THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2013 - 01209

BETWEEN

ADMIRALTY ACTION IN REM AGAINST THE MOTOR VESSEL - KGC COMPANY LIMITED

Claimant

AND

THE OWNERS AND/OR PARTIES INTERESTED IN THE MOTOR VESSEL "BYWATER LIBERTY"

Defendants

Before The Honourable Mr. Justice Devindra Rampersad

APPEARANCES:

Claimant	**Simon de la Bastide instructed by Nyree Alfonso for the Claimant**
Defendant	**Phillip Lamont for the Defendant**

Delivered 18th day of March 2014

RULING

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1. This claim was commenced on 22 March 2013. By that claim, as particularized in the statement of case, the claimant pleaded that:

> *"2. The defendants are the owners and/or persons interested in the multipurpose vessel "Bywater Liberty ("Bywater Liberty") which is registered in the Panama registry. Liberty Force Investments Company LP ("Liberty Force Investments"), a partnership registered at 1806 S 16th Street, La Porte, Texas, United States of America, is and was at all material times the registered owner of Bywater Liberty and the sole beneficial owner of all the shares in Bywater Liberty"*

2. The statement of case proceeded to relate facts which were exactly similar to the facts set out in claim number CV 2011 – 04865 between Liberty Force Investments Company LP and the claimant in these proceedings. It is not at all in contention that the lis is the same in both matters.

3. Those previous proceedings are also before this court and are proceedings *in personam*.

The Warrant of Arrest

4. By application filed on 12 July 2013 in these proceedings, leave was sought by the claimant for the issuance of a warrant to arrest the motor vessel "Bywater Liberty" supported by an affidavit of Ms. Nyree Dawn Alfonso. In her affidavit, Ms. Alfonso indicated that these proceedings were filed to protect the claimant's position in the previous proceedings pursuant to the case of ***The Monica S*** [1967] Vol. 2 Lloyds LL Reports 113 in light of information received that the vessel was about to be sold and/or taken out of the jurisdiction. The application was also supported by an affidavit of Keith Arjoon filed on 11 July 2013 in which he said at paragraph 53 as follows:

"53. As far as I'm aware the only asset owned by Liberty Force in Trinidad and Tobago is the Bywater Liberty and the only business that it conducts…."

5. This court made an order granting leave to the claimant to issue a warrant of arrest for the vessel on 17 July 2013. Those proceedings were conducted between 2:29 PM and 2:36 PM that day.

6. On the same day, at 12:49 PM, a caveat was lodged pursuant to part 74.10 of the CPR by Messr. A.C.O. Cherry and Company, Attorneys at Law, in which the said attorneys at law undertook to"

"1. Acknowledge issue or service of the claim form in any claim made against Motor Vessel "Bywater Liberty" in the request; and

2. Within three (3) days after receiving notice that such a claim has been made, to give bail in that claim in the sum not exceeding an amount specified in the request or to pay the amount so specified into court."

7. That caveat was not brought to the court's attention when the order was made.

8. The vessel was arrested on 17 July 2013.

The applications before the court

9. Nothing was done until 8 November 2013 when the claimant filed an **application for judgment in default of appearance** pursuant to part 74.22 (3) of the CPR which was supported by a detailed affidavit of Mr. Keith Arjoon of even date. An amended notice of application was filed on 13 November 2013 and all of these documents were apparently served on the security officer of the vessel on Thursday, 14 November 2013 at 11:45 AM [1].

10. On 22 November 2013, an appearance was filed by Anthony C.O. Cherry acknowledging service of the amended claim form and statement of case on 17 July 2013. In response to the question whether the defendant's name was

[1] See affidavit of service filed on 26 November 2013 by Jaikerran Persaud

properly stated on the amended claim form[2], the answer "*yes*" was given. No name was set out in the appearance for the defendant. The address for the defendant was given as 1806 South 16th Street, La Porte, Texas, 77571, United States of America.

11. On the 17th of January 2014, two applications were filed on behalf of the defendant:

    11.1. An **application for an order extending the time for the filing of the defence** and for the consolidation of this action with CV2011 – 04865 (the action *in personam*). This application was supported by an affidavit of Anthony Cecil Oliver Cherry;

    11.2. An **application for the release of the motor vessel** "Bywater Liberty" upon the placement of a reasonable bond. This application was supported by an affidavit of Lewis Phriday.

