REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-00032

BETWEEN

JEREMY MCPHIE

Claimant

AND

NAUTICAL VENTURES LLC

Defendant

Before the Honourable Justice Robin N. Mohammed

Appearances:

Mr Ronald Simon for the Claimant
Ms Cheryl Ann Steele instructed by Ms Janet Peters for the Defendant

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JUDGMENT

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[1] This claim arises out of an incident that occurred on board the Defendant's sea vessel known as the **"Gulf Champion"** on the **3rd March, 2012**. The incident occurred during a transfer of cargo operation while the Gulf Champion was moored onto a rig platform. The Claimant, a **Deck Hand**, employed by **Marine Utility Services Limited**, who was the contracted crewing agent of the Defendant, was on duty on board the Gulf Champion on the said date. Pursuant to his employment, he was responsible for the transferring and receiving of cargo from Gulf Champion's deck to the platform. While attempting to bind the cargo for transfer, some of the cargo became unsecured and struck Mr McPhie causing

him to be thrown in between two containers, known as a **"pinch point"**, where he sustained injuries to his back and knees.

[2] His case was essentially one of negligence against the Defendant. He pleaded that there had been inclement weather on the day in question, which resulted in turbulent, unsafe and dangerous conditions and rough seas. Thus, the Gulf Champion remained unsteady which made it difficult to secure one's footing.

[3] In the circumstances, Mr McPhie thought it prudent to engage a **"Stop Work Notice"**, which essentially permitted him to cease all work related activity due to the unsafe conditions. However, it is his case that the Captain, Mr Sylvester, and the Chief Mate, Mr Ramdath, who were employees and/or agents of the Defendant, proceeded to disregard this Notice and continued the transfer of cargo operation. Thus, he alleges that it is because of their negligent decision that he suffered injury.

[4] After the incident, he was initially treated at the La Romain Family Medical Centre and discharged on pain killers. However, his pain continued and follow up treatment occurred with one Dr Marlon Mencia who diagnosed the Claimant, on the **13th April, 2012**, with swelling of the quadriceps muscle and local tenderness over the lateral aspect of the knee. He was then placed on sick leave for 21 days until the **4th June, 2012**.

[5] A gap of almost two (2) years occurs on his pleading before another medical visit on the 16th January, 2014, when he attended the office of Dr Curtis Young Pong. Dr Young Pong diagnosed him with para spinal mid lumbar muscular strain and regional pain disorder and recommended new radiographs and an MRI scan of the back.

[6] These injuries, he states, have significantly diminished his ability to continue as Deck Hand and accordingly, he claims that he has suffered loss of amenity. Thus, he sued for loss of earnings and wages for the period of **February, 2012 to June, 2012** in the sum of $21,375.00 at ($7,125.00 per month) plus $700.00 in doctor's fees from Dr Curtis Young Pong thereby totalling **$22,075.00**.

[7] On receiving the Claim, the Defendant purported to deny that the weather conditions prevailing on the 3rd March, 2012 could properly be described as "dangerous or unusual" to persons engaged in Mr McPhie's line of work and/or the reasonable sea man. Reference

was made to a report by Captain Sylvester who allegedly described the waves at 6 to 8 feet, which, in the Defendant's view, was normal for a vessel operating in local waters.

[8] It was also denied that Mr McPhie ever requested a Stop Work Notice due to unsafe conditions. In any event, the procedure of such a Notice does not give any leeway or discretion to the Captain or any supervising officer to disregard the request. Rather, it involves an assessment of the situation and the conditions that gave rise to the Notice being initiated. Further, once the process is initiated, no work can be resumed until such conditions have dissipated. On the Defendant's pleadings, there exists no record of such order or assessment.

[9] Reference was also made to Mr McPhie's own report of the incident recorded on the 13th March, 2012, where no mention of any Stop Work Notice is given. Moreover, it is the Defendant's case that a fellow seaman, Mr Johnson, was also present at the incident and made no reference to any such Notice. Instead, Mr Johnson's evidence supports their case that weather conditions prevailing at the time were not unusual.

