Intervenor

[2016] JMSC Civ 232

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2016 A00003

BETWEEN	**JEBMED S.R.L.**	**CLAIMANT**
AND	**CAPITALEASE S.P.A. OWNERS OF M/V TRADING FABRIZIA**	**DEFENDANT**
	X/O SHIPPING A/S	**INTERVENOR**
	LIGABUE S.P.A.	**INTERESTED PARTY**

Admiralty Law – Ship under arrest – Application to intervene by Charterer - Whether order for sale pending trial ought to be made – Whether valid claim to the fuel – Mortgagee of vessel – Whether court has jurisdiction to order sale pending trial – Whether vessel ought to be released – Security for release.

Appearances: Emile Leiba, Trudy-Ann Dixon Frith instructed by DunnCox for the Claimant
Malaica Wong, Krishna Desai and Amanda Montague instructed by Myers Fletcher & Gordon for the Defendant.
Mikhail Jackson instructed by Livingston Alexander & Levy for the Intervenor.
Tavia Dunn and Arlene Williams instructed by Nunes Scholefied Deleon & Co. for the Interested Party.

Heard: 21st, 22nd and 23rd December 2016
IN OPEN COURT
COR: BATTS J

[1] On the first morning of hearing I disclosed to all parties that in a previous life I had been a partner at the firm Livingston Alexander & Levy which represents the applicant for intervention. Each party appearing before me indicated that they had no difficulty

with my proceeding to hear the matter. Having considered submissions, I, on the 23rd December 2016, made the orders detailed at paragraph 26 below. I promised then to put my reasons in writing at a later date. This judgment is the fulfillment of that promise.

[2] There were four applications before the court:

a) An Amended Notice of Application filed on the 28th November 2016 seeking an Order for Sale of the M/V Trading Fabrizia.

b) An Application filed on the 12th December 2016 seeking an Order for the Release of the vessel.

c) An Application filed on the 2nd December 2016 by X/O Shipping A/S seeking leave to intervene in the proceedings.

d) A Notice of Preliminary Objection filed by the Defendant.

[3] The several bundles and documents before me were by agreement marked as follows for ease of reference:

a) Index to Judges Bundle filed on the 16th December 2016 – Bundle 1
b) Index to Defendant's Judges Bundle filed 19 December 2016 – Bundle 2
c) Supplemental Index to Judges Bundle of Documents filed 20 December 2016 – Bundle 3
d) Notice of Application and Affidavit of Mikhail Jackson filed 2 December 2016 – Bundle 4
e) Affidavit of Amanda Montague filed 21 December 2016 – Bundle 5
f) Index to Bundle of Submissions in Support filed 19 December 2016 – Bundle 6
g) Index to Bundle of Submissions on behalf of the Defendant filed 19 December 2016 – Bundle 7
h) Submissions on behalf of Ligabue S.P.A. filed 20 December 2016 – Bundle 8

[4] I decided to first hear the application to intervene. It was submitted that X/O Shipping had an interest in the property under arrest. They had purchased the bunker C oil which was in the vessel. It had been done after the ship was arrested. However, they had not been informed that the ship was arrested. X/O I should explain had chartered

the vessel and the purchase of the fuel was purportedly in accordance with the terms of the charter. The Defendant opposed the application to intervene. It was contended that there was no proof that the fuel had been paid for and that until it was paid for it remained the property of "Aegean." That entity had not sought to intervene. In my view that is an issue best determined when the merits of the matter is being considered. For the purposes of the application to intervene I look no further than the claim to an interest in the fuel by X/O. It was best, and I so decided, to allow intervention. I gave X/O audience at this interlocutory application for the sale of the vessel. It was on the face of it X/O's obligation to the Defendant to provide fuel in relation to the Charter, whatever the contractual position between X/O and Aegean (the supplier of the fuel).

[5] There followed an objection by the Claimant to the Defendant being allowed to rely on an Affidavit of Amanda Montague filed on 21 December 2016. The objection related to an exhibit to that Affidavit which purported to be an opinion on the law of Italy. Mr. Leiba complained that he had only been served with the document on the morning of the hearing at 8:49 a.m. He had not been given an opportunity to take instructions. Furthermore, he submitted, the opinion was irrelevant to issues I had to decide. The decision whether or not to sell at the interlocutory stage, Mr. Leiba submitted, involved considerations of the law and practice in Jamaica. Ms. Wong by way of reply indicated that the legal opinion addressed issues in the claim. The Defendant ,she said, would proceed without reference to that document. The Affidavit in question also exhibited a report on the vessel, its condition and value. Mr. Leiba indicated that for present purposes he could proceed if the legal opinion was removed from the affidavit. In the result I therefore directed that exhibit AM 28 and paragraph 5 of the affidavit were to be struck out and disregarded. The affidavit would otherwise stand.

[6] I indicated that having read the respective submissions I wished to hear from Ms. Wong. The Defendant should indicate why the vessel ought not to be sold at the interlocutory stage and why it is they felt it should be unconditionally released. I would thereafter hear from the other parties. Ms. Wong would then be afforded a reply.

[7] It is convenient at this juncture to outline the facts and circumstances which resulted in this matter before me.

[8] The claim is filed in Admiralty. The Claimant seeks payment of US$699,046.38 and interest being an amount secured by mortgage dated the 11th May 2016 over the M/V Trading Fabrizia. Affidavits filed by attorneys on behalf of the Claimant assert that:

a) The Respondent (owners of the vessel) and the Claimant entered into a Master Agreement on the 5th May 2016 which allowed the Claimant to provide commercial management of the vessel and provide financial credit to the Defendant. This credit was secured by a mortgage of US$900,000.00 over the vessel (see Affidavit of Trudy-Ann Dixon Frith filed 30 October 2016).

b) The mortgage was granted on the 11th day of May 2016 and registered with the Registrar of Ships in Voletta in the Republic of Malta. The mortgage was supported by Deed of Covenants dated 5th May 2016. The deed was to be read with the Master Agreement. (See Exhibits TDF 1,2,3 and 4 of the Affidavit of Trudy-Ann Dixon Frith filed 30 October 2016)

c) It was an expressed term of the Deed of Covenant that in the event of default the security becomes immediately enforceable (Clause 7 of the Deed of Covenant).

d) The Claimant provided commercial management services including chartering services for which a fee payable by equal monthly instalments was due. The Claimant also gave financial credit to the Respondent in the amount of US$48,820.00 prior to the execution of the Master Agreement.

e) On the 16th September 2016 the Claimant issued an invoice to the Respondent for services rendered pursuant to the Master Agreement and the Ship Agreement in the amount of US$699,046.38.

f) By way of a further agreement between the Claimant and the Defendant, the Claimant agreed to provide additional credit to a maximum of US$90,000.00. The purpose was to allow delivery of cargo in Haiti. This further agreement is known as the Private Agreement. The Claimant contends that the Respondent acknowledged its indebtedness to the Claimant in this agreement.

g) In breach of the terms of the Private Agreement the vessel left Haiti and came to Jamaica. It is contended that the sum due and owing has not been paid.

h) The Claimant also asserts that the vessels' Hull and Machinery insurance has lapsed due to non-payment of premium since the 25th September 2016.

i) It is contended that the Defendant is impecunious and that there are several other creditors. The crew members they say are disgruntled and are being kept in abject conditions aboard the vessel.

j) The costs of arrest continue to accrue daily.

[9] The Defendant has filed a Defence and Counterclaim. In summary it is denied that US$699,046.38 is due and owing. It is alleged that the Claimant breached the Ship Management Agreement in various respects. Damages are claimed. By affidavits sworn to by Amanda Montague of counsel the Defendant takes no issue with the fact that the various agreements alleged were entered into. However the following facts are asserted:

a) Hurricane Matthew, a category 4 hurricane, made landfall in Haiti on the 4th October 2016.

b) The vessel having arrived in Haiti on the 26th September 2016 discharged its cargo. The vessel was moved to Laffiteau anchorage on the 24th October 2016.

c) The Claimant was advised that the Defendant wished to move the vessel to Kingston Jamaica in order to refuel and to put the vessel to safety. This was because refueling in Haiti was not possible due to the hurricane's impact.

d) The vessel is now valued at US$10,500,000.00 (see Exhibit AM11 to the Affidavit of Amanda Montague filed on the 16 December 2016).

e) Opportunities for trade with the vessel have been lost since its arrest.

f) The claimed amount includes items not due to the Claimant and those were particularized. Furthermore it was the Claimant's obligation to pay for insurance costs.

g) The Private Agreement was signed in order to obtain further finance. It was only after it was signed that the Defendant found out that the Claimant had invoiced for things not properly due.

h) It is alleged that the Claimant failed to establish accounting systems and failed to distribute to the owners hire earned by the vessel. It is also contended that the Claimant by its conduct jeopardized the possibility of the owners obtaining payment from the vessel's charterers.

i) That the vessel is in good condition and the crew well taken care of (see Affidavit of Amanda Montague filed 21 December 2016 and exhibits AM26 and AM27).

j) The Defendant is willing to provide a bank statement in the amount of US$400,000.00.

[10] By Order made on the 30th October 2016 the vessel was arrested in Kingston, Jamaica at the instance of the Claimant.

[11] The Defendant relied on written and oral submissions when opposing the application for an Order of Sale and in support of their application for release from arrest. The submissions may be summarized thus:

a) There is no jurisdiction to Order a Sale of a vessel in the circumstances of this case. Rule 70.13 which sets out the procedure for sale "at any stage of proceedings" is not substantive law and cannot create a power where none exists.

b) The Admiralty Laws since 1840 only grant a power of sale where there is a dispute between co-owners. There is no other power to sell a ship prior to a Judgment being entered.

c) In this case there is no default judgment and there cannot be a summary judgment as Rule 15.3(e) of the Civil Procedure Rules precludes summary judgment in admiralty proceedings in rem.

d) The Constitution of Jamaica precludes the wrongful deprivation of property. Therefore the ship cannot be sold prior to a determination of the issues.

e) The expressed statutory provisions trump the case law in which courts have, in England, ordered a sale at an interlocutory stage.

f) The arrest of the vessel by the Claimant was unlawful and in breach of the Private Agreement in that:

   i. No agreement was reached as to a port to be designated, and

   ii. The vessel was arrested prior to the agreed deadline of October 31st and therefore prior to 5 working days elapsing.

g) If the court does not agree with the prior submissions, an Order for Sale is inappropriate on the facts of the case. Firstly, because the condition and value of

the vessel is far in excess of the amount claimed. Secondly, because there are triable issues on the merits of the claim. The Defence is that there is no amount due under the mortgage and that the Private Agreement extinguished obligations under the mortgage. Thirdly, the unlawful arrest has cost the Defendant loss for which along with its other breaches there is a counterclaim and set off for damages. Any failure to insure was caused by the acts of the Claimant.

h) Finally, the Defendant submitted that if the vessel is not to be released or sold the amount due to secure its release ought to be reduced. This is because certain expenses are included in the account which either have been paid or were not for the Defendant's account under the various agreements. In particular the Defendant focused on the "severance costs" of US$250,002.25. This they submitted was never agreed under the Ship Management Agreement. The Defendant, they urge, should be asked to provide security for no more than US$400,000.00.

[12] Ms. Wong's submissions were supported by authority and were well structured. In similar vein were the submissions of Mr. Leiba for the Claimant. He also submitted "speaking notes". The Claimant's arguments may be summarised thus:

a) The jurisdiction to Order a Sale in the Admiralty jurisdiction predated the statutory provisions in Admiralty. The Act when properly construed does not limit the circumstances in which an Order for Sale can be made, it only adds a further such circumstance. In this regard there is no statutory power for sale where there is a default. The jurisdiction to Order a sale is therefore inherent.

b) This was an appropriate case to Order a Sale because each day the vessel remained under arrest costs increase. The length of time to trial may be considerable. Furthermore the vessel was not insured and it was manifest that the Defendants were in financial difficulty and unable to raise the necessary bond.

c) Issue was taken with the allegation that the Claimant had breached the agreements or raised unlawful charges. In particular it was contended that the obligation to insure was the Defendant's. The severance costs were also for the Defendant's account.

d) The Defendant had expressly admitted its indebtedness when the Private Agreement was executed and hence the case on liability was overwhelming. The

Private Agreement had not extinguished the mortgage or the other two agreements. It had been entered into to facilitate collection of the amounts outstanding and the making of further advances. He urged that an immediate Order for Sale be made pending the trial of the issues. Mr. Leiba helpfully referred to several authorities on each point.