12. This court, must now rule on the three applications before it:

    12.1. The claimant's application for judgment in default of appearance;

    12.2. The defendant's application for an order extending the time for the filing of the defence;

    12.3. The defendant's application for an order for the release of the motor vessel.

Preliminary issue – ownership of the vessel

13. As indicated above, the appearance filed on 22 November 2013 failed to identify by name who the defendant was. To compound that, the affidavits filed in support of the applications by the defendant were not definitive as to ownership.

[2] The defendants named in these proceedings was given as "The Owners and/or Parties Interested in the Motor Vessel "BYWATER LIBERTY""

The Caveat

14. A caveat was lodged on 17 July 2013 by A.C.O. Cherry and Company "*for the owners and/or parties interested of Motor Vessel "BYWATER LIBERTY*" with an undertaking given to acknowledge issue or service of the claim form in any claim that may be made against the said motor vessel. No mention is made as to the name of the owners and, of course from the record, the acknowledgment of issue or service of the claim form was not filed until 22 November 2013 in breach of that stated undertaking.

Mr. Cherry's affidavit

15. Mr. Cherry deposed in paragraph 1 of his affidavit filed on 17 November 2014 that he was the attorney at law on record for the defendant herein, and for the defendant's company Liberty Force Investments Company LP, the claimant in the related action *in personam*. Consequently, he drew a distinction between the company, Liberty Force Investments Company LP and the defendant, entitled as "The Owners and/or Parties Interested in the Motor Vessel "Bywater Liberty"". It therefore seems evident from this paragraph that the owners and/or parties interested in the said vessel were separate and distinct from the company Liberty Force Investments Company LP.

16. However, he went on at paragraph 2 of his affidavit to state as follows:

> *"I am informed by Jeff Dorsey, and I verily believe that he, George Cook and Kevin Newkirk formed a company called Liberty Force Investments Company LP for the purpose of owning inter alia, a boat called the Bywater Liberty. This vessel was chartered to the defendant by a company called Bywater Marine LC, and the defendant herein, took the assignment of that charter agreement from Bywater Marine and thereby took over the rights and liabilities of Bywater Marine viv a vis the claimant herein, in respect of the charter of the said vessel…"*

17. Again, it seems patently obvious that Liberty Force Investments Company LP is not being put forward as the owner of the vessel as of right but is an owner under

color of the assignment of the charter agreement, which was originally an agreement made between Bywater Marine and the claimant.

Mr. Phriday's affidavit

18. In the application for the release of the vehicle, in which one would have expected the owner to come forward, Mr. Phriday deposed that he was the "agent of the defendant company" and was duly authorized by the defendant to make the affidavit. In his affidavit, he went on to say at paragraph 3 that:

> *"The Defendant requires access to its motor vessel as it has obtained a contract."*

19. Mr. Phriday went on to suggest in that same paragraph that he had annexed a copy of a proposed contract for the charter of the vessel as exhibit LP 1. The document is a document written on the letterhead of "Eastern Drivers Company Limited" addressed to Trinity Exploration & Production PLC. The document was unsigned by anyone. Having regard to this document, the issue of ownership of the vessel became even cloudier.

Ms. Alfonso's affidavit

20. In her affidavit filed on 27 January 2014, Ms. Alfonso said that the identity of the party who has entered an appearance as defendant in these proceedings has not been disclosed either on the affidavits before this court on the pending applications or in any of the other documents filed in these proceedings on behalf of the defendant. Reference is made in Ms. Alfonso's affidavit to several inconsistencies in the defendant's affidavits in support of the applications on behalf of the defendant.

The court's view on ownership of the vessel

21. The court indicated to Mr. Lamont at the last date of hearing that it seemed a deliberate ploy on the part of attorney acting for the defendant to leave the question of ownership up in the air. The court made this comment based on the

fact that the name of the defendant was deliberately left out from the appearance filed on 22 November and the several contradictions and inconsistencies referred to above and set out in the 2 affidavits filed on behalf of the defendant on 17 January 2014.

22. In this court's view, it is imperative for a party entering an appearance in court proceedings, whether in person or by an attorney at law, to identify the name of the person/entity in respect of whom that appearance is being filed. To my mind, this applies across the board in all proceedings but especially so in matters *in rem* which involves, theoretically at least, the world at large. To file documents stating that one acts on behalf of the defendant where that defendant is unnamed in the proceedings and no attempt is made to identify the name of the defendant specifically is highly unsatisfactory and, to my mind, must be avoided.