[10] It was also pleaded that Mr McPhie had been party to a standard **Pre Job Safety meeting** and signed a **pre job safety checklist** prior to the incident. Therefore, he was aware of the proper safety procedures while transferring cargo. In fact, the Defendant avers that Mr McPhie breached the procedure by failing to remove himself from the pinch points when conditions dictated that he should. Further, as he himself reported, he had been alerted of the unsecured cargo by a fellow seaman yet failed to pay heed by placing himself in a safe position. Instead, Mr McPhie moved into a "pinch point" and therefore contributed to his own injury.

[11] In addition to challenging the Claimant's version of events leading up to the injury, the Defendant also denied the extent of his injuries as pleaded. In particular, it was averred that no mention was made of the Particulars of Injuries in Dr Mencia's most contemporaneous medical report of the 13th April, 2012. In any event, Dr Mencia had deemed Mr McPhie safe for work by the 4th June, 2012. Thus, it is the Defendant's case that any injuries diagnosed by Dr Curtis Young Pong on the 16th January, 2014 were not caused and/or related to the incident as Mr McPhie never resumed his duties on the 4th June, 2012 as advised.

[12] After the filing of pleadings, which included the Claim, Amended Defence and a Reply, the Court gave an order for disclosure and the filing of witness statements along with any attendant evidential objections. A trial date was fixed for the **10th and 11th May, 2016**.

[13] The Defendant proceeded to file two witness statements in support: **(i) Jess Sylvester,** the Captain/Master of the Gulf Champion; and **(ii) Deryk Knutt Johnson,** Able Bodied Seaman of the Gulf Champion. **Mr McPhie**, in opposition, filed his **own witness statement** in support.

[14] On the 21st January, 2016, the Claimant filed 3 hearsay notices for the medical reports of Dr Young Pong, Dr Mencia and Dr Manduru.

[15] Thereafter, by Court orders of the 5th March and the 13th April, 2016, directions were given for the filing of Evidential Objections, Statement of Issues and Trial Bundles. Trial dates were also confirmed.

[16] The trial was heard on the 10th May, 2016. Only two witnesses gave evidence— the Claimant and Mr Johnson for the Defendant as Mr Sylvester was apparently out of the jurisdiction.

[17] On even date, the Court made an order for closing addresses to be by written submissions. The parties filed and exchanged written submissions on the 24th June, 2016.

The law on Negligence:

[18] Negligence, as described in **Halsbury's Laws of England**[1], is a specific tort and, in any given circumstances, is the *"...failure to exercise that care which the circumstances demand".*

The learning continues to state that where there is a duty to exercise care, *"... reasonable care must be taken to avoid acts or omissions which it can be reasonably foreseen may cause harm to the claimant's interests* ***in so far as they fall within the scope of the duty****".*

[1] (2015) Vol 97 at para 497

[19] Thus, to successfully establish a case for negligence, the Claimant must prove that: (i) a duty of care existed between the parties; (ii) the Defendant breached that duty of care; (iii) the Defendant's breach caused him harm (causation); and (iv) his harm/injury can be remedied by damages. (See **Donoghue v Stevenson [1932] AC 562**).

Duty of Care:

[20] From the parties' submissions there appears to be no dispute that a duty of care existed between them. The issue therefore has more to do with the scope of the duty that existed between them. Generally, in higher risk jobs, of which the duties of a Deck Hand and/or seaman would not doubt fall within, the law requires that an employer take reasonable care not to subject an employee to unnecessary risk. The employer must therefore take care to reduce the risk involved in the particular undertaking as far as reasonably possible: **Shelly-Ann Richards-Taylor v The Attorney General**[2] per Jones J (as she then was). In fact, in an employer/employee relationship, there is a duty on both parties where the issues of risk and safety are concerned: **Clifford v Charles**[3] per Lord Denning MR:

> ***"The employers must take care of the men, but the men must also take care of themselves."***

[21] Applied to the case at bar, however, it simply means that the Defendant had such a duty to the Captain, Mr Sylvester and the Chief Mate, Mr Ramdath, as they were its only employees mentioned on board the Gulf Champion. From the pleadings, it is evident that the Claimant was not an employee of the Defendant, but rather, an employee of Marine Utility Services Limited. In those circumstances, the relevant law on the duty of care and/or the scope of duty existing between the Defendant and the Claimant is contained at **Section 7 (1) & (3) of the Occupational Safety and Health Act, Chap 88:08 (OSHA)**, which sets out the duty of employers to persons other than their employees who may be affected by their actions:

[2] CV 2010-01230 at 5
[3] [1951] 1KB 495

> *"(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable,* ***that persons not in his employment, who may be affected thereby are not thereby exposed to risks to their safety or health****…"*
>
> *"(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner,* ***to give to persons, not being his employees, who may be affected by the way in which he conducts his undertaking, the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health."***

Thus, to discharge its duty, the Defendant was only statutorily required to (i) ensure as far as reasonably possible that the Claimant was not exposed to health or safety risks; and (ii) give to the Claimant the necessary information concerning the way in which the Defendant conducts the transfer operation.

