[2020] JMCC Comm 13

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE ADMIRALITY DIVISION

CLAIM NO. SU2020AD00002

BETWEEN	**WEST INDIES PETROLEUM LIMITED**	**CLAIMANT**
AND	**ASPHALT TRADER LIMITED (OWNERS OF M/T ASPHALT TRADER)**	**DEFENDANT**

Admiralty- Application to Strike out Claim – Application to release vessel from arrest – Claim for negligence and breach of contract- demurrage, loss of future profits and arbitration costs – Whether Claims in Rem – Assessment of security for claim.

K. Desai, A. Montaque instructed by Myers, Fletcher & Gordon for the Claimant

R. Foster, J. Hamilton instructed by Foster Galloway for the Defendant.

Heard: 2nd June and 10th July 2020.

IN CHAMBERS by ZOOM.

Cor: Batts J.

[1] This Admiralty Claim was filed on the 17th day of May, 2020 and amended on the 27th of May, 2020. Further Amended Particulars of Claim were filed on the 2nd day of June, 2020. The Claim arises out of a charterparty, by which the Claimant chartered a vessel from the Defendant, for a voyage with a cargo of fuel oil. It is alleged that the vessel caused damage to a fishing jetty in Suriname. This resulted in the Claimant incurring loss and expense. The Claimant alleges that, as the

vessel was under the control of the servants or agents of the Defendant, pursuant to the terms of the charter party, the Defendant is liable for all loss damage and expenses incurred by the Claimant as a consequence of the said collision.

[2] This Court considered an application, filed by the Claimant, for a warrant of arrest in respect of the motor tanker M/T Asphalt Trader which is owned by the Defendant. On the 17th day of May 2020, after considering the affidavit evidence before me, I made the following orders:

> 1. *"A Warrant of Arrest is issued in respect of the motor vessel, The M/T Asphalt Trader (the "Vessel") registered under the flag of Liberia, presently moored at the Port of Kingston in the parish of Kingston and any other place where it may be found in the jurisdiction of this Honourable Court.*
>
> 2. *The Admiralty Bailiff is ordered to effect the arrest by serving the Warrant of Arrest on the Vessel.*
>
> 3. *The Claim Form in Rem and Particulars of Claim filed herein be served on the Defendant by affixing it to the vessel known as the M/T Asphalt Trader.*
>
> 4. *Notice of this Application is dispensed with.*
>
> 5. *The Registrar is to fix an inter partes hearing within seven (7) days of this Order.*
>
> 6. *The Defendant and the Liberian Consulate, if any, are to be served with notice of the inter partes hearing.*
>
> 7. *Costs to be costs in the claim.*
>
> 8. *Claimant's Attorneys-at-Law to prepare, file and serve this Formal Order."*

[3] On the 17th of May, 2020, pursuant to the warrant of arrest issued on said date, the Defendant's vessel was arrested in the Port of Kingston, Jamaica. On 21st of May, 2020, the Defendant filed a Notice of Application for Court Orders seeking, the following orders:

1. *"The time for filing and serving this application is abridged.*

2. *That the Warrant of Arrest of M/T Asphalt Trader issued on the 17th May, 2020 by this Honourable Court be discharged on the basis that the claim herein does not constitute a claim in rem and the arrest of M/T Asphalt Trader is wrongful.*

3. *Alternatively, that all aspect of the claim as it relates to reputational damages, and in particular as it relates to alleged potential Loss of future Contracts with Paria Fuel Trading Company, be struck out on the basis that they do not constitute in rem claims and cannot ground arrest of M/T Asphalt Trader which is now being held pursuant to Warrant of Arrest issued on the 17th May 2020.*

4. *That the security for the release of the vessel, if any, be determined based on the revised claim for maritime liens after the claim for reputational damages are struck out for consideration for purposes of security.*

5. *Cost to the Applicant.*

6. *Applicant's Attorneys-at-Law to prepare, file and serve this Formal Order."*

[4] A further Notice of Application for Court Orders & Urgency was filed by the Defendant on the 22nd of May 2020, in which the Defendant applied for the following:

1. "The time for filing and serving this application is abridged.

