GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHAM2008/0001

IN THE MATTER OF AN INTENDED ACTION
THE VESSEL "CARIBBEAN SOUL"

BETWEEN:

KREG MARTIN

Claimant

and

STEVE BONNER

Defendant

Appearances:
Mr. James Bristol for Claimant
Mrs. Avril Trotman-Joseph for Defendant

2009: April 9

JUDGMENT

[1] **CUMBERBATCH, J.:** The Defendant is the owner of the vessel 'Caribbean Soul' ('the ship'). The Claimant and the Defendant on or around the 12th June 2007 entered into a loan agreement ('the agreement') whereby the Claimant loaned to the Defendant the sum of US$750,000.00, the terms and conditions whereof are set out in a promissory note of even date. The said promissory note is secured by a preferred marine mortgage ('the mortgage') dated the 17th July 2007.

[2] Article V of the said mortgage provides that it shall be displayed on the ship. Paragraph 6(d)(5) of the agreement provides that the Defendant shall acquire and maintain a GPS tracking device that automatically reports the position of the ship daily to an intended accessible server.

[3] The Defendant also agreed to communicate to the Claimant the general geographic position and the intended itinerary of the ship at least 15 days in advance of its movement.

[4] Article VII of the mortgage is of significance to this action. That article provides:

> "The Defendant's failure to comply with all the terms and conditions of the Mortgage and/or the Agreement shall be an event of default and that should the said default continue for 7 days after written notice by the Claimant to the Defendant, the principal sum together with interest shall be immediately due and payable and that the Claimant may take possession of the ship if such sums are not paid forthwith and that the Claimant may without notice increase the interest rate to 8% per annum until paid."

[5] The Claimant alleges that the Defendant is in breach of Article V of the mortgage and paragraph 6(d) (5) of the agreement. The Claimant by a letter dated 24th April 2008 notified the Defendant of the alleged breach of paragraph 6(d) (5) of the agreement. By a letter dated the 6th May 2008 the Claimant notified the Defendant of the alleged breach of article V of the mortgage.

[6] The Claimant asserts that despite receipt of the letters aforesaid the Defendant has failed to remedy the alleged breaches set out therein and as a result the provisions of Article VII have been invoked. On the 26th May 2008 the Claimant filed a claim form claiming the following relief:

"Amount claimed	US$750,000.00 (@ 2.7169)	EC$2,036,675.00
Court Fees		EC$ 2,500.00
Legal Practitioner's costs on issue		EC$ 25.00
Together with interest thereon up to 25th April 2008	US$ 25,983.61	EC$ 70,594.87
(Daily rate thereafter = EC$446.39 per day)		
Total Claim		**EC$2,109,794.80"**

[7] On the 24th May 2008 the Court heard an ex parte application filed by the Claimant and granted the following orders:

"1. The Defendant must not remove from Grenada or Prickly Bay, Grenada or in any way dispose of or deal with or diminish the value of his asset namely the Vessel "CARIBBEAN SOUL".

2. The Defendant may cause this Order to cease to have effect if the Defendant provides security by paying the sum of US$794,191.00 into Court or makes provision for security in that sum by another method agreed with the Claimant's Legal representatives.

3. The said vessel shall be removed to the Grenada Coast Guard base at True Blue in the parish of St. George until further order by the Court.

4. The Return Date for the further hearing of this matter shall be the 30th day of May 2008."

[8] The orders granted on the 24th May 2008 were varied in the following terms:

"**IT IS ORDERED THAT**: -

1. The Injunction granted herein on the 24th May 2008 be varied as follows:

(i) The Ship "Caribbean Soul" be removed under the supervision of Grenada Coast Guard to the facilities of the Grenada Marine at St. David's Harbour and hauled out there for safekeeping until further order."

[9] On the 26th May 2008 the Registrar of the Supreme Court of Grenada issued a warrant for the arrest of the ship. A caveat of even date was also entered.

[10] The Defendant on the 5th June 2008 filed an application seeking the following relief:

"1. The Claimant deposits into the High Court Registry a minimum sum of One Million Eight Hundred Thousand Dollars Eastern Caribbean Currency and the same be held by the Registrar to settle any judgment and costs found against the Claimant.

2. The dismissal and/or variation of the Order made on the 24th day of May 2008 and varied on the 26th day of May 2008 by the Honourable Justice Francis Cumberbatch.

3. The Warrant of Arrest and Caveat entered on the 26th day of May 2008 be discharged."

[11] This application was superseded by an application of the 19th June 2008 accompanied by an affidavit of even date. An additional affidavit was also filed by the Defendant on the 8th August 2008. I will refer to these two affidavits later in this judgment.

[12] At the hearing of the applications by the Defendant two issues emerged for the Court's determination. These are whether the injunction granted herein should be discharged and as a consequence the warrant of arrest and caveat be discharged; and secondly, whether Grenada is the ***forum conveniens*** for the hearing of these proceedings.

[13] It is common ground that the injunction has been superseded by the issue of a warrant of arrest of the ship. Notwithstanding this, however, the Defendant sought the discharge of the injunction on the following grounds:

1. Non compliance with the Civil Procedure Rules 2000 ('the CPR');

2. Material non disclosure;

3. The failure of the Claimant to properly notify the Defendant of the proceedings.

[14] Counsel for the Defendant submitted that the Order of the 24th May 2008 did not contain the undertaking for damages as is required under part 17.2(2) of the CPR, nor does it contain the notice required under Part 11.16(3) of the CPR. Counsel further submitted that no reasons were advanced by the Claimant in his application for an interim ex parte injunction as to why notice thereof was not given as is required in Part 17.3(3) of the CPR.

[15] An examination of the relevant documents reveals that the Order of the 24th May 2008 does contain both the undertaking as to damages and the notice required under Part 11.16(3) of the CPR. The Court was satisfied that in all the circumstances the need for

speed and urgency in the pursuit of this application was good reason for not giving notice. The Court finds that the first ground for the discharge of the injunction fails.

[16] On the ground of non disclosure Counsel submits that the Claimant knew of the general whereabouts of the ship as a result of information conveyed by the Defendant's attorney in California to the Claimant's attorney, also in California. Counsel contended that the Claimant knew that the ship was headed to Brazil and that there were on going communications between the parties' California attorneys on general matters. Hence, there was no real risk of the dissipation of the asset. It was further submitted that the Court was not informed of litigation in the State of California commenced by the Defendant against the Claimant.

[17] It was further submitted to the Court that the evidence does not disclose that the Claimant was acting in good faith in the making of his application and that in all the circumstances it would be inequitable to allow the injunction to remain in force as the Defendant would continue to suffer loss of earnings before the hearing and determination of the substantive matter.

[18] The Claimant's Counsel contends that the Defendant by his own admission in paragraph 5 of his affidavit of the 19th June 2008 and in his affidavit of 5th June 2008 concedes that the GPS system was not yet in operation. She further contends that the ***raison d'etre*** for obtaining the injunction was to keep the ship within the jurisdiction of Grenada to facilitate the institution of Admiralty proceedings in rem.

[19] Counsel denies that the Claimant was at the time of the institution of these proceedings aware that the Defendant had commenced proceedings against him in California as it was not until the 1st June 2008 that same was served on him.

[20] In her closing submission on this issue Counsel for the Claimant stated that her client had no knowledge of the matters which he allegedly failed to disclose and in any event those matters were neither material nor relevant to the injunctive order.

[21] It is trite law that in all cases for injunctive relief there is the obligation on the part of the Applicant to have clean hands. Indeed, the more draconian the relief sought, the greater is

the obligation to have clean hands. Lord Donaldson summed up the position in **Bank Mellat v Nikpour (Mohammad Ebrahim)** [1985] Com. L.R. 158 at 159:

> *"It was so well enshrined in the law that no injunction obtained **ex parte** should stand if it had been obtained in circumstances in which there had been a breach of duty to make the fullest and frankest disclosure that it was difficult to find authority for the proposition; it was trite law. Happily the court had been referred to the dictum of Warrington L.J. in **R. v. Kensington Income Tax Commissioners, ex p. Princess Edmond de Polignac** at 509, where it was said that if a person did not make the fullest possible disclosure he would be deprived of any advantage he might have already obtained by means of the order."*

[22] In the same case Donaldson L.J. categorised the Mareva and Anton Piller injunctions as the law's two 'nuclear' weapons. In **Columbia Picture Industries Inc v Robinson** [1987] Ch. 38 Scott J. said that the affidavit evidence in support of an application for an Anton Piller order should err on the side of excessive disclosure and that the same approach applies to an application for a Mareva. The Claimant is also required to make sufficient enquiries in satisfying his obligation to make full and frank disclosure.

[23] The Court has applied these principles of law in determining whether the Claimant falls afoul of his obligation to make full and frank disclosure of all material facts. The Court does not agree with the submission by Counsel for the Claimant that the matters which the Claimant allegedly failed to disclose were neither relevant nor material. The fact of existing legal proceedings in another jurisdiction involving the same parties is a material fact which could influence the Court's decision to grant or not to grant the injunctive relief sought. The fact that the proceeding in California was an action in personam makes does not affect its significance. The Court is however satisfied that the Claimant did not become aware of the California proceedings until June 1st 2008.

[24] The Court is also satisfied that the GPS at the time of the application was still not in operation.

[25] The Defendant has alleged, however, that the Claimant was at all times aware of the general location of the ship. There is evidence in an e-mail exhibited in the Defendant's affidavit of the 19th June 2008 that the Claimant was on the 29th April 2008 enquiring as to the whereabouts of the ship. There is also evidence from the insurers advising the

Defendant in an e-mail of 12th September 2007, exhibited to the Defence as **"SB2"** requesting an itinerary for his proposed trip to the Caribbean and advising him that the Caribbean was not included in his scope of navigation.

[26] The Court in considering this issue has viewed with alarm the contents of an affidavit of the Defendant dated 8th August 2008, more particularly paragraphs 2 & 3 thereof which state thus:

> "2. I am willing to comply with a structured Order varying the Orders of the 24th and 26th May 2008 respectively, in order to operate Charters within the jurisdiction of the Organisation of the Eastern Caribbean States, until the hearing and determination of this matter, so that I can meet my financial obligations, including the maintenance and upkeep of my family, including my dependents and myself.
>
> 3. Further to this intention to operate in the said jurisdiction based in Grenada, I have obtained offers of Charters from Charter Wholesalers Dick Schoonover at Charter Port BVI and Horizons Yacht Charters, GIA Info and Activities Limited of Grenada, and berthing by Port Louis of Grenada. Copies of the said offers are hereto attached and marked **"SB2A to SB2D"**."

[27] Attached to this affidavit are exhibits **"SB2A", "SB2B", "SB2C",** all of which comprise correspondence between the Defendant and prospective charterers.

[28] The Court's Order on the 24th May 2008 stated *inter alia* that the Defendant 'must not ... in any way deal with ... the Vessel "Caribbean Soul". It is clear from the contents of these documents that the Defendant does not consider himself constrained to comply with the Orders of the Court even whilst the matter is *sub judice*. He has been involved in a frolic of his own to charter and sail the ship to destinations of his choosing.

[29] The Court is satisfied that the evidence relied on by the Defendant to establish that the Claimant is guilty of material non disclosure does not meet the required threshold. In the circumstances this ground fails as well.

[30] The third ground relied on by the Defendant for the discharge of the Injunction is that the Defendant was not duly served with the Demand Notices of the 24th April and 6th May 2008. Article XVI of the mortgage provides:

> "All notices required under this mortgage shall be sufficient if in writing and shall be deemed given upon actual receipt when any of the following events occurs:
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> (i) when personally delivered
>
> (ii) when mailed, certified mail, return receipt requested postage prepaid
>
> (iii) when sent by confirmed facsimile transmission, or
>
> (iv) when delivered by reputable overnight courier, to the address of the party receiving such notice as set forth above, or such other address as such party may designate by notice duly given pursuant to Article XV."

[31] The Notice dated 24th April 2008 states on the face of it that it was sent by registered mail-return receipt requested, whilst the Notice dated 4th May 2008 states on its face that it was sent by certified mail-return receipt requested. The Court is satisfied that the prescribed procedure was adhered to by the Claimant and pursuant to the provisions of Article XVI aforesaid the Defendant is deemed to have received same. This ground also fails.

[32] The Court has also considered the submissions of Counsel for the Defendant as to hardship to her client if the injunction is allowed to continue. Whilst the Court acknowledges the real possibility of hardship being experienced by the Defendant, the balance of convenience is in favour of continuing the injunction as to do otherwise would result in the release of the ship which could completely frustrate the Claimant's claim and render nugatory any judgment obtained by him. The Court also finds that damages would be an adequate remedy for loss occasioned by the grant of the injunction. Thus the applications for the discharge of the injunction and the discharge of the arrest warrant and caveat fail.

[33] I now turn to consider the issue of ***forum non conveniens***. The Defendant contends that the proceedings should be stayed as the State of California in the United States of

America is the more appropriate forum for the trial of this matter. The Defendant in advancing this submission relies on the choice of law clauses in the Mortgage, the Agreement and the Promissory Note.

[34] Article XVII (e) of the Mortgage provides:

> "This PREFERRED MARINE MORTGAGE shall be governed and construed in accordance with the laws of the United States."

[35] Clause 12(i) of the Agreement provides:

> **APPLICABLE LAW:**
>
> "The validity, interpretation and implementation of this agreement shall be governed by the laws of the State of California except as those matters which are governed by the maritime law of the United States."

[36] The Promissory Note provides:

> "This Promissory Note and Marine Mortgage securing the same have been executed under and shall be construed and enforced in accordance with the maritime laws of the United States."

[37] The validity of the aforesaid clauses has not been challenged by the parties. However, proceedings instituted by the Defendant in California have since been discontinued. I will refer to this matter again later in my judgment.

[38] The Claimant submits that these proceedings are an Admiralty action in rem and that Article VIII (3) of the Mortgage gives the Claimant the right to bring admiralty proceedings if the Defendant is in breach of any of its provisions. Article VIII (3) provides:

> "(3) Bring suit at law, in equity or in admiralty, as they may be advised, to recover judgment for any and all amounts due under the PROMISSORY NOTE or otherwise hereunder and collect same out of any and all property of the MORTGAGOR whether covered by this PREFERRED MARINE MORTGAGE or otherwise."

[39] The Claimant further submits that by virtue of Article VIII aforesaid it should be inferred that the Defendant accepts that the action in Admiralty could be brought anywhere that the vessel is located. Thus he cannot now seek to fetter or deny the Claimant's right to bring an admiralty action in Grenada where the ship is located. Counsel went on to contend that the Court will only assume jurisdiction in an admiralty action where the res is within its territorial waters. Counsel submits that it follows that as this action is an admiralty one the most appropriate jurisdiction is the one where the ship is located and that is in Grenada.

[40] Counsel submits that if the application for a stay is granted and the ship is released, there is no guarantee that the ship will be within the jurisdiction of the United States to commence proceedings. Thus if California is found to be the appropriate forum then the Claimant if successful will be deprived of the fruits of his judgment as the Defendant will have sole possession and control over the res. The Court's attention was drawn to the e-mail from the insurers aforesaid and the contents of paragraph 3 of the Defendant's affidavit of 8th August 2008. In this regard Counsel submitted that the Defendant has demonstrated that he is not prepared to adhere to directives but to act on his own accord. In the event of the ship being released as a consequence of a stay she submits that there is the real likelihood of the Claimant being unable to pursue his claim in the admiralty courts of another jurisdiction and the dissipation of the res.

[41] It was submitted that it does not follow that because the choice of law is the law of California and the United States that the only appropriate jurisdiction is the United States. Counsel also contended that there is no jurisdiction clause in the mortgage, promissory note or agreement.

[42] The principles of law to be applied in determining this issue were set out in the case of **Spiliada Maritime Corporation v Cansulex Limited** [1987] 1 AC 460. At page 476 in **Spiliada** it was stated:

> *"The basic principle is that a stay will only be granted on the ground of 'forum non conveniens' where the court is satisfied that there is some other available forum having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice."* (emphasis added)

[43] These principles were approved and adopted by Gordon JA in the unreported decision of the Court of Appeal in **IPOC International Growth Fund Ltd and LV Finance Group Ltd et al**, BVI Civil Appeal Nos. 20 of 2003 & 1 of 2004. In that decision Gordon JA set out the principles of law propounded by Lord Geoff of Chieveley thus:

> "1. The starting point, or basic principle, is that a stay on the ground of *forum non conveniens* will only be granted where the Court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum, for the trial of the action. In this context, appropriate means more suitable for the interests of all the parties and the ends of justice.
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> 2. The burden of proof is on the defendant who seeks the stay to persuade the Court to exercise its discretion in favour of a stay. Once the defendant has discharged that burden, the burden shifts to the claimant to show any special circumstances by reason of which justice requires that the trial should nevertheless take place in this jurisdiction. Lord Goff opined that there was no such presumption, or extra weight in the balance, in favour of a claimant where the claimant has founded jurisdiction as of right in this jurisdiction, save that "where there can be pointers to a number of different jurisdictions" there is no reason why a Court of this jurisdiction should not refuse a stay. In other words, the burden on the defendant is two-fold: firstly, to show that there is an alternate available jurisdiction, and secondly, to show that the alternate jurisdiction is clearly or distinctly more appropriate than this jurisdiction.
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> 3. When considering whether to grant a stay or not, the Court will look to what is the "natural forum" as was described by Lord Keith of Kinkel in **The Abidin Daver**, "that with which the action has the most real and substantial connection." In this connection the Court will be mindful of the availability of witnesses, the likely languages that they speak, the law governing the transactions or to which the fructification of the transactions might be subject, in the case of actions in tort where it is alleged that the tort took place and the places where the parties reside and carry on business. The list of factors is by no means meant to be exhaustive

but rather indicative of the kinds of consideration a Court should have in exercising its discretion.

4. If the Court determines that there is some other available and prima facie more appropriate forum then ordinarily a stay will be granted unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. Such a circumstance might be that the claimant will not obtain justice in the appropriate forum. Lord Diplock in **The Abidin Daver** made it clear that the burden of proof to establish such a circumstance was on the claimant and that cogent and objective evidence is a requirement."

[44] The aforesaid principles in **Spiliada** were also approved and applied by the House of Lords in the case of **Lubbe and others v Cape PLC** [2000] 4 All ER 268. At paragraph (17) Lord Bingham of Cornhill stated how the Court should consider and determine an application of forum non conveniens:

> "*17. In applying this principle the court's first task is to consider whether the defendant who seeks a stay is able to discharge the burden resting upon him not just to show that England is not the natural or appropriate forum for the trial but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is had to the fact that jurisdiction has been founded in England as of right (**Spiliada**, page 477). At this first stage of the inquiry the court will consider what factors there are which point in the direction of another forum (**Spiliada**, page 477; **Connelly v R.T.Z. Corporation Plc**. [1998] AC 854 at 871). If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, that is likely to be the end of the matter. But if the court concludes at that stage that there is some other available forum which prima facie is more appropriate for the trial of the action it will ordinarily grant a stay unless the plaintiff can show that there are circumstances by reason of which justice requires that a stay should nevertheless be granted. In this second stage the court will concentrate its attention not only on factors connecting the proceedings with the foreign or the English forum (**Spiliada**, page 478); **Connelly**, page 872) but on whether the plaintiff will obtain justice in the foreign jurisdiction. The procedural advantages, or a higher scale of damages or more generous rules of limitation if he sues in England; generally speaking, the plaintiff must take a foreign forum as he finds it, even if it is in some respects less advantageous to him than the English forum (**Spiliada,** page 482; **Connelly,** page 872). It is only if the plaintiff can establish that substantial justice will not be done in the appropriate* forum that a stay will be refused (***Spiliada***, page 482; ***Connelly***, page 873).

[45] The Court finds that the Supreme Court of Grenada is seised of jurisdiction to hear and determine this matter. Article VIII (3) of the mortgage grants to the parties the right to institute admiralty proceedings without restrictions as to jurisdiction. Hence jurisdiction of the Supreme Court of Grenada is well founded. In light of the Defendant's application, however, the Court must consider whether there are factors which point to another forum as being more appropriate.

[46] In deciding whether the Defendant has discharged the burden on him I must consider the fact that the parties have decided that the governing law on matters of interpretation of the mortgage, agreement and promissory note is the law of the State of California and the maritime law of the United States. It is also common ground that the parties are ordinarily resident in California. Indeed, the relevant documents in these proceedings were all executed in California. Though no evidence has been provided on this matter I am also required to consider the question of the relative availability of witnesses and the expense involved in procuring expert witnesses. I must also take into account the nature of the legal issues involved herein and the logistical and practical factors such as the trial process. Counsel for the Defendant has directed the Court's attention to the dictum of Brandon J. in **the "Eleftheria"** 1969 Vol. 1 Lloyds Law Rep 237 who opined thus:

> *"I recognize that an English Court can, and often does, decide questions of foreign law on the basis of expert evidence from foreign lawyers. Nor do I regard such legal concepts as contractual good faith and morality as being so strange as to be beyond the capacity of an English Court to grasp and apply. It seems to be clear, however, that, in general, and other things being equal, it is more satisfactory for the law of a foreign country to be decided by the Courts of that country. That would be my view, as a matter of common sense, apart from authority. But if authority be needed, it is to be found in* ***The Cap Blanco, sup.****, per Sir Samuel Evans, P. at p. 136. and in* ***Settlement Corporation and Others v. Hochschild****, [1966] Ch. 10, per Mr. Justice Ungoed-Thomas, at p. 18. This last case was not cited to me in argument but appears to me to be helpful on the general point involved.*

[47] I find that these are matters which show that the State of California is another available forum which prima facie is more appropriate for the trial of this matter.

[48] That, however, is not the end of the matter as I must now consider whether justice requires that a stay be granted. It is incumbent on the Claimant to establish that substantial justice will not be done if a stay is granted.

[49] Counsel for the Claimant has urged that if a stay is granted and the ship released there are no guarantees that the ship will be in the territorial waters of the United States so as to enable her client to institute proceedings in an American court in the admiralty jurisdiction.

[50] The Courts of this jurisdiction have from time to time heard and determined cases which involved the application of foreign law. Expert testimony on foreign law has been received and that has assisted the Court to adjudicate on those matters. The issues to be tried as evidenced in the Amended Statement of Claim are for various sums of money due and payable on demand on the promissory note arising from breaches of the conditions of the mortgage. It has not been urged to the contrary and the Court finds that these are uncomplicated matters with which our Courts are not unfamiliar. The Court has not been apprised of any evidence to the effect that the maritime laws of the United States and the relevant laws of California are uncertain, complicated or cumbersome. The Court has considered the fact of the discontinuance of proceedings in California by the Defendant and the contents of a letter from his attorney in California to the Claimant's attorney in California in which it is stated:

> "Re: Bonner v Martin
>
> Dear Mr Gruft:
>
> Mr. Bonner has elected for the present to let the proceeding in Grenada to run its course.
>
> A dismissal is enclosed herewith.
>
> Sincerely yours,
>
> James Roberts
> Attorney at Law"

[51] The Court understands from this letter that the Defendant notwithstanding his application herein has instructed his attorneys to discontinue the California proceedings in deference to the proceedings in Grenada.