Any omission or failure on the part of the Defendant to ensure the above would amount to a breach of that duty. Given that the parties have agreed that a duty of care existed, this becomes the principal issue of this case and accordingly, the most important element that the Claimant must prove to have any chance of success in his claim for negligence.

It follows that if Mr McPhie fails to prove that the Defendant failed to meet its standard of care as provided for in the **OSHA,** then no breach of duty would have occurred and his claim for negligence must fail.

Breach of Duty:

[22] The Claimant, in its pleaded case[4], alleged that the Defendant was negligent and/or breached its duty of care by failing to ensure a safe working environment and/or permitted him to carry out his duties in unsafe working conditions. In particular, two averments of such breach were given: (i) that the Defendant's employees/agents negligently decided

[4] See para 9 (A) (i) – (vii) of the Statement of Case

to moor the vessel to the platform in conditions that were turbulent, unsafe and dangerous, which caused the vessel to become unsteady; and (ii) that Defendant's employees/agents disregarded the Claimant's Stop Work Notice and proceeded with the operation, which caused the Claimant to sustain injury.[5]

The Weather Conditions:

[23] In his witness statement, the Claimant, Mr McPhie, stated that prior to the day of the incident, being the 3rd March, 2012, the weather was bad with lots of unexpected rain. His evidence was that this inclement weather persisted on the day of the incident because, shortly after receiving their instructions, the shift carried out *"safety measures as the seas were vicious"*. In fact, he amplified his pleading by stating that *"both the Captain and the chief mate made several attempts to move the vessel close to the platform but due to the bad weather condition, we were forced to turn back the vessel and this process continued for 8 hours."* However, more importantly, he deviated from his pleading by giving new evidence that the water had calmed down enough to give sufficient stability to *"get closer to the platform"* allowing the captain to reverse the Gulf Champion close to the platform. This period of calm did not last long, as he then deposed that shortly after the cargo reached the platform, the weather conditions went back to being vicious.[6]

Thus, there does appear to be a contradiction between the Claimant's pleaded case and his evidence-in-chief. He had pleaded that the Defendant *"negligently moored the vessel in turbulent and unsafe waters"*[7], whereas his written evidence was that the conditions had calmed enough for the Captain to get close to the platform.

[24] At trial, Ms Steele, the defendant's counsel, purported to cross-examine the Claimant on three documents from the Amended Defence on the issue of the prevailing weather conditions. Those documents were: (i) an email purporting to be a contemporaneous report of the incident prepared by the Claimant and sent on the 13th March, 2012 (the "Claimant's incident report"); (ii) a Pre Job Safety Meeting Checklist dated the 3rd March, 2012; and (iii) the Stop Work Authority given to the Claimant.

[5] Paras 4 & 5 of the Statement of Case
[6] Paras 8 – 12 of the Claimant's witness statement
[7] Para 5 of the Amended Defence

While these documents were not exhibited to any of the Defendant's witness statements, the Claimant purported to include them in the Agreed Bundle of Documents in the Trial Bundle pursuant to **Part 40.1(2) & (3) of the CPR** and thus, admitted them into evidence.

[25] Ms Steele did not seek to challenge the Claimant's evidence as to the prevailing weather conditions. Rather, she was able to elicit from Mr McPhie that the Captain did take some safety procedures evidenced by his decision not to moor the vessel when conditions were bad but to anchor it until the conditions subsided.[8]

While this evidence corroborated Mr McPhie's evidence-in-chief,[9] it, as stated above, contradicted his pleaded case—that the Captain negligently moored the vessel to the platform in turbulent and unsafe conditions. In fact, Mr McPhie's written evidence was more in line with his incident report where he clearly alluded to two important facts in the chain of events: (i) that before taking up their duties, certain safety measures were taken; and (ii) that the waters had calmed just enough to give the vessel sufficient stability to get closer to the platform and allowing the deck hands to proceed with the operation.[10] Thus, the evidence suggests that the Claimant's pleadings were inaccurate and that the more likely version is that the vessel was not moored in any dangerous or unsafe conditions.