2. A P&I Club LOU in the full amount of the claim with the reservation to reduce the quantum of security should it be ordered so by this Honourable court, shall stand as security for the Claimant's claim against the Defendant filed on the 17th May, 2020.

3. The M/T Asphalt Trader, now being held pursuant to Warrant of Arrest issued on the 17th May, 2020, is TO BE IMMEDIATELY RELEASED FROM Arrest upon the provision of the said P&I Club LOU without any further Order of the Court.

4. Costs to the Applicant and the Bailiff to be paid by the Claimant.

5. Applicant's Attorneys-at-Law to prepare, file and serve this Formal Order."

[5] On the 25th of May, 2020 I made the following orders:

> 1. *"The executed P & I Club LOU dated 25th May, 2020 with reference number 2019002126 from the West of England Insurance Services (Luxembourg) S.A in the sum of US$2,447,759.14 together with interest at a rate of 3% per annum and costs shall stand as security for the Claimant's claim against the Defendant filed on the 17th May, 2020.*
>
> 2. *The M/T Asphalt Trader, now being held pursuant to Warrant of Arrest issued on the 17th May, 2020, IS IMMEDIATELY RELEASED FROM ARREST.*
>
> 3. *Foster Galloway and Mr. Remone Foster are relieved from the following undertaking and Order made on the 20th May 2020:*
>
> *"All original documents required for the international passage of the Vessel shall be deposited with Foster Galloway prior to the sailing of the Vessel on the undertaking of Mr. Remone Foster not to part with possession, transfer otherwise deal with the said documents until the arrest is lifted.*
>
> 4. *Costs to the Claimant and Bailiff to be paid by the Defendant."*

[6] The vessel was therefore released upon the security being provided. The application now before me is that filed on the 21st of May, 2020 (see paragraph 3 above). The issue to be determined is whether the security required should be reduced, or the claim struck out, on the basis that the claim or some part of it does not constitute a claim in rem. Both parties prepared full written submissions with authorities. Oral submissions were also heard. I am grateful for the industry displayed by counsel and the assistance thereby provided.

[7] Counsel for the Defendant submitted that, upon a review of the Claim and Particulars of Claim, as amended and further amended, the claim is for negligence and/or breach of contract. The items of loss are as follows:

> a. Demurrage paid to the load port and claimed by the discharge port;
>
> b. Shifting costs at load port;

c. Cost of Tsunami Marine;

d. Legal fees to Lau Horton & Wise LLP

e. Cost of Oral Hearing for Arbitration;

f. Cost of Expert's Report;

g. Liability to Paria for Delay charges

h. Loss of contracts with Paria Fuel Trading (deemed reputational damages).

These, he submits, are not capable of being subject to maritime liens. None of them, counsel argues, give rise to a claim in rem or a maritime lien. They are either prior claims in personam or are future claims. Arbitration, for example, has not yet occurred. The claim, not being in rem cannot support the arrest of the vessel. It is on that basis, counsel argued that the arrest was improper.

[8] Alternatively the Defendant asserts that, if the court is minded to accept the claim as being properly invoked in rem, the amount of security should be determined by assessing that which is sufficient to meet the Claimant's 'reasonably arguable best case'. In support of this submission Counsel relied on the case of **The Moschanthy [1971] 1 Lloyd's Report 37.** It was submitted that the demurrage claim by the Claimant does not fall within the Claimant's 'reasonably arguable best case'. It is the Defendant's position that the Claimant breached the terms of the safety warranty when it allowed the vessel to load at an unsafe port at the material time. This in effect caused all of the delay, loss and demurrage costs that the Claimant faced. These costs flowed from the unsafe berthing and as such are liabilities of the Claimant. Counsel submits that on a careful review of Clause 8 of the charterparty the circumstances giving rise to this claim do not shift the responsibility of the demurrage from the Claimant to the Defendant. The Defendant further submits that the future cost of arbitration as outlined by the claim, being US $300,000.00, is not to be considered as a basis of determining the Claimant's "reasonably best case". This because this cost is based on an upcoming event and has not been incurred by the Claimant. It is unsupported by any documentary