23. Having regard to the documents before this court, however, which includes the pleading at paragraph 2 of the statement of case and the documents referred to above and exhibit "K.A.15" to the affidavit of Keith Arjoon filed on 11 July 2013 in support of the application for the arrest of the vessel[3], it is patently apparent that the claimant cannot now assert any contention contrary to its pleaded case and contrary to its evidence used in support of the application used for the arrest of the vessel that the vessel is owned by any other party than Liberty Force Investments Company LP.

24. Therefore, based on the claimant's case, the court has to accept that the vessel is owned by Liberty Force Investments Company LP. That is the claimant's case.

The claimant's application for judgment in default of appearance

25. In respect of this application, the claimant relies upon part 74.22 (3) of the CPR which provides as follows:

> *"Where a defendant to a claim in rem fails to acknowledge service of the claim within the time limited for doing so, then, on the expiration of 14*

[3] This is a bundle of documents which includes a Radio Station Provisional License dated 5 January 2011 identifying the owner of the vessel as **Liberty Force Investments LP** and a Navigation Provisional Registry of the same date giving the same information as to the ownership, etc

days after service, of the claim and upon filing an affidavit proving due service of the claim, an affidavit verifying the facts on which the proceedings is based and, if a statement of case was not served with the claim form, a copy of the statement of case, the claimant may apply to the court for judgment by default and an order for sale.

26. Part 74 does not prescribe any particular time for the entry of appearance in a claim brought *in rem* so that, to my mind, the general rule provided at part 9 of the CPR applies which is that the period for entering an appearance is 8 days after the date of service of the claim form. The provision in the preceding paragraph therefore restricts a claimant from bringing an application for judgment in default of appearance to "*…. on the expiration of 14 days after service…*" thereby granting a grace period of 6 days beyond the 8 days allowed for an appearance.

27. The defendant has relied upon the pronouncements made in ***The Attorney General v Keron Matthews*** [2011] UKPC 38 as authority for the proposition that an appearance can be filed without the leave of the court at any time prior to judgment being taken up by the claimant. Particularly, reliance was placed upon paragraph 14 of the judgment of the Lord Dyson where he was said:

> *"[14] I would reject these arguments largely for the reasons given by Mr Knox QC. First, a defence can be filed without the permission of the court after the time for filing has expired. If the Claimant does nothing or waives late service, the defence stands and no question of sanction arises. If, as in the present case, judgment has not been entered when the Defendant applies out of time for an extension of time, there is no question of any sanction having yet been imposed on him. No distinction is drawn in r 10.3(5) between applications for an extension of time before and after the period for filing a defence."*

28. In other words, Mr. Lamont has suggested that the court must accept this appearance notwithstanding the fact that it is late. On the other hand, Mr. de la Bastide has submitted that once an application is made for judgment, it cannot be that the court's discretion comes to an end. He went on to say that the court has a

continuing discretion under Pt. 74.22(3) to refuse acknowledgment of the late appearance even though that is not specifically stated in the rule. Otherwise this would invite an abuse of the rules if it were to be construed that a court's discretion comes to an end UPON the filing of an appearance after the application for judgment has been made.

29. The court has looked at the learning in "***British Shipping Laws***" Volume 1 Admiralty Practice 1964 at paragraph 380. That learning refers to order 75, rule 20 (3) of the pre-CPR English rules which is in almost exact terms as the CPR provision being considered by this court and, in considering an application for judgment in default of appearance, states as follows:

> *"It sometimes happens that an appearance is entered by a defendant, or by an intervener with leave, at a very late stage, i.e. after the motion has been set down. In such a case it is usual for counsel for the defendant or intervener to be heard, on an application either for leave to serve a defence or for an adjournment of the motion, before any details of the case are considered, and the motion will usually be adjourned. It sometimes happens, too, that the defendant or intervener will be represented at the hearing of the motion although no appearance has yet been entered. It has been the recent practice to hear counsel in such circumstances on his undertaking that an appearance would be entered, and here again the motion will usually be adjourned: an award of costs, as always, is discretionary."*

30. Having regard to the foregoing, and the fact that there is no sanction prescribed for failure to enter an appearance on time, it seems that it is necessary for this court to accept the fact that the appearance was entered, albeit late, and proceed to determine the application for the extension of time for the filing of the defence before determining the claimant's application for judgment. Even though the claimant's application is for judgment in default of appearance, and the court acknowledges that appearance was in fact entered, the court is of the view that it must next consider the defendant's application for the extension of time and adapt

the claimant's application for judgment accordingly since, by the time it was filed, no appearance had as yet been entered. In any event, if the defendant's application for the extension of time for the filing of the defence is refused, the court has its case management powers to proceed to enter judgment in any event or even to treat the claimant's application as an application under part 74.22(5).

The application for extension of time

31. Notwithstanding the application having been made on 17 January 2014, Mr. Lamont sought to submit that, in fact, that application was unnecessary in light of the quoted paragraph from ***Matthews***. He said that, the defence having been filed, the defendant was entitled to wait and see what step the claimant was going to take – was the claimant going to accept the defence out of time and do nothing thereby waiving the late service or was the lateness of the defence going to be an issue?

32. On the other hand, the claimant's attorney at law indicated that by Nyree Dawn Alfonso's affidavit filed on 27 January 2014, it ought to have been crystal clear that the application was being opposed. A perusal of that affidavit indicates that the deponent, at paragraph 2, mentioned that her affidavit was filed in opposition to the defendant's application for the extension of time for the filing of the defence. As Mr. de la Bastide put it, it ought to have been clear from Ms. Alfonso's affidavit that they had "locked horns".

33. That being the position, the court has to consider whether or not the application for the extension of time ought to be granted. As indicated in ***Matthews***, such an application does not amount to an application for relief from sanctions so that part 26.7 of the CPR does not apply.

The chronology

34. The history of the proceedings gleaned from the record is as follows:

- **22 March 2013** – The claim was commenced

- **11 July 2013** – The claim form and statement of case are amended
- – Application made for relief be granted to issue a Warrant of Arrest for the vessel

- **17 July 2013** – Order made granting leave for the issuance of the Warrant of Arrest for the vessel
- – Amended claim form and statement of case served on the defendant
- – Caveat lodged by A.C.O Cherry and Company
- – Vessel arrested
- – Defendant makes an application for the release of the vessel but files it in CV 2011 – 04865 – a related matter. That application was dismissed, on the ground that it was filed in the wrong proceedings, on 20 August 2013

- **30 September 2013** **– Defence due**

- **8 November 2013** – Claimant files application for judgment in default of appearance together with affidavits in support

- **13 November 2013** – Claimant files amended application for judgment in default of appearance

- **14 November 2013** – Service of the original application and the amended application together with the affidavits in support on the vessel

- **22 November 2013** – Appearance filed on behalf of the defendant by A.C.O Cherry and Company

- **17 January 2014** – Defendant files application for extension of time for the filing and service of the defence together with supporting affidavit
- – Defendant files application for release of the vessel together with supporting affidavit

- **27 January 2014** – Claimant files affidavit in opposition

35. Having been served with the proceedings since 17 July 2013, the defence would have been due by 30 September 2013 (excluding the long vacation) and it seems incumbent upon the defendant to explain what happened for the next 3 ½ months until it filed the application to extend the time for the filing of the defence.

The authorities

36. Even though it is almost 50 years old, it seems that the words of the Privy Council in ***Ratnam v Cumarasamy*** are still very relevant. In that case, it was stated [4]:

> *"The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation."*

37. Part 10.3 (5) of the CPR allows a defendant to apply for an order extending the time for filing a defence. No guidelines are set out in the CPR as to the specific principles which the court must apply in such an application so that the court must revert to Part 1 of the CPR – the overriding objective. The elements of Part 1 as espoused at Part 1.1 are very well rehearsed and need no further discussion, to my mind.

38. In considering the factors set out therein, it is helpful, to some extent, for the court to consider the manner in which its discretion has been exercised in the pre-CPR days.

39. Our Court of Appeal considered the principles involved in applications for the extension of time for compliance with the Rules of the Supreme Court in ***The National Lotteries Control Board v Michael Deosaran*** Civ App No. 132 of 2007. Even though it was a matter under the Rules of the Supreme Court 1975, it was delivered in the environment and circumstances which prevailed post CPR as the court sought to deal with the need to move away from the laissez-faire approach of old to the more structured and stringent the minds of the CPR. In that case, several authorities were considered and discussed by the Honorable Jamadar

[4] At page 935

JA including that ***of Krishna Persad v George Nicholas and Ors.*** Civ. App. No. 99 of 2005 in which Hamel-Smith JA said[5]:

> *"47. Without affirming the correctness of that judgment, I think that the judge took too stringent an approach in applying what had been said by Kangaloo JA in IMH and overlooked the question of prejudice to Nicholas. I hesitate to affirm the judgment because* ***it seems that applications for extension of time (except those for filing notices of appeal which are dealt with under Order 59 r.7 (7) are governed by Order 3 r.5 and not by Order 59 r.21. Order 3 r. 5(4) expressly provides that the rule for an extension of time applies to applications in the Court of Appeal or a single Judge thereof. Implied in the rule is the exercise of a discretion and while there must be some material before the judge upon which it can be exercised, there is no requirement to advance good and substantial grounds as is required in Order 59 r7.*** *Unfortunately, in IMH Order 3 r.5 was not addressed by either side and therefore not considered by the judge.*
>
> *48. Even if one follows the judgment in IMH, as the judge did, there seems to have been a marked absence of any prejudice against Nicholas. The short delay could not per se amount to prejudice, as the Judge rightly observed. Kangaloo JA himself in IMH accepted that were the explanation for the delay (is) borderline or the delay itself not inordinate, he would have been inclined to allowed the application before him, and rightly so.*
>
> *49.* ***I would think that in the absence of any requirement for good and substantial grounds, allowance should generally be given in cases where a rule in respect of time, particularly in an application of this nature, is overlooked marginally and it is nigh impossible to proffer any reason other than the inadvertence on the part of instructing attorney. I***

[5] At paragraphs 47 to 49

would think however, that in those circumstances the greater the time lapse the more reluctant a Court will be to exercise its discretion to extend the time, more so where the other side can show prejudice or a lack of bona fides in the application. *Neither has been demonstrated in the instant matter.*"

[Emphasis added]

40. Jamadar JA recognized that what was involved was an exercise of a judicial discretion and that some material had to be before the court to justify the exercise of that discretion. He cited his own decision in ***Alloy Wong and Anor. v Republic Finance and Merchant Bank Ltd. and Ors*** [6] for the proposition that the explanation must be an acceptable explanation for the delay. Generally, he stated that the courts have adopted the relatively strict attitude to delay and went on to say that what was at stake was not "*simply justice between parties to a single case, but the entire administration of the civil justice system*".[7]

41. Therefore, this court has to determine this application against the background mentioned above, together with the principles of prejudice or lack of bona fides, and the specific provisions of the overriding objective.

The reason for the delay

42. There is no doubt that there are related proceedings between Liberty Force Investments Company LP and the claimant in CV 2011 – 04865. In fact, it is accepted that the pleadings in this action basically mirror what has been said in those related proceedings. The only conceivable reason for the filing of this new action *in rem* was to allow the claimant in these proceedings to have the power of arrest in respect of the vessel to protect its position in the event that it was successful in the related matter. The claimant's representative, Keith Arjoon said, in his affidavit in support of the application for leave to issue a warrant of arrest in July last year, said at paragraph 50:

[6] Civ App No. 76 of 2008
[7] See paragraph 22

"In March 2013 I received information from KGC's instructing attorney at law that the owners of the Bywater Liberty were attempting to sell the vessel. Ms. Alfonso advised me to commence these proceedings and to take steps to obtain a warrant of arrest for the Bywater Liberty. Ms. Alfonso specifically advised me that by bringing these proceedings a lien would be created which would attached to the Bywater Liberty even if she was sold."

43. In his affidavit in support of the application for the extension of time, Mr. Cherry indicated that the reason for the failure to comply with the time limit was because of the extreme difficulty which he had in getting in contact with the client. Without specifically identifying "the client", the inference was that he was acting for Liberty Force Investments Company LP. Apparently, the difficulty he had was in relation to getting instructions from Mr. Jeff Dorsey specifically, who is a ship captain and who, according to Kevin Newkirk, Mr. Dorsey's associate, was on a ship off the coast of Argentina. He said that he was not able to speak to Mr. Dorsey and that was partly because Mr. Dorsey was of the view that the related first matter had reached trial stage and there was no need for continuous interaction or communication between the two of them.

44. Mr. de la Bastide's response to this was, as follows:

    44.1. This was one of the worst excuses one can come up with. If one looks at the instructions required, one can see from paragraph 8 of the affidavit of Mr. Cherry that the pleadings mirror the prior matter with exactitude.

    44.2. He agreed that the issues are exactly the same so that the claim made in these proceedings is the same as the counterclaim in the related proceedings and the defence to counterclaim is the same defence which would have had to have been used in this matter PROVIDING Liberty Force is the owner.

    44.3. He went on to say that it was difficult to believe that there was no word from Mr. Dorsey since July. If that was so, then how were the caveat and the mis-filed bail application filed in the related proceedings? What was

the source of Mr. Phriday's agency in any event? How could Mr. Phriday seemingly get instructions and yet Mr. Cherry could not speak to Mr. Dorsey?

44.4. An appearance was filed at the end of November – how is it that Mr. Cherry got instructions to enter an appearance but not to file a defence even though it may be the same defence as was put in in the related proceedings?

44.5. What about the other 2 parties who are Liberty Force partners – Mr. Newkirk or Mr. Cook? Why was instructions not taken from them – see letter at "NDA 1" from Mr. Cherry. Also, Mr. Phriday is said to be an agent – why not get instructions from him?

45. Having regard to the facts before me, I have to consider whether this excuse was an acceptable one. It is unfortunate that no attempt was made by Mr. Cherry to substantiate his allegations of his attempts to call or get in contact with Mr. Dorsey. Further, he failed to identify why Mr. Dorsey was the only member of the company, the membership of which he referred to at paragraph 2 of his affidavit and quoted above, from whom he could have gotten instructions. He also did not state who gave the instructions for the filing of the appearance, the applications for the release of the vessel and the defence and counterclaim. Further, he did not indicate if it was in fact Mr. Dorsey who eventually gave the instructions to settle the defence and counterclaim or when he was able to receive those instructions. All in all, paragraph 11 of his affidavit was quite nebulous and failed to display the type of particularity that is expected in matters falling under the CPR. The paucity of information is a reflection of the former practice of not saying too much as opposed to the current approach which is to ensure that the full story is laid bare before the court. Further, when this court pays attention to the manner in which the defendant's attorney has attempted to cloak the true identity of the defendant by failing to disclose the name of the party for whom he acts directly, the court's prior mentioned inclination to view the defendant's actions as deliberately hazy seems all the more justified.

46. So, is this explanation acceptable? It does not have to be a good and/or substantial explanation. It just has to be acceptable. The court must confess that it is unable, in the context of the CPR, to accept this bare-bones explanation as being acceptable. To deem it so would in fact be tantamount to approving a return to deliberate vagaries which is inconsistent with the tenor of the CPR - see for example the appeal court's approach to pleadings in ***M.I.5 Investigations Ltd. v. Centurion Protective Agency Limited*** Civ. Appeal No. 244 of 2008. A court cannot countenance such an imprecise approach to a crucial aspect of the application – the full and frank explanation for the delay. In those circumstances, this court rejects the explanation as being unacceptable.

Other considerations

47. However, that is not the only consideration that this court must bear in mind in this matter. To my mind, a more crucial aspect is the fact that the very same matter is being dealt with on two levels – *in personam* and *in rem* – and it would be contrary to the good administration of justice for the court to allow a judgment in default *in rem* on the very issue which the court has to determine *in personam* after a full trial and a detailed hearing on the merits.

48. When the court looks at the overriding objective, it seems compelled to ensure that a just result be derived on both levels rather than risk inconsistent results *in rem* and *in personam* on the same issue.

49. Consequently, and on that plank, the court will allow the extension of time for the filing and service of the defence and directs that this matter and CV 2011 – 04865 be consolidated as they deal with the very same matters. Of course, the court considers the approach by the defendant to have been wanting and therefore intends to penalize the defendant in costs.

The application for the release of the vessel

50. The claim brought by the claimant in these proceedings is for the sum of $1,224,000 US for breach of charter agreement entered into by the claimant on or about 30 June 2010, reimbursement of the sum of $788,353.01 TT for works

carried out on the vessel, interest, costs and other reliefs. Prescribed costs on such a claim, without taking into account interest, would amount to at least $234,000 TT.