[26] Such a state of affairs accords with the Defendant's case on the issue, which is that the conditions existing at the time of the mooring were considered normal for vessels conducting such operations in Trinidad. Mr Johnson maintained this pleading by giving evidence that the conditions were safe enough, despite the swells, to moor the vessel and undertake the cargo operation.[11] I also find that the purported tranquillity in the conditions existing at the time of the mooring is corroborated by the Captain's (Mr Sylvester's) witness statement. Mr Sylvester gave a detailed description of the weather conditions occurring *"at the time of the operation"* and described them as being normal conditions for the operation[12]. In fact, the Captain also made reference to the swells, which caused

[8] Page 14, line 4 - 7
[9] See paras 9 & 10
[10] Attachment D to the Amended Defence
[11] Paras 7 & 8 of Mr Johnson's witness statement
[12] Para 6 of Jess Sylvester's witness statement

the starboard stern to move downwards but maintained that this was considered to be *"normal sea conditions"*[13].

While this written evidence was not tested under cross-examination because Mr Sylvester could not attend trial, Mr Simon, the Claimant's counsel, by referring to it at trial, accepted the Court's jurisdiction to consider Mr Sylvester's witness statement in its decision. In fact, he specifically stated that he wanted the Court to consider it.[14] Counsel for both parties therefore agreed to the witness statement of Captain Jess Sylvester being entered into evidence and for the Court to attach such weight to his evidence which, to the Court, appears appropriate, bearing in mind that such evidence was not tested under cross-examination.

[27] Thereafter, Mr Simon proceeded in his cross-examination of the other witness, Mr Johnson, and sought to reveal some contradictions between his evidence-in-chief and his incident report contained in an email dated the 14th March, 2012 sent to Mr Bash David. In Mr Johnson's incident report, he had stated that they had been experiencing bad weather with lots of unexpected rain and rough seas during the entire "Hitch", which, to his opinion, was *"not unusual"*. However, Mr Simon asked Mr Johnson to explain his evidence at paragraph 4 of his witness statement where he described the conditions of the shift as being fair with no mention of rainy weather. Mr Johnson's response was not the most convincing:

> *"Am well it would rain sometimes, then sometimes it will stop raining"*[15]

When probed further, Mr Johnson attempted to clarify the discrepancy by stating that his incident report referred to the general weather conditions for the entire hitch and/or journey whereas in his witness statement referred to the weather on the day in question.[16] Counsel responded by informing Mr Johnson that his incident report is supposed to deal specifically with the events surrounding the accident and therefore, ought not to relate to any time period before. Mr Johnson then engaged in another long-winded response but

[13] Para 9 of Jess Sylvester's witness statement
[14] NOE Page 32, lines 40 - 47
[15] NOE Page 35, lines 43 & 44
[16] NOE Page 37

eventually maintained his evidence that the weather conditions described in his incident report referred to the entire month hitch and not the day in question. Needless to say his responses were not the most convincing to this Court.

Mr Johnson's remaining responses to the issue of the weather conditions prevailing on the day of the incident were as follows:

(i) That he could not remember whether the captain had difficulty accessing the platform for over 5 hours as is the Claimant's case[17];

(ii) That he felt it necessary to keep a look out, every 6 seconds for swells, not because the weather conditions were bad enough to warrant such precautions, but because it is his usual safeguards due to the nature of the sea."[18]

[28] In summary, although Mr Johnson seemed to give differing accounts of the weather in his incident report and his witness statement, his explanation for this discrepancy, though nervously given, was not incredible. Mention of the weather conditions during the hitch, does seem to describe the conditions for the entire tour and not necessarily the day in question. Even if I am inclined to believe that he has understated the conditions on the 3rd March, 2012, I am not convinced that they were as bad as the Claimant would like the Court to believe. In any event, Mr Johnson's statements in his incident report reflected his belief that even if it were rainy, he did not consider this to be unusual. Most importantly, he expressly stated that his crew mates considered it safe enough to attempt the cargo operation. This seems to be agreed by Mr McPhie in his witness statement and incident report where, as stated earlier, mention was made of conditions calming before the vessel was moored and the operation begun.