evidence (such as a valid invoice from an arbitrator). It therefore is a speculative figure which should not be accepted by the Court without proper documentation. Counsel relied on the case of ***The Bazias 3 [1993] 2 Aller 964*** . At page 968 (d) that court cited with approval *Robert Goff LJ in* ***The Andria [1984] 1 All ER 1126 at 1135*** wherein he said:

> *"However, on the law as it stands at present, the court's jurisdiction to arrest a ship in an action in rem should not be exercised for the purpose of providing security for an award which may be made in arbitration proceedings. That is simply because the purpose of the exercise of the jurisdiction is to provide security in respect of the action in rem, and not to provide security in some other proceedings, e.g. arbitration proceedings."*

It is submitted that the cost of the arbitration is a likely award to be made at arbitration and should not be covered in the security for an action in rem.

[9] Defendant's counsel submitted further that the bulk of the claim is based on purported potential loss of future contracts with Paria Fuel Trading Company in the sum of US $1,906,616.07. This should not be considered as a part of the Claimant's 'reasonably arguable best claim'. Counsel relied on the case of ***The Kate [1899] P165*** as demonstrating that in the case of a loss due to a collision the proper measure of damages, against the vessel solely liable for the collision, was the value of the vessel at the end of the voyage plus profits lost under the charterparty. It was further submitted that the Claimant suffered no loss of profits arising from the charterparty because the charter was completed, and the goods were delivered. It was further submitted that reputational damage and/or loss of potential profits do not constitute in rem claims and therefore cannot ground an arrest.

[10] In light of the foregoing, Defendant's counsel submitted that a reasonable sum for the security of the claim, having regard to the 'reasonably arguable best case', is US $ 300,000.00.

[11] In answer Claimant's counsel relied on the ***Administration of Justice Act, 1956 (UK)*** in support of a submission that the admiralty jurisdiction of the Supreme Court may be invoked by an action in rem in three cases:

1. In cases mentioned in section 1 subsections (1) (a) to (c) and (s) of that Act (See Section 3(2));

2. Cases where there is a maritime lien or other charge on the ship (See Section 3(3)); and

3. In the case of claims at section 1 (1) (d) to (r), of the Act , if the person liable in personam was the beneficial owner of the vessel at the time the claim was brought (see Section 3(4)(a)).

[12] It is submitted by counsel that the claim falls squarely within section 1(1) (h) of the Act, being a claim which arises out of the charterparty. That is an agreement relating to the carriage of goods in the vessel and to the use and hire of the vessel. Counsel relied on evidence, in the affidavit of Gerald Charles Chambers filed May 17, 2020, that: (i) the Defendant would be liable on the claim even if it were not commenced in rem, (ii) the Defendant was, when the right to bring the claim arose, the owner of the Vessel, and (iii) at the time the claim in rem was issued the Defendant was the beneficial owner of all the shares in the vessel. The claim therefore meets all the requirements of section 3(4) of the Act and is properly a claim in rem. The Claimant submits that there does not need to be a maritime lien for there to be a claim in rem. In any event, the Claim does not purport to assert a maritime lien. The claim is for negligence and/or breach of contract and the heads of damages sought flow from that. The negligence claimed is that the Owner of the vessel, and/or its servants and/or agents, were negligent in failing to exercise due care and skill in the navigation and or operation of the vessel. This caused the blackout that resulted in the ship colliding with the fishing jetty. This resulted in delay, costs and expenses. Counsel relied on a decision of the House of Lords in ***Samick Lines Co. Ltd. V. Owners of The Antonis P. Lemos [1985] 1 A.C. 711***. That case made it clear that claims whether in contract or in tort, including negligence arising out of any agreement relating to the carriage of goods by a

vessel, could be brought within the admiralty jurisdiction of the Court. The claim is one in personam against the persons who owned the vessel at the time action commenced and is therefore a proper claim in rem pursuant to sections 3(4) and 1(1)(h) of the Act.

[13] The Claimant denies that it failed to select a safe port as alleged and states that the collision would not have occurred but for the fact that the Defendant's servants and/or agents failed to properly navigate the port. It is agreed that the amount of security for the claim should be based on its "reasonably arguable best case". It is submitted that the Defendant is unlikely to succeed and that the Claimant has an arguable case with a real prospect of success. It is submitted that a port is safe if the particular vessel on charter will only be exposed to danger through negligent navigation. It is argued that the expert commissioned by the Claimant, Andrew Moore & Associates (Singapore) Pte Ltd, has expressed the view that the Defendant's servants and/or agents were negligent in their navigation of the vessel. Further that the Claimant's best arguable case, supported by the law, experts, industry practice and the evidence generally, is that the owner and/or crew of the vessel were negligent in their operation of the vessel. It was this negligence that caused the power outage and ultimately the collision. The port was safe for the vessel.

[14] Counsel submitted further that the Defendant's servants and/or agents were extremely slow in discharging the fuel at the Paria Terminal. They failed to use or employ appropriate discharge devices. It is alleged in the claim that complaints were made about the slow discharge rate and the Defendant was notified that the Claimant would not accept the consequences of any delay caused by the slow discharge rate. On the 8th June, 2019 the Defendant's ship broker and agent advised the Claimant that laytime stopped during this period, that is, 72 hours of laytime had not been exhausted. This lead to the Claimant paying the demurrage under protest so that the cargo, which was already several days late, could be discharged to its customer. Counsel submits that Paria intended to levy charges

of US $10,500 for each day the fuel was late so it was in the Claimant's interest to mitigate its losses by paying the demanded demurrage cost. As regards the arbitration costs, Claimant's counsel submits that, it has been advised by its UK counsel that the cost for the arbitration hearing will be USD $300,000 see email dated 16 July 2019 exhibit GCC-16 to affidavit of Gerald Chambers filed 27th May 2020.There is also a quote of USD $3,000 for expert's reports for the arbitration. This is supported by email dated 11th July 2019 and part of the same exhibit "GCC-16".

[15] It is submitted that the claim for negligence arises out of the charterparty, and is therefore a claim in rem. The claim for lost contracts with Paria is not a claim for reputational damage but for lost opportunities. Counsel submits that the Claimant has provided evidence, see paragraphs 43-49 of the Affidavit of Gerald Charles Chambers filed on 27th of May, 2020, of this lost opportunity.

[16] I find that the law in this area is settled and clear. The court's jurisdiction is derived from ***Part 70 of the Civil Procedure Rules (2002)***. The ***Administration of Justice Act, 1956 (UK)*** is made applicable to Jamaica by virtue of The ***Admiralty Jurisdiction (Jamaica) Order in Council, 1962.*** The admiralty jurisdiction of the Supreme Court was discussed by me in ***Jebmed SRL v Capitalese SPA owners of M/V Trading Fabrizia et al (2016) JMSC Civ. 232 (unreported judgement delivered 23rd December 2016)*** at paragraphs 17 and 18. In that case I cited Sykes J (as he then was) in ***Matcam Marine Ltd v Michael Matalon (the registered owner of the Orion Warrior formally Metcam 1) Claim No 0002/2011 (unreported judgment 6th October 2011)*** where he states:

> *"22. From all this, it is clear that the Admiralty jurisdiction of the Supreme Court of Jamaica is grounded in section 2(2) of the Colonial Court of Admiralty Act of 1890 as modified in section 1 of the Administration of Justice Act. The Admiralty Order in Council of 1962 also applied sections 3,4,6,7 and*

8 to Jamaica. No statute or any other law has repealed or altered these statutes or Order in Council in relation to Jamaica. The Supreme Court Act of 1981 (UK) has repealed section 1 and the entire Part I of the 1956 Act but that 1981 Act does not apply to Jamaica. Procedural rules for the exercise of Admiralty jurisdiction of the Supreme Court came into being in 1893. These rules have now been repealed and replaced by Part 70 of the CPR. Let there be doubt no more."