51. The claimant's attorney at law provided the authority of "Admiralty Jurisdiction and Practice" 4th edition by Nigel Meeson and John Kimball. At paragraph 4.80 of that authority, it is stated:

> *"The claimant is entitled to security in an amount sufficient to cover the amount of his best reasonably arguable case, together with interest and costs, but cannot demand the security in an amount which exceeds the value of the property proceeded against."*

52. The application filed on behalf of the defendant is supported by an affidavit of one Lewis Phriday. Mr. Phriday described himself as being of Eastern Divers Limited which he also described was an agent of the defendant. In the same manner that the application for the extension of time for the filing of the defence seemed to have been deliberately nebulous, so too this very brief affidavit failed to provide any proper information upon which a court of law could reasonably act.

53. Mr. Phriday suggested an agency exists between his company and the defendant without identifying who the defendant was or in what manner such an agency was established or if that agency is in fact properly established and still subsisting to allow him to make this application for the release of a vessel to him. He relied upon a contract which he said the defendant had obtained but a perusal of the exhibit upon which this allegation seemed to have been based makes no mention of who the principal is and there is absolutely no reference whatsoever to the company Liberty Force Investments Company LP. That document is a document on Eastern Divers Company Limited's letterhead addressed to one Mr. Deoraj at Trinity Exploration & Production PLC and is unsigned by any party. Mr. Phriday also placed reliance on a letter dated 12th of August 2013 from Ms. Alfonso to Mr. Cherry but, once again, that letter failed to identify who the defendant was.

54. In those circumstances, this court has great reluctance in approving the release of the motor vessel "Bywater Liberty" to Mr. Phriday in light of his absolute failure to show any proper interest in the vessel whatsoever other than his empty, unsupported and uncorroborated statements in his affidavit. In such an instance, the court does not get a sense of confidence that a proper security can be entered into by Mr. Phriday in light of his unsubstantiated agency.

55. However, having regard to the circumstances, and the fact that the arrest must continue until the determination of the consolidated actions, the cost of the continued detention of the vessel remains a charge upon the Marshal of the court at the first instance. Therefore, it seems to be in the best interest of all concerned that this issue be resolved as soon as possible.

56. As a result, the court will grant the defendant an opportunity to file and serve a supplemental affidavit directly identifying who the defendant is, supported by proper evidence as to ownership, and providing satisfactory evidence of the value of the vessel and a properly drafted bond with the name of the defendant properly identified on its face.

The order

57. In light of the foregoing and the extension of time granted for the filing of the defence, the court will not grant the claimant relief on its notice of application filed on 8 November 2013 as amended.

58. Consequently, the order the court makes is as follows:

    58.1. The defendant shall file and serve an amended appearance properly identifying and stating thereon the name of the defendant by the **24th of March 2014**. In default, there will be judgment for the claimant on terms to be settled by the court at a further hearing based on the draft order annexed to the claimant's notice of application for judgment.

    58.2. Providing the amended appearance is filed by the deadline given in the preceding paragraph:

58.2.1. The claimant's notice of application filed on 8 November 2013 and amended on 13 November 2013 is **dismissed**.

58.2.2. With respect to the defendant's notice of application filed on 17 January 2014 for the extension of time for the filing of the defence, the court grants an **order in terms** of the draft order dated 18th March 2014 as amended and initialed by the court.

58.2.3. With respect to the defendant's notice of application filed on 17 January 2014 for the release of the vessel "Bywater Liberty":

58.2.3.1. Permission is granted to the defendant to file and serve a supplemental affidavit(s) including but not limited to directly identifying who the defendant is, supported by proper evidence as to ownership, and providing satisfactory evidence of the value of the vessel and a properly drafted bond with the name of the defendant properly identified on its face by the **27th of March 2014** ;

58.2.3.2. Further hearing of this application is adjourned to the **27th of March 2014 at 10:15 AM in POS 07**.

58.3. The defendant shall **pay the claimant's costs** of:

58.3.1. The claimant's notice of application for judgment in default of appearance;

58.3.2. The defendant's notice of application for the extension of time for the filing of the defence;

To be quantified pursuant to part 67.11 of the CPR, in default of agreement, by the Assistant Registrar in Chambers on a date to be fixed.

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Devindra Rampersad J