



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN ADMIRALTY

CLAIM NO. A00004/2018

BETWEEN	F.T. MARITIME SERVICES LTD.	CLAIMANT
AND	LAMDA SHIPHOLDING LTD. (Owners of the M/V Pluto)	DEFENDANT

**In Admiralty – Application to strike out claim - Claim for payment for bunker fuel-
Whether claim in rem – Whether supply of fuel gives rise to a lien on the vessel-
Whether contract with ship owners - Counterclaim for wrongful arrest – Whether
summary judgment to be entered on counterclaim.**

Z. Lewis, instructed by AYN Associates, for the Claimant

**K. Desai and A. Montaque, instructed by Myers, Fletcher & Gordon, for the
Defendant.**

Heard: 26th March and 23rd April, 2020

IN CHAMBERS

BATTS J.

[1] There are two applications before me. One is the Defendant’s application, filed on the 5th November 2019, for the claim to be struck out and for judgment on the counterclaim. The other application is by the Claimant, filed on the 18th March, 2020, seeking a stay of the claim pending arbitration proceedings.

[2] The applications were heard together. Each party filed written submissions and, prior to commencement, agreed that 30 minutes would suffice for oral submissions. I decided to hear the Defendant first.

[3] The applications arise in consequence of an Order for arrest made, with respect to the motor vessel Pluto, on the 19th December 2018. The Order stated at paragraph 3:

“That this Order be made subject to the Claimant’s undertaking to stamp the Admiralty Claim Form in rem with the requisite sums and regularise any other procedural defects within 48 hours of the granting of this order.”

[4] A Claim Form was filed, on the 20th December 2018, accompanied by Particulars of Claim. The Defendant filed an Acknowledgement of Service on the 24th December 2018. On the 28th December, 2018 an Order was made, releasing the vessel, consequent to the provision of a letter of undertaking in the sum of US\$223,000.00. A Defence and Counterclaim was filed on the 1st February, 2019.

[5] It is the case for the Defendant that it had no contract with the Claimant for the supply of fuel, which is, the subject matter of this action. Furthermore, the Defendant contends that, the supply of bunkers does not create a maritime lien at law. There is therefore no relevant claim *in rem* against the vessel. The Defendants have counterclaimed, for damages, for the wrongful arrest of the vessel.

[6] The Claimant contends otherwise. Jermaine Reid ,an attorney at law, swore an affidavit dated and filed on the 19th December 2018 on the Claimant’s behalf. That affidavit, exhibited the invoice for fuel supplied, and asserted that no

payment had been made. In an affidavit, filed on the 18th March 2020 and sworn to by Tannece Green an attorney at law, it is asserted,

“(a) That on or about the 6th day of November 2018, the Respondent entered into an agreement with the Applicant for the supply of marine bunker fuel subject to Terms and Conditions, which indicate that the agreement shall be referred to Arbitration pursuant to the LMAA Rules currently in force.”

[7] The Particulars of Claim go into greater detail :

“3. The Defendant entered into a contract with the Claimant for the supply of bunker/fuel oil to the motor vessel M/V ‘Pluto’ owned by the Defendant.

4. The Defendant also received the Standard Terms and Conditions for the Sale of Marine Bunker Fuels, Lubricants and other Products (“The Terms and Conditions”). The following are relevant provisions of the Terms and conditions

“10.01 where product is supplied to a vessel in addition to any other security the Agreement is entered into and Product is applied upon the faith and credit of the vessel. It is agreed and acknowledged that a maritime lien against the vessel is thereby created for the Price of Product supplied and that the seller in agreeing to deliver product to the vessel does so relying upon the faith and credit of the vessel and that such maritime lien may be enforced in any court of competent jurisdiction.