[17] I now quote the relevant parts of the statutory provisions:

(a) ***The Civil Procedure Rules, (2002):***

Section 70.1

"(1) This Part applies to Admiralty proceedings including those proceedings listed in rule 70.2 and any other Admiralty jurisdiction of the court.

(2) The other provisions of these Rules apply to Admiralty proceedings subject to the provisions of this Part."

(b) ***The Admiralty Jurisdiction (Jamaica) Order in Council, 1962:***

Section 2 provides:

"The Colonial Courts of Admiralty Act, 1890 shall, in relation to the Supreme Court of Jamaica, have effect as if for the reference in subsection (2) of section two thereof to the Admiralty jurisdiction of the High Court of England there was substituted a reference to the Admiralty Jurisdiction of that court as defined by section one of the Administration of Justice Act, 1956,

subject to the adaptations and modifications of the said section one that are specified in the First Schedule to this order."

Section 3 states:

"The provisions of sections three, four, six, seven and eight of Part 1 of the Administration of Justice Act 1956 shall extend to Jamaica with the adaptations that are specified in Column II of the Second Schedule of this Order."

(c) ***The Administration of Justice Act, 1956 (UK):***

Section 1

"(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims-

(a) any claim to the possession or ownership of a ship or to the ownership of any share therein;

(b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;

(c) any claim in respect of a mortgage of or charge on a ship or any share therein;

(d) any claim for damage done by a ship;

(e) any claim for damage received by a ship;

(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default

in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(g) any claim for loss of or damage to goods carried in a ship;

(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

(j) to (r)….

(s) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the. restoration of a ship or any such goods after seizure, or for droits of Admiralty,"

Section 3

"(1) Subject to the provisions of the next following section, the Admiralty jurisdiction of the High Court, the Liverpool Court of Passage and any county court may in all cases be invoked by an action in personam.

(2) The Admiralty jurisdiction of the High Court may in the cases mentioned in paragraphs (a) to (c) and (s) of subsection (1) of section one of this Act be invoked by an action in rem against the ship or property in question.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, the Admiralty jurisdiction of the High Court, the Liverpool Court of Passage and any county court may be invoked by an action in rem against that ship, aircraft or property.

(4) In the case of any such claim as is mentioned in paragraphs (d) to (r) of subsection (1) of section one of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court and (where there is such jurisdiction) the Admiralty jurisdiction of the Liverpool Court of Passage or any county court may (whether the claim gives

rise to a maritime lien on the ship or not) be invoked by an action in rem against-

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

(5) to (8) "

[18] This claim falls within sections 1 (1) (h) and 3(4) of the Act. It therefore is a claim in rem. The claim is for negligence and breach of contract arising out of a charterparty entered into between the parties. This is indicated by the fact that, but for the charter party, the vessel would not have been at that port doing that delivery. Furthermore, the interpretation of the charterparty, for example the safe port clause, will be crucial to a resolution of the issues. In this regard the decision of the House of Lords in the "**Antonis P.Lemos**" case (cited at paragraph 12 above) is instructive. The act of negligence, there alleged, was the failure to ensure that the vessel's draught at the port of disembarkation did not exceed a contractually stipulated amount. The claim was brought in negligence because the defendant was a subcharterer who had no contractual relations with the claimant. The court decided that it sufficed, to make it a claim in rem, that reference had to be made to the charterparty in order to establish the draught limits so as to prove negligence. Their lordships adopted a wide and generous construction of the phrase "any *claim arising out of any agreement relating to the carriage of goods in a ship or the use or hire of a ship".* Section 3(4) applies where the owner, charterer or person in possession, is the beneficial owner of the ship at the time action is brought. The affidavit of Gerald Charles Chambers filed May 17, 2020, at paragraph 28, asserts that at the time the claim form was issued the Defendant was the beneficial owner of all the shares in the vessel. The Defendant has not denied this fact. I find that the claim is alleging negligence and/or breach of contract, arising out of the

charterparty and is a proper claim grounded in rem. The arrest of the vessel was therefore within the court's jurisdiction.