Mr Johnson's evidence is also supported by the Captain who, as mentioned above, also described the conditions as being normal with occasional swells. While it would have been useful to hear his live testimony as to whether these 'normal' conditions included any precipitation or winds, there is nothing in his evidence to suggest that the vessel was moored negligently. In the circumstances, I accept Mr Johnson's viva voce evidence that

[17] Page 38, lines 6 - 7
[18] NOE page 48

the turbulent conditions prevailing over the entire journey had subsided on the day of the incident.

To the contrary, there was no possible way for Mr McPhie to explain the contradiction between his pleaded case and his evidence on this issue. His pleaded case was that the Defendant was negligent because its employee(s) decided to moor the vessel in turbulent conditions only to change in his evidence that the vessel was moored when conditions subsided.

[29] Thus, I find that the Claimant has failed to discharge his burden to prove that the Defendant was negligent in attempting to moor the vessel in weather conditions that were bad, unsafe or turbulent and/or that such negligence caused and/or contributed to his injuries.

The Stop Work Notice:

[30] Mr McPhie's case on this issue was similarly contradictory. He pleaded that he had requested a **"Stop Work Notice"** due to the unsafe conditions *prior* to the mooring of the vessel. This is gleaned from the following averment:

> *"…however, the captain…both employees…of the Defendants* ***disregarded this request and turned the vessel around and attempted to reverse into the platform and negligently moored the vessel in turbulent and unsafe waters****…"*

[31] His written evidence, however, painted a different scenario. He deposed that the Stop Work Notice was issued by him *after* the vessel had moored onto the platform. In fact, he specifically stated that it was shortly after the cargo reached the platform that the weather conditions *"went back to being vicious"* and that around that time he requested the Stop Work Notice, which was ignored and thus, the operation was *continued*.[19]

[32] At trial, Mr McPhie admitted that he was familiar with the document known as the **Stop Work Authority** and therefore, was fully aware of the procedure to engage same.

[19] See para 12

However, the Defendant's counsel, Ms Steele, pointed out that no mention was made of the engagement of this Stop Work Authority in his incident report of the 3rd March, 2012.

[33] In opposition, the Defendant pleaded that no Stop Work Order/Authority was ever issued by the Claimant or by any personnel on board the vessel.[20] Mr Johnson corroborated this pleading by his written evidence that the crew had decided that the conditions were safe enough to undertake the cargo operation once the vessel was secured.[21] Further, Mr Sylvester simply made no mention of any such Stop Work Notice in his witness statement.

[34] Based on the Defendant's case— that makes no mention of any Stop Work Authority engaged at any time during the operation, Mr Simon, on behalf of the Claimant, focused his efforts on placing doubt on the probability of Mr Johnson's evidence— that the weather conditions were indeed safe.

He questioned Mr Johnson as to why, if indeed the weather conditions were normal, was it necessary for the crew to collaborate on a decision that it was *"safe enough"* to commence the operation. Mr Johnson's response seemed a bit anxious and unnecessarily long-winded in nature. In summary, it boiled down to the following answer: that the standard procedure for any operation is that the crew would meet on the bridge to decide the best course of action as well as to agree whether it was safe to conduct the operation.[22]

Mr Simon probed further suggesting that there must have been certain conditions that would lead to such a decision. Mr Johnson, again, was prolix in his response:

> *"No, not necessarily, is… as I… as I trying to explain to you, no matter what the job is, it could be going to use a knife, whatever the case is, we always come together, and I in particular will always talk to the Captain and say 'Ay how you going to position the vessel, what do I expect to see when I go out there with the vessel.' And we will decide if it safe. They will*

[20] Para 4 of the Amended Defence
[21] See para 8 of Mr Johnson's witness statement
[22] NOE Page 44,

always say in the JSEA, in the paperwork we do, there is a part that says, is it safe to do the job? Do you think it is safe to do the job…"

Mr Simon then asked that if, for example, it was the middle of January, with pristine conditions, blue skies, etc., would there still be a meeting to determine the safety of the loading operation, to which Mr Johnson replied yes because it is a standard procedure no matter what the job is.[23]

[35] While the Court was not completely convinced of Mr Johnson's evidence about the standard procedure, there was no contradiction in the Defendant's case on the issue. It was maintained at all times that there was no Stop Work Notice and the crew viewed the conditions as safe. To the contrary, the Claimant's case lacked credibility because of the inconsistency between the pleadings and evidence-in-chief as to when the Stop Work Notice was allegedly issued by Mr McPhie, especially given the fact that no mention of any such Notice found its way into his most contemporaneous incident report of the 13th March, 2012.