12.01

12.02

12.03

5. *At all material times it was the understanding of both the Claimant and the Defendant that the Claimant is the company mentioned in the Standard Terms and Conditions for the sale of Marine Bunker Fuels Lubricants and other products.”*

[8] The Defendant by an affidavit of Litrow Hickson attorney at law, filed on the 5th November, 2019, exhibits contractual documents. He asserts that there is no contract between the Claimant and the Defendant. In this affidavit, which was unanswered by the Claimant, the Defendant says that the vessel was chartered to Atlantic Coal & Bulk SA (hereinafter referred to as ACB). The charter was dated August 17, 2018 and evidenced by a fixture recap attached as exhibit LH1 to the affidavit. The Time Charter agreement is attached as exhibit LH “2” and contains the following terms:

“(Line 264-266) Clause 23 Liens

The Charterers will not directly or indirectly suffer nor permit to be continued, any lien or encumbrance, which might have priority over the title and interest of the owners in the vessel. The Charterers undertake that during the period of this Charter Party, they will not procure any supplies or necessities or services, including any port expenses and bunkers, on the credit of the owners or in the Owner’s time.”

“Clause 67 no lien clause

... In addition to the obligations above Charterers, shall ensure that any supplies of bunkers or other services are on the credit solely of the Charterers and not on the credit of the vessel or owners or managers.”

- [9] There were additional clauses in the Time Charter, entitled BIMCO Bunker Non-Lien Clause for Time Charter Parties, which required the Charterer to advise suppliers by way of a “non-lien notice” that the owners were not responsible. The clause was also to be incorporated in any sub-charters. The Defendant’s affidavit under reference, by paragraph 9, indicates that ACB (the Charterer) sub chartered the vessel to Nordia Bulk A/S (“Nordia”). This charter incorporated the terms of the original charter between the Defendant and ACB. The affidavit further states that, on or around the 6th November, 2018, Nordia entered into an agreement for the supply of bunkers with Petrotec Bunkering (Ja) Limited. This is evidenced by a Bunker Delivery Receipt (exhibit LH5). Neither the contract nor the terms of supply were communicated to the Defendant at the time. The affidavit states at paragraph 13:

“Nordia therefore ordered and arranged the supply of bunkers, without using Owner’s credit in any way. Further, pursuant to clause 67 of the Time Charter agreement, Nordia was not allowed to bring bunkers on the credit of the vessel or the owners.”

- [10] More importantly the affidavit asserts that, at the time of the delivery of the fuel, the master of the vessel issued a letter of protest to the MT Sea Dweller (the barge which delivered the bunker/fuel oil). The letter stated (exhibit LH6):

“I Master of the mv ‘Pluto’ hereby declare, that the bunker received from mt Sea Dweller III IMO: 9254006 in port of Kingston, Jamaica on November 7, 2018 are for account of the Nordia Bulk A/S Ltd.

Whereof I the undersigned hereby note my protest against any dispute or irregularity may arise from your refusal to accept the stamp indicated below in your Bunker Delivery Note.

The goods and services hereby acknowledged, received for and/or ordered are being accepted solely for the account of Messrs. Nordia Bulk A/S Ltd. Charterers of mv Pluto and not for the account for said vessel or her owners, so no lien or other claim against said (sic) or her owner can arise thereof.”

This document is dated in print the 07.11.2011 (see the top right corner).

This is clearly an error as there is handwritten, below the master’s signature, the date: “07 Nov. 2018.”

- [11] The invoice for the bunker fuel was addressed to the Nordia, and is, exhibit LH 7. Nordia failed to settle the invoice. At paragraph 19, of the Hickson affidavit, it is stated that the Claimants failed to inform the Defendants of this fact prior to arresting the vessel. The Nordia’s charter party came to an end, and the vessel redelivered to the Defendant, on the 8th November 2018. The order for arrest, you will recall, was made on the 19th December 2018.
- [12] It is against this background that the Defendant submits there is no basis in law to hold them accountable or to arrest the ship. The Claimant’s counsel on the

other hand asserts that, as a matter of law and notwithstanding the contractual provisions alluded to, the supply of bunker created a lien on the vessel.

- [13] The Claimant says that it has a maritime lien and that the action constitutes a claim in rem. Reliance is placed on Section 80 (a) (ii) of the Shipping Act. The relevant portion of that section says –

“Subject to the provisions of this Act, the following claims in relation to the operation of a ship shall be secured by a maritime lien –

(a) claims for

i. ...

ii. masters disbursements or liabilities made or incurred on account of the ship.”

It is contended that, as the ship could not sail without fuel, it was a liability incurred on account of the ship.

