REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2006-3677

BETWEEN

TOP HAT YACHTS LIMITED

CLAIMANT

AND

EVELYN PETERSEN
(sued in her capacity as (ADMIRALTY) MARSHAL OF TRINIDAD AND TOBAGO)

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

AND

PROPERTY PROTECTORS LIMITED

AND

CINDY JAGROOP

DEFENDANTS

<u>Before the Honourable Madame Justice C. Pemberton</u>

<u>Appearances:</u>

For the Claimant: Mr. M. Morgan instructed by Ms. D Charles

For the First and Second Defendants: Mr. Hosein, S.C. leading Ms N D Alfonso instructed by Mr Sean Julien

For the Third and Fourth Defendants: Mr K Garcia instructed by Ms P Chankardyal

DECISION

[1] Top Hat Yachts Limited ("Top Hat") brought suit against the named Defendants claiming damages for negligence as a result of a fire on board the "Top Hat" yacht, on 5th February 1999. At that time, the yacht was under arrest and in the custody of the First Defendant, The Admiralty Marshal at the premises of Power Boat Mutual Facilities Limited in Chaguaramas, Trinidad[1]. The Third and Fourth Defendants were charged with the day to day security of the vessel and are sued as being the agents of the First and Second Defendants. The trial in this matter commenced on January 28, 2011. The trial bundle was quite comprehensive and included several documents upon which the parties did not agree as to their admissibility at the trial. One such document is the subject of this decision[2].

[2] At trial, Attorney-at-law for Top Hat, Mr. Morgan, applied to the Court to have a letter dated October 30, 1996 written by Messrs. M Hamel-Smith & Co. to The Admiralty Marshal entered into evidence. Attorney-at-law for the First and Second Defendants, Mr. Hosein, vigorously opposed the application. I proceeded to listened to submissions by both parties on this issue.

[3] **TOP HAT'S SUBMISSIONS**

Mr. Morgan argued that the letter dated October 30, 1996 from Top Hat Yachts Limited to the Registrar of the Supreme Court (The Admiralty Marshal) is highly significant to the matter. Mr. Morgan submitted that this correspondence expressed concerns harboured by a person concerned in Top Hat Yachts Limited regarding the condition of the vessel at that time.

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[1] See A9 of 1996 **TOP HAT YACHTS LTD. v OWNERS AND/OR PARTIES INTERESTED IN S/V TOP HAT AND KIM P. ERICHSEN**

[2] See 5A in the Trial Bundle filed on 25th January 2011.

It is necessary to have this letter admitted into evidence as part of the Top Hat's Case. The letter amounts to a letter of complaint. This is in direct contradiction to The Admiralty Marshal's pleading in her defence that "**no and/or no sufficient report had ever been made to the First named Defendant** by the Plaintiff company and/or any other person as to any defect…". He further stated that the Registrar's (The Admiralty Marshal's) letter in response of November 04 1996[3] reflected the nonchalant attitude of the Registrar (The Admiralty Marshal) toward these concerns. Further, the sufficiency of the report depends on the evidence of the Registrar (The Admiralty Marshal). These letters do not offend the rule of relevance bearing in mind the particular pleading. When asked by the court whether the time of the letters 1996 and the time of the fire 1999, made an impact on his submissions, Mr Morgan stated that there could not be a time limit. That was not an issue. In this case, The Admiralty Marshal's pleading defines the relevance of the communications.

[4] **FIRST AND SECOND DEFENDANTS' SUBMISSIONS**

Mr. Hosein's objections were two fold. One was the time span between the date of the subject letter,(1996) and the fire (1999). The other was the relationship between the contents of the letter, the matters complained of, the response and the fire. The 1996 Top Hat letter was too far removed in time to be associated with the fire which occurred in 1999. The letter complained about the unsanitary conditions on the vessel. There was no report that security was lacking, which could be inferred from a complaint of missing items. Then Mr Hosein contended, it may have implied that security on the boat was "lax" and there was a concern that there may be "a propensity of a fire". Mr. Hosein reminded the Court that one year later Top Hat, in contradiction of a previous request to more security being

[3] See Trial Bundle 5B

provided, stated they would like only Power Boats security to guard the vessel as it was more economical.

[5] Mr. Hosein urged me to consider the prejudicial value of the letter stating that the condition of the vessel was not documented when the boat was arrested, so it cannot be stated as a fact that a third party entered the vessel and caused it to be in the condition which was highlighted in the letter. Mr. Hosein argued that the letter was irrelevant to the current proceedings and should not be admitted into evidence.