[13] The intervenor, by its counsel Mr. Mikhail Jackson, made submissions with respect to the court's jurisdiction to Order a Sale and the treatment of the proceeds of such sale. The intervenor spoke in favour of the jurisdiction and its exercise. However, as they had supplied fuel to the vessel after it had been under arrest, they wished an Order providing for the removal of such fuel prior to any sale. Alternatively if sold the proceeds of sale of the bunker C oil in the vessel should be treated separately and orders made to protect the interest of the intervenor. The fuel had been supplied pursuant to the terms of the Charter and was to be used for the Charter. At the time no one informed the intervenor that the vessel was under arrest. The Charter had been terminated and therefore the fuel ought to be returned. If the vessel were to be released the bond should take into account the value of the fuel supplied by the intervenor.

[14] The interested party Ligabue S.P.A. by their counsel, were content to rely on their written submissions (Bundle 8) and to adopt the Claimant's submissions. They were Claimants in another action and had obtained an Order for Arrest of the vessel. They supported an Order for Sale of the vessel.

[15] In her reply Ms. Wong sought to distinguish the cases relied upon by the Claimant. As regards the intervenor's position she submitted that there was no evidence that the intervenor had paid for the bunker C oil supplied. Property had not therefore passed and hence the intervenor had no locus standi to make the application.

[16] On the matter of the jurisdiction to Order a Sale at this interlocutory stage, that is prior to trial or entry of a judgment in default, it is clear to me that this inheres in a power to arrest. The court, insofar as it has the power to determine what happens to the res in any case pending trial must, in the interest of justice, have the power to determine in what form that res may be retained. In the **Myrto [1977] 1LL Rep 243** there was little

doubt that the jurisdiction existed, the only issue was the circumstances in which it would be exercised. Brandon J at page 260 of the report said,

> *"The question whether an order for the appraisement and sale of a ship under arrest in an action in rem should be made pendente lite arises normally only in a case where there is a default of appearance or defence. In such a case it has been a common practice for the court to make such an order on the application of the plaintiffs on the ground that, unless such order is made, the security for their claim will be diminished by the continuing costs of maintaining the arrest, to the disadvantage of all those interests in the ship, including if they have any residual interest, the defendant's themselves."*

With respect to the source of the jurisdiction Lord Brandon stated (at page 259):

> *"There was some discussion before me as to the sources of our court's power to make such an order and rather more discussion as to the principles on which the power should be exercised.*
>
> *So far as the sources of the power are concerned it appears to be derived, in the first place at least, from the inherent jurisdiction of the court exercised before the Judicature Acts by the High Court of Admiralty and inherited by the unified High Court created by these Acts."*

Justice Brandon explained the dearth of authority on the question by the fact that in most cases of this type when a Defendant appears they almost always obtain the release of the ship by signing a bond or other security. If they did not appear a judgment in default and sale would almost invariably follow.

[17] Jamaican courts also inherited this jurisdiction which in my view inheres in any power to control the res (i.e. the subject matter of a suit) pending the trial of the claim. If statutory support for the passing on of this power is required it may be found in the Admiralty Jurisdiction (Jamaica) Order in Council 1962 made on the 29th March 1962. Orders 2 and 3 provide:

> *"2. The Colonial Courts Admiralty Act 1890(a) 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.

3. The provisions of sections three, four, six, seven and eight of Part I of the Administration of Justice Act 1956 shall extend to Jamaica with the adaptations and modifications that are specified in Column 2 of the Second Schedule to this Order."

The Schedules when read serve to adapt the provisions to Jamaica. The explanatory note to this constitutional measure reads :

"This Order provides that the Supreme Court of Jamaica which is a Colonial Court of Admiralty shall have the Admiralty jurisdiction of the High Court of England as defined in section 1 of the Administration of Justice Act 1956 with certain modifications. It also extends certain of the provisions contained in Part I of that Act to Jamaica."

[18] 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**, Sykes J very helpfully set out the historical roots of the High Court of Admiralty in Jamaica. I respectfully adopt and apply his words in that regard :

"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."

[19] Ms. Wong's effort to raise a doubt about the extent of that jurisdiction also fails. Her very intriguing argument was that the sections of the Administration of Justice Act 1956 (UK) which were applied to Jamaica limited the circumstances in which a sale may be ordered pendent elite to matters involving questions between co-owners as to possession, employment or earnings of the ship. The submission fails to take account of the fact that nowhere does the Admiralty Act provide for a sale of the vessel after judgment. The logical extention of her argument would be that there is no such power. Secondly and more to the point section 1(2) is an inclusionary provision and is not by inference or expressly or otherwise limiting the court's power. The section is indicating that the power to determine disputes between co-owners includes a power to direct a sale of the vessel and division of its proceeds. It really has nothing to do with applications pending trial (pendente lite).

[20] The Defendant's effort to argue that the power of sale is unconstitutional also fails. An Order for Sale pendente lite is not depriving a person of their right to property without compensation. The purpose of the order is to preserve the value of such property pending a trial. The Constitution prohibits compulsory taking of possession and the compulsory acquisition of an interest in property except under a law which provides for compensation and secures a right of access to a court to the persons claiming an interest in the property. The Defendant at the end of this process will have received both compensation and a fair hearing. I should say that, although not necessary for my decision, I do not agree with the Claimant's assertion that such a complaint may only be made against the State.

[21] On the question whether or not this is an appropriate case to exercise the power of sale pending trial, I am equally satisfied that it is not now appropriate to make such an order. My reasons may be shortly stated:

a) The Defendant has raised triable issues. Some of these turn on the construction of written agreements in accordance with foreign laws. It is not necessary to and I express no opinion as to the merits of the defence at this juncture. Suffice it to say that factual and legal issues will have to be determined.

b) There is before me prima facie evidence that the vessel is in a relatively good condition. Also that it has a value which far exceeds the sum total of the known

claims against the owners. A court, I think, ought to be slow to order a sale which may of necessity reduce the price obtainable on the open market and where the owner has considerable equity remaining.

c) My enquiry of the Registrar of the Supreme Court, and which I communicated to the parties in the course of the hearing, revealed that if a speedy trial were ordered trial dates in April and July might be obtained.

d) At the request of the court, counsel provided evidence of the costs related to the arrest of the vessel. These amounted to US$ 4762.50 per day. At that rate, and given the value of the vessel, even 6 months delay ought not, all other things being equal, to adversely impact the Claimant's position.

[22] This case is therefore to be distinguished from many of the authorities cited by the Claimant. In particular the "Myrto". In those case the vessels were either in poor condition and wasting away or, as in the case of the Myrto, the value US$650,000 was in danger of, if not already, overtaken by the many claims and the accruing costs of the arrest pending a trial which, all told, exceeded US$1 million.

[23] I am also persuaded by Ms. Wong's contention that the claim is unlikely to succeed in respect of $250,000 claimed for "severance costs" and that in consequence any bond to be stipulated as a condition for release ought not to take that into account. Whereas the other items of dispute in the Defence will turn on arguable issues of fact and law, this matter of "severance costs" seems fairly straightforward. It turns on a construction of the Master Agreement which incorporated the standard terms for commercial Ship Management with modifications. The Ship Agreement is Exhibit TDF2 to the Affidavit of Trudy-Ann Dixon Frith filed on the 30th October 2016. That part of Clause 8.4 referencing the payment of severance costs and the cap thereon was deleted. Although I of course do not decide the issue, in the exercise of my discretion as to the amount of security which is adequate before the release of the vessel is granted, I bear in mind that the Claimant's case as regards $250,000.00 for severance is on the face of it rather weak.

[24] I however disagree with Ms. Wong on her position as regards the duty to insure. Mr. Leiba, on a fair reading of the Agreement, is on stronger ground. The obligation to secure and maintain insurance is that of the owner. (See Clause 6). The advance

stipulated for H&M insurance was ultimately to be repaid by the owners. The duty to insure was and remains the responsibility of the owners, or at any rate at this interlocutory stage it seems more probable than not that a court may ultimately so hold. As indicated above much turns on the applicability of Italian law and I express no final view. I must however at this interlocutory stage bear in mind the probabilities.

[25] Insofar as the intervenor's submissions are concerned it seems to me that their interest ought to be protected. Ms. Wong argued that the intervenor has not proved it owns the fuel because there is no evidence it has paid the supplier. That might be so. However the supplier has an enforceable agreement for the purchase price of the fuel. The supplier is perhaps not interested in reclaiming the fuel from the vessel. It does not need to because the intervenor by contract has to pay for that which has been delivered. It is the intervenor therefore who has an equitable claim to the fuel now in the vessel. If the vessel is released with the fuel, the charter having been terminated, or if the vessel and fuel are ordered sold, the intervenor may lose the fuel and remain liable to pay the supplier. Equity will for the purpose of this interlocutory order treat as done that which ought to be done. The intervenor clearly has locus standi and a legitimate claim to the protection of a court considering the release or sale of the vessel.

[26] It is for the reasons stated herein and against the factual background outlined above, that on the 23rd December 2016 I made the following Orders:

1) X/O Shipping A/S is permitted to intervene in this application.
2) The Application for sale is refused.
3) The vessel shall be released to the Defendant on the following conditions:
   (a) Upon satisfactory proof being provided to the Claimant that the vessel has Hull & Machine Insurance coverage.
   (b) Upon the provision of a bond, guarantee or undertaking satisfactory to the Claimant in the amount of US$450,000.00 and a bond, guarantee or undertaking satisfactory to the Intervenor in the amount of US$139,000.00.
   (c) As an alternative to the requirement at (b) that the Defendant pays into court or into a joint account in the names of the attorneys for the parties at a financial institution agreed between the parties the amounts of

US$450,000.00 and US$139,000.00 to abide the final determination of this matter.

(d) In exchange, for conditions (b) or (c) being met the Intervenor shall provide an indemnity satisfactory to the Defendant in respect of the said US$139,000.00 against a claim by Aegean.

4) Compliance with conditions set out in Order 2(a) (b) or (c) and (d) shall be by way of affidavit evidence and thereafter certified by the Registrar of the Supreme Court.
5) There shall be a speedy trial of this matter.
6) Trial by judge alone in Open Court.
7) Trial dated fixed for the 3rd to 7th April 2017.
8) In the event the conditions for the Release of the vessel are not satisfied by the 3rd April 2017 the Claimant shall be at liberty to renew its application for survey appraisal and sale of the vessel.
9) Case Management Orders as follows:
   a) Standard disclosure of documents on or before the 30th January 2017.
   b) Inspection of Documents on or before the 13th February 2017.
   c) Witnesses limited to 3 Ordinary and 1 Expert for each party.
   d) Witness Statements to be filed and exchanged on or before the 6th March 2017.
   e) An agreed Statement of Facts and Issues is to be filed on or before the 17th March 2017.
   f) Parties are to agree a bundle of documents if possible and the Claimant is to file said agreed bundle of documents on or before the 17th March 2017.
   g) In respect of documents not agreed and which the parties intend to adduce in evidence, Notices of Intention to adduce in evidence and/or Notices under the Evidence Act, are to be filed and served on or before the 24th March 2017.
   h) Counter Notices are to be filed and served on or before the 19th March 2017.
   i) Listing Questionnaires to be filed and served on or before the 29th March 2017.
   j) Pre-trial review fixed for the 30th March 2017 at 10:00 a.m. and for 1 hour.

10) Liberty to Apply.

11) Costs in the Claim.

12) Permission to appeal granted to the Claimant.

David Batts
Puisne Judge