- [14] I disagree. Section 80 (a) (ii) of the Shipping Act is speaking to disbursements or liabilities incurred by the Master of the vessel. These become chargeable to the vessel by law. The bunker fuel was not purchased by the Master of the vessel. Indeed, by his notation, he made it clear it was not chargeable to the vessel's owners. The authorities, cited by the Defendant, make it clear that in English law there is no maritime lien automatically imposed for the supply of necessities, see ***Kamal Hassanein v The “Hellenic Island” [1991] LRC (Comm) 109***, and, ***Angara Maritime Ltd. v Oceanconnect UK Ltd. and another: the Fesco Angara [2011] 1 All ER (Comm) 193 @ page 204 para 39***.

- [15] The position is underscored by reference to section 3 (2), of the Administration of Justice Act 1956 (UK), which states that the Admiralty jurisdiction for a claim in rem may be invoked in cases mentioned in subsections (1) (a) to (c) and (s) of section 1 of that statute. The supply of bunkers, or necessities, is not among

them. Section 3 (3) makes it clear that an action in rem is also possible where there is a maritime lien. Subsection (4) of section 3 states that the claims at paragraphs (d) to (r) of Section 1 (1), which includes goods or material supplied for a ship's operation or maintenance, may be the subject of a claim in rem only if the person liable in personam was the beneficial owner of the vessel at the time the claim was brought. The Administration of Justice Act 1956 (UK) ,or rather parts of it, forms part of the law of Jamaica. See the discussion at paragraphs 17 and 18 of my judgment in ***Jebmed SRL v Capitalese SPA owners of M/V Trading Fabrizia et al [2016] JM SCCiv 232 (unreported judgment delivered 23rd December 2016)*** and also, per Sykes J (as he then was), in ***Matcam Marine Ltd v Michael Matalon (registered owner of the "Orion Warrior" formally "Matcam 1") Claim No 0002/2011 (unreported judgment delivered 6th October 2011)***.

- [16] If there is no claim *in rem* the Claimant cannot succeed. This is because, as we have seen, there is no contractual claim to be pursued in personam against the ship's owners. Furthermore, as there is no lien imposed by our maritime law, there is no basis to keep the vessel arrested. It follows that the Defendant's application to strike out the claim succeeds and the Claimant's application to stay fails.
- [17] The Defendant also seeks judgment, on the counterclaim, which is summarised at paragraph 5 above. The Defence to Counterclaim, filed by the Claimant on the 25th March 2020, asserts that (1) a maritime lien existed for the supply of the fuel (ii) by signing the contract Nordia held itself out as agents of the owners, and (iii) the vessel benefitted from the supply and therefore it gave rise to a claim *in rem*. It is apparent, for reasons indicated earlier, that these assertions have no real prospect of success.
- [18] That is not however the end of the matter. In order to succeed, on its counterclaim for damages for wrongful arrest of the vessel, the Defendant must prove that the Claimant acted maliciously and/or without reasonable or probable

cause, see *97 Hals (2015) para 755, The Evangelismos [1858] XII Moore 352* and *The Cathcart (1867)1 LR A&E 314*. The fact that the Claimant was in error, when applying for the vessel's arrest, does not necessarily give rise to a right to damages. The question will arise whether there was reasonable or probable cause for the Claimant to believe that it had such a right. Triable issues of fact therefore arise for determination. The counterclaim ought therefore to go to trial.

[19] The Defendant made other submissions concerning (a) the fact that the warrant of arrest was issued prior to the filing of the Claim and (b) the absence of certain formalities in the Claim when filed. It is contended that these rendered the Claim and the arrest nullities. When regard is had to my other conclusions I have not found it necessary, or desirable, to decide these issues. They were not sufficiently addressed by the Claimant in argument and, for that reason also, I decline to comment.

[20] In the final analysis my orders therefore are:

- a) The Claim is struck out and the application for a stay of proceedings refused.
- b) Parties are to proceed to Case Management Conference on the Defendant's counterclaim.
- c) Costs to the Defendant to be taxed or agreed
- d) If necessary an Order is made discharging the arrest and releasing the undertaking.

David Batts
Puisne Judge