

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2017-00499

JOHN JORDAN TRADING AS JOHNBOND MARINE SERVICES LTD.

Claimant

AND

CORAL VISION CRUISES LIMITED

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Mr. Clay Hackett

Defendant: Mr. Peter Taylor

Date of Delivery: 2nd March 2020

REASONS

On the 2nd March 2020, I delivered an Oral Judgment in this Claim and made the following Orders:

- a. Judgment for the Claimant against the Defendant.
- b. The Defendant to pay to the Claimant the sum of \$116,320.00 for towing services performed by the Claimant at the request of the Defendant pursuant to two agreements dated 24th May 2013 and 27th May 2013.
- c. The Defendant to pay to the Claimant interest at the rate of two percent on the sum of \$116,320.00 from the 25th April 2017 to the 2nd March 2020.
- d. The Defendant to pay to the Claimant prescribed costs on the above sums.
- e. The Defendant's Notice of Application filed on the 17th October 2017 is dismissed.
- f. The Defendant to pay to the Claimant assessed costs ordered on the 28th February 2018 in the sum of \$5400.00.

Set out below are my Reasons therefor.

THE CLAIM

[1] By amended Claim Form and Statement of Case, the Claimant sought damages in the sum of one hundred and sixteen thousand three hundred and twenty dollars (\$116,320.00) for towing services performed by the Claimant at the request of the Defendant pursuant to the First Agreement dated in or around the 24th May 2013, and the Second Agreement dated in or around the 27th May 2013. Alternatively, the Claimant claimed the said sum on a quantum meruit basis. Interest and costs were also claimed by the Claimant against the Defendant.

[2] The Claimant pleaded that on the 24th May 2013 he and Mr. Iwer George on behalf of the Defendant entered into an oral agreement (the First Agreement) for the Claimant to use his vessel the "KP Rambler"

(the KP) to tow the Defendant's vessel "the Coral Vision" (the CV) whenever the Defendant hosted a party cruise. The towing services were necessary due to mechanical problems affecting the CV.

[3] It was agreed by both the Claimant and the Defendant that the Claimant would be paid six thousand dollars (\$6000.00 TTD) per party cruise, and that the said party cruise would be approximately three (3) to four (4) hours long. It was further agreed that the Claimant would have to provide the following services:

- (i) The KP will tow the CV from the shipyard to the jetty;
- (ii) The KP will tow the CV out to cruise within the Gulf of Paria area, leaving the NIPDEC Wharf at the Port of Spain Port tot "Five Islands", within the vicinity of Anchorage and returning to the NIPDEC Wharf;
- (iii) The KP to return the CV to the jetty to offload passengers; and
- (iv) The KP to tow the CV from the jetty back to the shipyard.

[4] It was also agreed by the parties that the Defendant would pay the Claimant after each cruise for which the Claimant towed the CV. Further, that charges for towing the CV on occasions other than a party cruise would incur additional costs in accordance with the Claimant's fees for such towage at the time.

[5] The Claimant averred that in performance of the said First Agreement it provided towing services for the Defendant for party cruises on the CV between the 24th May 2013 to the 14th July 2013 for 38 trips totalling \$228,000.00.

[6] The Defendant paid to the Claimant \$168,000.00 of this sum representing 28 trips. The Claimant relied upon extracts of the Captain's log book for the KP in support of its claim that it provided towage services for 38 trips upon request from the Defendant. The trips paid for by the Defendant were for services provided the Defendant from

24th May 2013 to 30th June 2013. However, outstanding towage fees remained unpaid for the period 30th June 2013 to 14th July 2013 amounted to \$60,000.00.

- [7] The second Oral Agreement between the parties provided that the Claimant's vessel would tow the Defendant's vessel to specific destinations for mechanical repairs and that the Claimant would be remunerated for this service based on the duration of the journey to be paid at the end of each tow. The Claimant pleaded that in breach of the second agreement the Claimant failed and/or refused to pay towage fees incurred under the second agreement amounting to \$56,320.00.

THE DEFENCE

- [8] The Defendant agreed that it contracted with the Claimant to provide towage services for the CV during party cruises at the rate of \$6000.00 per cruise lasting three to four hours under the terms pleaded in the Statement of Case. The Defendant also admitted that other towage services apart from the cruises would be paid for in accordance with the Claimant's rates and charges at the time.
- [9] The Defendant admitted that it only paid for 28 trips but denied liability for the 10 other trips claimed by the Claimant. The Defendant also denied that it entered into the second agreement with the Defendant or was liable for towage services under that agreement in the sum of \$56,320.00.
- [10] The fees for towage of the CV other than a cruise were disputed on the grounds that:
- (a) the shifting of the CV within the Maritime Preservation Wharf (MPL) could only be done at the behest of the Director, maritime Preservation Ltd. and not the Defendant. The Claimant would be paid by MPL and not the Defendant in these instances.

- (b) the towage fee for moving the CV for a distance of one mile was \$3000.00 a trip
- (c) one item amounts to a double claim.

[11] The Defendant also pleaded that the Claimant failed to take into account:

- (a) Cheques totalling \$60,000.00 paid for towage services.¹
- (b) The contribution of \$28,000.00 in diesel given the Claimant by the Defendant in or around July to August 2013.
- (c) Receipt of drinks totalling \$6000.00 from the Defendant's bar to the Claimant.

REPLY

[12] The Claimant denied that it was hired by MPL to tow the Defendant's vessel and asserted that the CV was towed pursuant to the Second Agreement, for which the Defendant was liable.