[19] On the matter of the amount of security the Claimant's counsel pointed to the fact that, although the Notice of Application referenced only an objection to the claim for "reputational damage", the Defendant's affidavit raised other aspects, see paragraph 25 of Claimant's written submissions. Full submissions were made on all aspects of the claim, by both parties, and therefore I will treat with them. Both counsel rightly submitted that the test, to determine the amount of security to be held, is based upon the "reasonably arguable best case" see, ***The Gulf Venture [1984] 2 Lloyd's Rep 445*** per Sheen J at 449:

> *"When plaintiffs are entitled to keep a ship under arrest until her owners provide security for their claim, that security must be for such sum of money as represents their reasonably arguable best case, including interest and their costs of the action."*

[20] I disagree with defence counsel that the cost for arbitration is unsupported by evidence. The evidence is contained in the affidavit of Gerald Charles Chambers filed 27th May 2020 and exhibit GCC-16. I do agree with Mr Foster however, that the security for the claim should not include these arbitration costs. This is because arbitration is the agreed process for dispute resolution under the charterparty. At the end of the arbitration process the successful party may receive an order for costs of the arbitration. The Claimant will be able to recover costs for arbitration there. The Claimant cannot proceed with this litigation and arbitration. At some point an election has to be made. It would not be right to secure the anticipated costs of arbitration as well as the costs of this litigation. The costs of arbitration should therefore not be included in the amount assessed for security.

[21] As it relates to legal fees the Claimant has provided sufficient evidence of the legal fees it has incurred, and will incur, in consequence of the collision and in order to pursue this claim, see exhibits GCC 14 and 15 to affidavit of Gerald Charles Chambers filed 27th May 2020. There is also an estimate from counsel in the United

Kingdom, whom it will have to retain, in relation to the fees for conducting arbitration in the United Kingdom. However, for the reasons stated in paragraph 20 above, the legal fees in relation to the arbitration should not be included.

[22] I now consider whether or not the demurrage and shifting costs incurred by the Claimant are to be included in the security. The shifting cost of US$531.74, payable at the load port, is supported by the affidavit of Gerald Charles Chambers filed on 27th May 2020 see exhibit GCC-8. The Claimant states that seventeen days after the incident it put up security for the damaged jetty in Suriname and the vessel was allowed to sail. Further it paid demurrage in the amount of US$184,458.33, see exhibit GCC-9 to the affidavit of Gerald Charles Chambers filed on 27th May 2020. This was paid after the vessel arrived in Trinidadian waters on or around June 29, 2019. The Claimant alleges that demurrage was paid in protest since the Defendant refused to discharge cargo unless demurrage claims, incurred in Suriname, were paid. This is despite being informed that laytime had stopped during the vessel's detention in Suriname. Payment of which, the Claimant states, amounts to liquidated damages for any delay of the vessel beyond laytime, and which is a breach of contract.

[23] I find that the demurrage claim falls within its 'reasonably arguable best case'. The vessel was under the control of the Defendant's servants and/or agents. The berthing was stationery. It was along a river and, on the evidence, it was common knowledge that at times the loading vessel's hull would touch the bottom during low tide while loading, see paragraph 3.2.4 of the expert report exhibited as GC3 to the affidavit of Gerald Charles Chambers filed 27th May 2020.The power outage, which resulted in a loss of control of the vessel, was caused by problems with the cooling system. It had become clogged with debris connected to the low water level. The collision was therefore directly related to the depth of the river. On this evidence the Claimant may credibly argue that those operating the vessel, in those waters, ought to have anticipated the effect on its cooling system. The Defendant has at this stage put forward no evidence, expert or otherwise, to support the

allegation of an unsafe port. The Claimant on the other hand gave evidence of the safe use of the port on a regular basis, see paragraphs 16 to 19 of the affidavit of Gerald Charles Chambers filed 27th May 2020. On the evidence before me the Claimant's reasonably argued best case includes loss, such as costs of delay or demurrage, resulting from the collision. There is also evidence that the Defendant's servants and/or its agents were extremely slow in carrying out their duty to unload the cargo. This notwithstanding a complaint concerning the slow discharge. The Claimant was in consequence charged demurrage costs of US$37,798.34. The evidence presented at this stage, is sufficient to support security which includes demurrage and related costs.

[24] The claim to loss of potential contracts was supported by emails. In an email dated June 12th, 2019, see exhibit GCC-17, to the affidavit of Gerald Charles Chambers filed on the 27th May 2020, Arnold Soogrim (representative of Paria) stated that *"Once this is done and contract amended we can sign off today. Once this is closed we can start talking the next delivery dates".* The Claimant has stated that profit from the 1st delivery was $317,402.95 (see GCC-18). On June 18, 2019, after the delays and complaints from Paria about the delays with the first delivery (the charterparty in dispute), Paria wrote the Claimant stating that the Claimant was "*unable to perform an attached contract for the reason of inability to provide clear supply window*". The Claimant has since then not done another delivery. The evidence at this stage suffices to support the allegation that delay from the 1st delivery between the Claimant and Paria has caused Paria to not employ the Claimant for further deliveries. The test is what is the 'reasonably arguable best case'. The Claimant has put forward evidence to support a position that, but for the action of the Defendant during the charterparty in question, they would have retained other contracts from Paria. Such a claim is possible, and on the evidence at this stage, quite plausible as such a loss is reasonably foreseeable, see ***The Owners of the Steamship 'Gracie' v The Owners of the Steamship 'Argentino' (1889) Vol XIV Law Reports HL (E) 519*** at page 523 per Lord Herschell:

> *"I think that damages which flow directly and naturally, or in the ordinary course of things, from the wrongful act, cannot be regarded as too remote. The loss of the use of a vessel and of the earnings which would ordinarily be derived from its use during the time it is under repair, and therefore not available for trading purposes, is certainly damage which directly and naturally flows from a collision. But, further than this, I agree with the Court below that the damage is not necessarily limited to the money which could have been earned during the time the vessel was actually under repair. It does not appear to me to be out of the ordinary course of things that a steamship, whilst prosecuting her voyage, should have secured employment for another adventure. And if at the time of a collision the damaged vessel had obtained such an engagement for an ordinary maritime adventure, the loss of the fair and ordinary earnings of such a vessel on such an adventure appear to me to be the direct and natural consequence of the collision."*

[25] I therefore find that the Claimant's reasonably arguable best case may yield the following:

1.	Demurrage paid to Load Port Paramaribo, Suriname	US$	184,458.33
2.	Shifting costs at Suriname port	US$	531.74
3.	Demurrage cost at discharge port Pointe a Pierre	US$	37,708.34
4.	Tsuanami Marine Consultants and Ship Surveyors	US$	3,000.00

5.	Lau Horton & Wise legal fees	US$	4,176.00
		US$	8,268.65
6.	Paria Delay Charges	US$	231,000.00
7.	Loss of Paria Fuel Trading Contracts		US$1,588,846.73
	Total		US$2,057,989.70

The security for release of the vessel should therefore be adjusted from 2,360,989.79 to 2,057,989.70.

[26] In result, and for the reasons stated above, the application to dismiss the arrest and release the security is dismissed. The security for release of the vessel is however reduced.

David Batts
Puisne Judge