amount to cover the cost of the operation of the vessel i.e. wages; fuel; ice; repairs etc. will be deducted.
 - (b) Of the remaining portion of proceeds an amount 50% will be directed toward the payment for the fish traps;
 - (c) 25% will be utilized to cover the purchase of the boats.

(d) 25% will be divided between the suppliers.

- [13] In regard to the meaning of paragraph 3(c) Mr. Ping's **evidence is that the intention was that 25%** of the proceeds would go to future purchase of boats to grow the business.
- [14] In deducing the meaning of the written agreement, particularly paragraph 3(c) a plain literal meaning should be applied unless it would lead to ambiguity.
- [15] Firstly, the parties to the agreement are XPZ of the one part and Dale Henry and Mr. Walker of the other part. Mr. Walker's **evidence is that Dale Henry owns no part of the vessel "Fire Ants" and** that the loan arrangement was between himself and Mr. Ping. If this is so, there would be no reason for the repayment agreement to include Dale Henry. Secondly, the agreement does not **mention the vessel "Fire Ants" or the alleged loan of \$80,000.00.** The language of the agreement is clear and unambiguous. The agreement mainly concerns the advancement of one thousand fish traps by XPZ and provision for the liquidation of the cost of the fish traps over a two year period. Thirdly, while Mr. Walker claims that paragraph 3 (c) is in respect of the loan, he has not pleaded any amounts that have been applied to the repayment of the loan under the said paragraph 3 (c) since the signing of the agreement in June 2012. The court cannot accept that this agreement makes provision for the repayment of a loan given by Mr. Ping to Mr. Walker for the purchase of **the vessel "Fire Ants"**. The court instead concludes that the money advanced for the purchase of **the vessel "Fire Ants" was not a loan to Mr. Walker.**

Whether the Defendant Holds the Fishing Vessel in Trust for the Claimant Company?

- [16] The claimant company has asserted that it caused the vessel to be registered in the name of the defendant as owner because the managing director and majority shareholder of the claimant company is a non-national and would be prevented from being so registered by virtue of the Fisheries Act, 2006.
- [17] Section 12(1) provides:

“(12) (1) An application for registration of a local fishing vessel under this Act shall be made in the prescribed form to the Chief Fisheries Officer by or on behalf of the owner of the vessel, and shall be accompanied by the prescribed supporting documents, information and application fee.”

- [18] Local fishing vessel was defined in the interpretation section to mean a fishing vessel –
- (a) wholly owned by the Government or by a public corporation established by or under any law of Antigua and Barbuda;
 - (b) wholly owned by one or more persons who are citizens of Antigua and Barbuda;
 - (c) wholly owned by a company, society or other association of persons incorporated or established under the laws of Antigua and Barbuda of which at least two-thirds of the voting shares are held by citizens of Antigua and Barbuda; or
 - (d) wholly owned by a body corporate designated as an authorized body corporate by the Minister under section 3.

[19] The managing director and/or the claimant company could not have been legally registered as the owner of the local fishing vessel. A resulting trust may arise solely by operation of law, as where, upon a purchase of land, one person provides the purchase money and the conveyance is taken in the name of another; there is then a presumption of a resulting trust in favour of the person providing the money, unless from the relationship between the two, or from other circumstances, it appears that a gift was intended¹.

[20] The court accepts the submission by XPZ that an agreement to hold properties on trust for a non-citizen, may be voidable, and not void². In *Tinsley v Milligan*³ Lord Browne-Wilkinson opined that:

‘Where the presumption of resulting trust applies, the plaintiff does not have to rely on the illegality. If he proves that the property is vested in the defendant alone but that the plaintiff provided part of the purchase money, or voluntarily transferred the property to the defendant, the plaintiff establishes his claim under a resulting trust unless either the contrary presumption of advancement displaces the presumption of resulting trust or the defendant leads evidence to rebut the presumption of resulting trust. Therefore, in cases where the presumption of advancement does not apply, a plaintiff can establish his equitable interest in the property without relying in any way on the underlying illegal transaction.’

¹ Halsbury’s Law of England, Volume 47 (2014), Paragraph 230

² *Young v Bess* (1995) 46 WIR 165

³ [1994] 1 AC 340 at page 371

[21] In the case at bar, there is overwhelming evidence to support the finding that XPZ provided 100% of the purchase price and is the beneficial owner of the fishing vessel. The theory that the sums advanced by XPZ represents a loan, has been rejected. Accordingly, to the extent that the vessel **"Fire Ant" was registered in the name of Junie Walker**, Mr. Walker held the said vessel on trust for XPZ.

Breach of the written agreement dated the 12th June, 2012?

[22] Clause 1 of the agreement provides:

"(1) The supplier for a period of two years commencing on the execution of this agreement will sell to the purchaser exclusively all catch of fish and lobster products harvested by the supplier."

[23] XPZ pleads that in breach of this clause, in or around the month of September 2012, Mr. Walker sold the fish and seafood products and retained the proceeds of sale. In response, Mr. Walker states that while working as Project Manager for XPZ he also sold fish and seafood products to the general public at the request of XPZ. It was money from the sale of fish to the public that he had in **his possession and which he used to pay his wife's bill**. According to Mr. Walker, Paul, another Manager at XPZ gave him permission to use the funds and repay it later. Mr. Walker claims that he has repaid a part of the sum owing. However, he was unable to say how much was repaid or to produce any receipts for such payments. Paul was not called as a witness.

[24] By letter dated 19th **October 2012, XPZ's Attorney wrote to Mr. Walker** pointing out that he had deprived XPZ of the proceeds of the contract in that he had improperly retained the sum of EC\$6,512.47, notwithstanding repeated demands. Mr. Walker did not respond to the letter. Given the state of the evidence, the court finds that Mr. Walker breached the contract of June 5, 2012, by improperly retaining the proceeds of sale.

Clause (9) provides

"(9) Any party in breach of this agreement will pay \$60,000 and will be liable to indemnify that party for any further loss incurred as a result of the breach."

XPZ is entitled to the sum of \$60,000.00 in addition to the \$6,512.47 for a total of EC\$66,512.47.

[25] XPZ also pleads that in October 2012, the defendant, without any just cause removed from the vessel the fish finder, GPS radio and other equipment so as to prevent the vessel from going to sea. As a consequence, XPZ was unable to use the vessel for the purpose for which it was bought and has suffered loss and damage. A report was made to the police, but it was not until 7th January 2014 that XPZ obtained an order for the return of the items. As a consequence, XPZ was unable to use the vessel for the purpose for which it was bought and suffered loss and damage during the period.

[26] XPZ claims loss of profits at the rate of \$EC14,000.00 per week. From the record the court is unable to ascertain how that figure was calculated. Therefore XPZ is entitled to a further sum for loss incurred as a result of the breach to be assessed.

The claim for Conversion was not pursued.

[27] Accordingly, Judgment is entered for the claimant XPZ International Seafood Trading Company Ltd in the following terms:

- (a) A declaration that the claimant XPZ International Seafood Trading Company Ltd is the sole and lawful owner of the fishing boat registered as "V2 – 872 EH (#12 UB-101-5105427)";
- (b) Damages for breach of contract in the sum of EC\$66,512.47;
- (c) Interest from the date of filing of the claim to judgement at the rate of 4% per annum
- (d) Damages for loss of profits to be assessed; and
- (e) Prescribed cost on the sums awarded.

Clare Henry
High Court Judge

By the Court

Registrar