[13] The Claimant asserted that the two cheques totalling \$60,000.00 were already accounted for and do not amount to additional payments made by the Defendant (if \$60,000.00 was paid by the Defendant debt would be reduced to \$56,000.00)

[14] The Claimant denied that the Defendant ever provided it with \$28,000.00 worth of diesel or \$6000.00 worth of drinks.

THE EVIDENCE

[15] Mr. John Jordan gave evidence on behalf of the Claimant and was cross-examined.

[16] He admitted that a ride logged for on the 1st June 2013 actually took place on the 2nd June 2013. No explanation was given for this error even

¹ Paragraph 10(1v)(a) and (b)

though this witness testified that log entries are made contemporaneously. With respect to the claim for cruises shorter than three to four hours, Mr. Jordan explained that the Claimant was not responsible for the duration of the trips – their responsibility was limited to towing the CV.

[17] Mr. Jordan admitted that initially, before that claim was filed the Claimant failed to take into account a \$48,000.00 payment made by the Defendant to the Claimant. He however asserted that this sum was taken into account before filing this claim.

[18] Nadine Abdool Jordan, Secretary of the Claimant, with responsibility for reconciling accounts testified for the Claimant and was cross-examined.

[19] This witness also acknowledged that she had failed to pick up one payment of \$48,000.00 made by the Defendant to the Claimant before this Claim was filed, but that the error was corrected before these proceedings were instituted.

EVIDENCE FOR THE DEFENDANT

Iwer George

[20] Mr. George admitted to entering into the First Agreement with the Claimant but denied that the Defendant was a party to the Second Agreement with the Claimant.

[21] While he accepted that the Claimant shifted the CV outside of the party cruises, he denied liability for this movements on the ground that the requests to have the CV moved on these occasions were made by MPL and not the Defendant. He could not however support this assertion with any evidence either documentary or otherwise. He also admitted that he produced no evidence to support his claim that he provided \$28,000.00 worth of diesel to the Claimant of \$6000.00 worth of items to the Claimant.

Michellene Bailey

- [22] This former employee of the Defendant purported to testify that there were only 28 cruises for which the Claimant towed the CV and not 38 as claimed by the Claimant.
- [23] In cross-examination she acknowledged that the contracts exhibited to her witness statement in support of her evidence that the CV cruises took place on the dates that the Defendant said that they occurred related to another company, not the Defendant; further, that no contract for one of the trips was exhibited to her witness statement. Ms. Bailey also admitted that there were no drink stubs in relation to the Defendant's claim that the Claimant owed it \$6000.00 for drinks supplied. Ms. Bailey testified that she adduced no records to support her evidence with respect to the sailings of the CV.
- [24] Mr. Ferguson, the boat captain of the CV gave evidence on behalf of the Defendant. He too could not adduce any evidence in support of his assertion that the MPL authorised the Claimant to move the CV; he also claimed that the CV was towed, on the MPL's direction, without the knowledge of the Defendant. He agreed that the schedule that he provided of the CV sailing was not contemporaneous.

ANAYLSIS AND CONCLUSION

- [25] I wish to state at the outset that I find no difficulty in holding that the Defendant is liable to the Claimant for towage charges in the sum of \$56,320.00 under the Second Agreement. The Defendant did not deny that the CV was moved by the Claimant on occasions other than party cruises. The Defendant's contention that the CV was towed by the Claimant at the request of MPL and that MPL was liable for these charges is without merit in the absence of any evidence documentary or otherwise to bolster this contention.

- [26] The evidence of all of the Defendant's witnesses reveals that no contemporaneous record of the CV's sailings were made. Ms. Bailey, whose responsibility it was to make such a record admitted that she had to adduce any document which amounted to a record of the sailings. Of note was the fact that the schedule of sailings which Ms. Bailey prepared contained inaccuracies. Some of the contracts exhibited were between hired patrons and 'Trinibashment' – not the Defendant. Ms. Bailey testified that all CV's cruises were subject to written agreements; however one trip on the 6th July 2013 at 2:00p.m. was not evidenced by any contract. She also admitted that she did not provide any receipts or stubs to support the Defendant's claim that it provided the Claimant with drinks values at \$6000.00 for the CV.
- [27] I therefore concluded that the Claimant did not benefit from \$6000.00 in drinks from the Defendant nor \$28,000.00 worth of diesel since the Defendant provided no evidence to support this claim.
- [28] The Defendant admitted that it contracted with the Claimant to provide towage services for the CV for party cruises. The Claimant has been able to establish on a balance of probability that it did provide towage for 38 cruises. Although there were errors in logging the times of a few sailings from midnight over to the next day, those errors did not undermine the Claimant's case that the Defendant incurred towage fees for 38 sailings at \$6000.00 TTD per sailing.
- [29] In the circumstances I made the following Order:
- g. Judgment for the Claimant against the Defendant.
 - h. The Defendant to pay to the Claimant the sum of \$116,320.00 for towing services performed by the Claimant at the request of the Defendant pursuant to two agreements dated 24th May 2013 and 27th May 2013.
 - i. The Defendant to pay to the Claimant interest at the rate of two percent on the sum of \$116,320.00 from the 25th April 2017 to the 2nd March 2020.

- j. The Defendant to pay to the Claimant prescribed costs on the above sums.
- k. The Defendant's Notice of Application filed on the 17th October 2017 is dismissed.
- l. The Defendant to pay to the Claimant assessed costs ordered on the 28th February 2018 in the sum of \$5400.00.

Joan Charles

Judge