[6] **ANALYSIS**

After my initial viewing of the letter, I attempted to gauge from Mr. Morgan the nexus between the complaints listed in letter and the fire which occurred three (3) years later. My concerns with the letter were *inter alia*:

1. How can the unsanitary condition of the vessel as stated in the letter be relevant to the issues at hand, the cause of the fire and the responsibility of any tortfeasor for its origin?
2. What was the condition of the vessel, sanitary wise, sea worthiness wise and structural soundness wise at the time of the arrest? There is no pleading to this effect and from the Witness Statements that I pre-read, no evidence is available on these issues.
3. The pleading itself states: **no and/or no sufficient report had ever been made to the First named Defendant** by the Plaintiff company and/or any other person as to any defect…".

[7] Phipson on Evidence states at para. 7-05, "It is correct then, in deciding whether evidence is admissible, to ask first whether the evidence is *relevant* and, thereafter, whether there are any rules or discretions, based on convenience or policy. Which nonetheless make this relevant evidence *inadmissible…".* Continuing under the rubric "*Legal and logical relevancy"*,

the authors opine that "*Legal relevancy is for the most part based on logical relevancy,* ***or that connection between events which, in the ordinary course of experience, is found to render one probable from the existence of the other….*** [Emphasis mine].[4]

[8] The question arises thus, where is the connection between the letter of complaint about the unsanitary conditions on a vessel, arrested or not, (Exhibit 5A), the Admiralty Marshal's response to Top Hat Yacht's letter (Exhibit 5B) and the pleading in the Defence used to support Mr Morgan's application **and** the fire which damaged the yacht Top Hat in 1999? How do the former "render probable the occurrence and for that matter the existence of the fire"? Where was it established that there were breaches of security? In fact, the letter at the final paragraph the writer respectfully **requests** The Admiralty Marshal to "look into these matters which **apparently evidence a breach of security and/or interference with property …"**. There is no certain position from which this letter is written.

[9] I do not see the connection or the nexus between one and the other. I disagree with Mr. Morgan's submissions that the mere penning of the letter to the Admiralty Marshal containing apparent evidence of breaches of security in relation to items which I daresay raise no alarm as to incineration potential and the response thereto are sufficient to satisfy the requirement that there must be a logical and legal connection between the acts complained of and the event leading to the loss or damage. I say "event", since, as I said earlier the cause of the event was not pleaded or adverted to by the yacht Top Hat.

[10] Further, the fact that complaints were made is not the relevant point. What is of importance is the nature of the complaints. The nature of the complaints in the October 30, 1996 letter goes towards the unsanitary

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[4] See Phipson on *Evidence* para. 7-06

condition of the vessel. How is the cleanliness of the vessel in 1996 relevant to the allegation of failure by the Admiralty Marshal to perform the duty to provide adequate security on 5th February, 1999, the date of the fire?

[11] Finally, I shall examine briefly the pleading which gave rise to Mr Morgan's disapproval. It states: **no and/or no sufficient report had ever been made to the First named Defendant** by the Plaintiff company and/or any other person ***as to any defect and/or any reason whereby it had become necessary to examine and/or to have examined 'Top Hat'*** …". Mr Morgan chose to contain his submissions to the part highlighted. I should like to look at the entire selected passage including the last part in italics.

[12] Suffice it to say that the passage selected, when looked at in its entirety provides the context in which the October 30th 1996 and November 4th 1996 letters must be viewed and the reason for my conclusion that both of the letters for my part are irrelevant. For these purposes, the 30th October 1996, upon which I am asked to rule, is irrelevant and therefore inadmissible[5]. The "report" or the "sufficiency of the report" have to be read in the context of the case – breach of duty to take care of the vessel under arrest which **RESULTED** in a fire, the cause of which is unknown. The pleading cannot be taken to be of universal application. It must be time specific – limited to the time at which the fire occurred. It may have been otherwise if causation was pleaded and the letters show a chain of events which would have led to the breach of duty of care and the resulting fire. I note though the plea of *res ipsa loquitur*, but I leave comment on this for later.

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[5] Exhibit 5A

[13] **CONCLUSION**

Top Hat has failed to convince me that the letter to The Admiralty Marshal, which complained particularly of the unhygienic conditions of the vessel and the apparent “break in”, and the response thereto, both written during the same year, 1996 are any way related to the substantive issue, the fire which occurred, some three years later.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The First and Second Defendants’ Application to disallow the production in evidence of the letter dated October 30, 1996, Exhibit 5A in the Unagreed Bundle of Documents succeeds.

2. That Exhibit 5A shall not be admitted into evidence.

Dated this 1st day of February, 2011.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE