

Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE ADMIRALTY JURISDICTION

SUIT NO. A6 OF 1998

ADMIRALTY ACTION IN REM AGAINST THE SHIP
THE MV. STAR 11 OF THE PORT OF LIMASSOL
CYPRUS AND HER CARGO.

BETWEEN RESOLVE TOWING AND SALVAGE
INCORPORATED **- PLAINTIFF/RESPONDENT**

AND THE OWNERS AND PERSONS
INTERESTED IN THE SHIP THE
M/V "STAR 11" OF THE PORT
LIMASSOL CYPRUS AND HER
CARGO **- DEFENDANTS/APPLICANTS**

John Vassell, Q.C., and Dr. Lloyd Barnett, instructed by Delroy Beckford of
Dunn, Cox, Orrett and Ashenheim for the Plaintiff/Respondent

Ransford Braham instructed by Miss Janet Francis of Livingston, Alexander
and Levy for the Defendants/Applicants

Heard: July 22, 31, 1998.

CORAM: WOLFE C.J.

This is a motion on behalf of the Defendants/Applicants for an order that:

1. The Writ of Summons dated May 22, 1998 and filed herein be set aside and/or dismissed on the ground that same is void and/or irregular being endorsed with a Statement of Claim contrary to the Rules.

2. That the order made by the Honourable Mr. Justice McIntosh on the 22nd day of May, 1998 and further clarification of the said order made by the Honourable Mr. Justice McIntosh on the 30th day of May, 1998 and any subsequent order directing the arrest of the cargo now on board the ship M/V Star 11 be discharged.
3. That the warrant of arrest herein be set aside and that the cargo on board M/V Star 11 be released from arrest.
4. Further or in the alternative that the Writ of Summons and Statement of Claim in this action be struck out as showing no cause of action and being frivolous, vexatious and an abuse of the process of the Court and under the inherent jurisdiction of the Court.
5. That leave be granted to bring on this action on this motion for hearing notwithstanding that same be short served.

The plaintiff/respondent is a limited liability company which is engaged in the business of providing salvage and maritime services.

By an agreement dated April 9, 1998, between the plaintiff/respondent and Scandinavian Maritime Claims Office, the plaintiff, as salvor, agreed to salvage the defendants' vessel, her equipment, cargo, freight, bunkers, stores and other property thereon and take them from this location at Morant Point in Jamaica to Port Royal.

There is no contest that the salvage services were performed and the claim for the salvage duly submitted for payment. The sum claimed is US\$942,620.00 or the Jamaican Dollar equivalent at the date of payment for salvage.

The plaintiff commenced its action by way of Writ of Summons with the Statement of Claim endorsed thereon. It is this form of commencement of the action, primarily, which gives rise to this motion.

Mr. Braham for the applicants submitted that the rules which govern the Admiralty Jurisdiction of the Supreme Court prohibit the endorsement of a Statement of Claim on the Writ of Summons.

The rules referred to were published in the Jamaica Gazette, Thursday, April 13, 1893. I set out the introduction of those rules.

"Rules of Court for regulating the Procedure and Practice (including fees and Costs) in the Supreme Court of Judicature of Jamaica hereinafter called "The Supreme Court" in the exercise of the jurisdiction conferred on the said Court by the "Colonial Courts of Admiralty Act 1890" (53 & 54 Vict. Ch 27) made by the Chief Justice of the said Court with the concurrence of the Puisne Judges thereof in virtue of the authority conferred on them by section 7 of the above Act and in the manner prescribed by section 36 of the Judicature Law 1879 (Law 24 of 1879) as amended by section 1 of the Judicature Law 1879, amendment Law 1885 (Law 31 of 1885) for framing Rules of Court to regulate the Procedure and Practice of the said Supreme Court in the exercise of its ordinary civil jurisdiction."

Rule 1 dealing with the "FORM AND COMMENCEMENT OF ACTION" states:

"All actions which previously to the commencement of the "Colonial Courts of Admiralty Act 1890" (53 and 54 Vict Ch. 27) were commenced by a cause in rem or in personam in the Courts of Vice - Admiralty in Jamaica shall be instituted in the Supreme Court by a

proceeding to be called an action which shall be commenced by filing a writ of summons in the office of the Registrar of the Supreme Court (hereinafter spoken of as "The Registrar."

Rule 2 states as follows:

"The writ of summons in every action in rem shall be in the Form 1 in the Schedule A hereto appended with such variations as circumstances may require."

The form as set out in Schedule A makes no provision for the endorsement of a Statement of Claim.

Rules 11 through to 18 set out the procedure which is to be followed in the event of Appearance or Default of Appearance to the Writ of Summons.

Rule 16 which deals with Default of Appearance states:

"In actions in rem upon default of appearance the plaintiff at the expiration of 18 days from the service of the writ of summons and a warrant may, upon filing his statement of claim together with proofs in support thereof, and also the writ of summons, affidavit of service, and warrant in the office of the Registrar, enter the action for trial."

Rule 18 enacts as follows:

"In actions in rem where the property remains under arrest, if any defendant; where pleadings are ordered make default in filing a statement of defence and delivering a copy thereof as hereinafter provided, the plaintiff may on filing the statement of claim, together with his proof in support thereof, in the office of the Registrar, and when the defendant has appeared, delivering a copy thereof to the defendant, or when he has not appeared, serving a copy thereof in the manner required in the case of a writ of summons set down the action on motion for judgment, and such judgment, shall be given against the property under arrest or

otherwise, as the Court or Judge shall consider the plaintiff to be entitled to."

Rule 20 dealing with Statement of Claim stipulates:

"In actions in rem the Plaintiff SHALL, within 12 days from the appearance of the defendant, file his Statement of Claim in the Office of the Registrar and deliver a copy thereof to the Defendant, and the Defendant within fourteen days, after such delivery SHALL file his Statement of Defence in the office of the Registrar and deliver a copy thereof to the Plaintiff."
(Emphasis mine).

Mr. Braham contends that the sections quoted above make it abundantly clear that the rules prohibit the writ of summons being specially endorsed. He is fortified in his submission by the decision in Morgan v. M.V. Vacuna and Owners (1968) 15 N.I.R. 280, a judgment of the distinguished Jamaican Judge Parnell J. in which he held, inter alia, that -

- "(i) it is not competent to bring an action in rem in the Admiralty Jurisdiction of the Court by way of a specially endorsed writ of summons;
- (ii) that in any event, the claim brought was not in respect of a debt or liquidated demand and the procedure by way of specially endorsed writ was misconceived."

Parnell, J found solace in the decision in White v. M.V. Amaryllis (1949), High Court of Jamaica Action A2/1949 (unreported) in which McGregor J, as he then was, ruled in effect, that in an action in rem in Jamaica, the writ cannot be specially endorsed. Parnell J observed, in following the decision of McGregor J that he "was very experienced in matters of this kind".

Both the judgments of McGregor and Parnell JJ. are only persuasive and not binding upon me. I make this observation with the greatest of respect for the erudition of these two legendary Jamaican Judges.

Dr. Barnett submitted that Parnell, J erred when he ruled that the rules of the Admiralty Jurisdiction and the rules of the Supreme Court were kept separately from the inception of the Supreme Court.

Dr. Barnett contends that the decision of Parnell J is wrong in three respects:

- (1) The rules governing Admiralty matters are not the rules of an Admiralty Court or the old Vice-Admiralty Court but the rules of the Supreme Court itself; and that the Court administering the Admiralty Jurisdiction is the Supreme Court.
- (2) The rule making power as set out in section 43 of the Judicature (Supreme Court) Act Revised Edition (Laws of Jamaica) Law 1953 which came in force on June 1, 1953 applied to all rules and practices with respect to the Supreme Court.
- (3) The Admiralty Court itself was assimilated into the Supreme Court and unless specially excluded the Rules of the Supreme Court will apply in so far as they are applicable to Admiralty actions.

The decision of McGregor J was handed down in 1949 prior to the Civil Procedure Code (Amendment) Rules 1960, published in the Jamaica Gazette Supplement of March 21, 1960. Section 7 of the amended rules states as follows:

"Section 14 is hereby replaced and the following section is substituted therefor:-

14 (1). In any action other than one which includes -

- (a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or
- (b) a claim by the plaintiff based on an allegation of fraud; or
- (c) a Probate action

the writ of summons may at the option of the plaintiff, be specifically endorsed with or accompanied by a statement of claim."

Before addressing the effect of section 14, let me state that I am of the view that the rules made under the Admiralty Jurisdiction and referred to herein do not specifically prohibit a Writ of Summons filed under the Admiralty Jurisdiction being specially endorsed.

I am further of the view that section 14 of the Civil Procedure Code applies to all proceedings commenced in the Supreme Court unless expressly excluded by the rule. Worthy of note, is that section 14(1)(c) excludes a Probate action. Had the framers of the rules intended to exclude the application of rule 14 to an Admiralty action, they would have expressly done so as in the case of a Probate action.

As we approach the new millennium it would be a retrograde step to hold that an action fails because a Writ of Summons is specially endorsed with a Statement of Claim. In such circumstance, I would be prepared to order that

the endorsement be struck out and that a separate statement of claim be filed rather than set aside the writ on the ground that it is void and/or irregular. This course in my view is not, however, necessary.

In endorsing the Writ of Summons with a Statement of Claim there is absolutely no prejudice to the defendants. To accede to the defendants' application would be a classic case of "the forms of action ruling us from the grave".

The following appears in Atkin's Encyclopedia of Court Forms in Civil Proceedings 2nd Edition Volume 3 page 27 under the heading ADMIRALTY ACTION.

"The forms of endorsement of claim on the writ may be varied to suit particular cases. In cases where preliminary acts are filed (i) the writ will be generally endorsed, that is, endorsed with a concise statement of the claim made or the relief or remedy required (j). In other cases there is no reason why the statement of claim should not be endorsed on the writ, whether the action is in rem or in personam."

For these reasons, I hold that the Writ of Summons herein is neither void nor irregular.

FRIVOLOUS VEXATIONS AND ABUSE OF
THE PROCESS OF THE COURT

Mr. Braham submitted that on the terms of the salvage agreement there was no basis on which the defendants could be liable. The law of salvage which is recognised by Maritime Law recognises two types of salvos, to wit, volunteers and contract workers. Contract workers, he submitted, exclude volunteers.

The plaintiff having relied upon the agreement in writing is precluded from reliance upon the volunteer type of salvo.

The agreement, Mr. Braham contends, does not authorise the owners of the ship to contract on behalf of the cargo owners unless they can constitute themselves "an agent of necessity".

Without adverting to the submissions of Vassell, Q.C., it is sufficient to note that whether a person is properly constituted, an agent of necessity is a question of mixed law and fact. This, therefore, raises a triable issue to be determined by the forum dealing with the substantive action.

The motion, for the reasons stated herein, stands dismissed.

There will be costs to the Plaintiff/Respondent.