[52] The Court is cognizant of the fact that the res is held under arrest in Grenada. Thus in the event of the action being stayed the Court is required to determine the question of the release of the ship.

[53] Section 8 of the West Indies Associated States (Supreme Court (Grenada) Act Cap 336 of the Laws of Grenada provides:

> *"8. The High Court shall have and exercise all such jurisdiction in Admiralty and the same powers and authorities incidental to such jurisdiction as immediately before the prescribed date were vested in the former Supreme Court, and reference to the former Supreme Court in the Admiralty Jurisdiction (Grenada) Order 1964, shall be deemed to be a reference to the High Court."*

[54] By Statutory Instrument 1661 of 1964 the Admiralty Jurisdiction (Grenada) Order came into effect on the 16th October 1964. Those sections of the Administration of Justice Act 1956 with the necessary adaptations and modifications which pertained to the Admiralty Division of the High Court of England became part of the laws of Grenada.

[55] In the case of **The Golden Trader** [1975] Q.B. 348 Brandon J. held that in admiralty cases where a ship is under arrest and the grant of a stay is discretionary, as in foreign jurisdiction clause cases, the Court if it thinks fit may order the release of the ship upon the condition of alternative security being provided.

[56] The Court in the circumstances is not minded to order an unconditional release of the ship on the grant of a stay. The Court finds the dictum of Ritchie J. of the Supreme Court of Canada in the case of **the "Capricorn"** [1977] Vol 1 Lloyd's Law Rep 181 at 185 to be quite compelling;

> *"I think it is important to note that special considerations apply in the administration of admiralty law and the regulation of shipping, and in this regard I find it pertinent to refer to a passage from the dissenting judgment of Lord Simon in the Atlantic Star which appears to me to give forceful expression to the effect to be given to the statutory right in rem in admiralty. Lord Simon there said in part:*
>
> > *Ships are elusive. The power to arrest in any port and found thereon an action in rem is increasingly required with the custom of ships being owned singly and sailing under flags of convenience. A large tanker may by negligent navigation cause extensive damage to beaches or to other shipping: she will take very good care to keep out of the ports of the convenient forum."*

[57] The Court is aware that the Defendant did not pursue a previous application for the release of the ship on bail because of financial constraints, hence if the Court is minded to order a stay and the release of the ship on condition of the provision of alternative security the Defendant would undoubtedly be unable to provide same.

[58] The Court will not grant a stay for proceedings to be instituted in the United States on some date in futuro, at the convenience of the Claimant whilst the ship remains under arrest in Grenada. The Court finds that that would not be in best the interest of all parties and the ends of justice. The Court finds that as hereinbefore stated there is no evidence of extreme difficulty or expense for the parties to provide the Court with expert evidence on the relevant laws of the State of California or the maritime law of the United States. There is also no evidence of difficulty in accessing witnesses and documents for a hearing in Grenada, and of course there is no language barrier. It is common ground that both parties are represented by attorneys in California during the course of their on-going dispute, thus it would not be difficult for them to access expert evidence of the law in that jurisdiction for the benefit of the Grenadian Courts.

[59] There have been filed in the matter herein an Amended Statement of Claim, a Defence and several Affidavits. Thus this matter could be ready for trial in this jurisdiction in short order. The trial process here can be controlled by the Courts to prevent any or any inordinate delays therein to the detriment of either party.

[60] Thus in the circumstances and for the reasons hereinbefore stated the Court will not grant a stay of the proceedings and orders that the substantive matter be proceeded with due expedition.

Francis Cumberbatch
High Court Judge