In those circumstances, I find in favour of the Defendant as the Claimant has failed to discharge its burden to prove that he issued a Stop Work Notice.

[36] Given the above findings, there is nothing to suggest that the Defendant or any of its employees, in particular, Captain Sylvester or the Chief Mate, was negligent and/or breached their duty of care to the Claimant by failing to ensure a safe working environment. This view is further concretized by Mr McPhie's viva voce evidence that he had signed the Pre Job Safety Checklist and marked, in the affirmative, all boxes therein that related to the safety of the equipment and procedure. Mr McPhie's attempt to escape that admission by stating that he signed that checklist *after* the incident, was nullified by his subsequent concession— that the date next to his signature was the date of the incident being the 3rd March, 2012. Further, he accepted that he gave no indication that his signature thereon was affixed at some later date.[24]

[23] NOE Page 45, lines 1 - 12
[24] NOE page 8

Additionally, Ms Steele also referred to the Job Safety & Environmental Analysis (JSEA), which identifies the possible risks that the Claimant and other crew members may face on duty along with the control measures to be taken. Mr McPhie similarly admitted to witnessing this document and confirmed his name on same.[25] By this evidence, Mr McPhie accepted that he was made aware of the hazards of being caught in "pinch points" and the steps that must be taken in such an event. This evidence was in line with the Captain Sylvester's witness statement, which stated that prior to the cargo operation, he conducted the usual Pre Job Safety Meeting with bridge and deck personnel (inclusive of the Claimant) which involved a review of the following documents: (i) a Rigger's checklist completed by the deck personnel; (ii) the JSEA; and (iii) the Stop Work Authority.

Thus, I also find that all necessary safety measures and briefings occurred prior to the journey and the transfer operation on the day in question.

[37] Accordingly, having found that (i) the Defendant did not moor the vessel in turbulent or unsafe weather conditions; (ii) the weather conditions were not unusually bad and/or were normal; (iii) the Claimant has failed to prove that he engaged the Stop Work Notice/Authority; and (iv) the Claimant's evidence that he was aware of and/or signed all documents relating to the necessary safety procedures, there is nothing before the Court to suggest that the Defendant breached its duty of care to the Claimant as prescribed in **Section 7 of the OSHA** and/or was negligent.

[38] This finding is dispositive of this matter as there is no need to consider the elements of causation and damages.

Costs:

[39] On the issue of costs, the general rule is that if the Court decides to make an order for costs of any proceedings, then it must order the unsuccessful party to pay the costs of the successful party (costs follow the event): see **CPR Rule 66.6(1)**. Taking all the circumstances into account and having regard to the analyses and findings of the Court, there is nothing to justify the Court disapplying the general rule. Accordingly, on the

[25] NOE Page 9

question of entitlement to costs, the Court is minded to order the Claimant to pay the Defendant's costs of the proceedings. Such costs are to be quantified on the prescribed regime of costs in accordance with **CPR Part 67.5(2)(b)(ii)** since the claim was one for damages and the successful party being the Defendant. However, since (i) the Claim form did not specify an amount that is claimed; (ii) no sum having been agreed between the parties; nor (iii) was there any application or submission by either of the parties for the Court to stipulate a sum as the value of the Claim, the Court is minded to treat the Claim as one for **$50,000.00**. In this regard, the prescribed costs would be quantified in the sum of **$14,000.00** as stipulated in **CPR Part 67 Appendix B**.

II. Disposition:

[40] Accordingly, in light of the foregoing analyses, the order of the Court is as follows:

ORDER:

1. **That the Claimant's Claim be and is hereby dismissed.**
2. **That the Claimant shall pay to the Defendant its costs of the Claim which have been quantified on the Prescribed Scale of Costs in the sum of $14,000.00 in accordance with CPR Part 67 Appendix B.**

Dated this 20th day of February, 2018

Robin N. Mohammed
Judge