

03-03-2021

**COMMONWEALTH OF THE BAHAMAS  
2021/COM/adm/FP/0004  
IN THE SUPREME COURT  
Admiralty Division**

**BETWEEN  
ISS FREEPORT LIMITED  
Plaintiff  
and  
THE OWNERS OF THE M/V GRAND CLASSICA  
Defendant  
and  
FREEPORT HARBOUR COMPANY LIMITED  
Intervenor**

**BEFORE:** The Honourable Justice Petra M. Hanna-Adderley

**APPEARANCES:** Mr. Edwin Knowles for the Plaintiff  
Mrs. Kenra Parris-Whittaker along with Jacy Whittaker for Paradise Cruise Line Owner Ltd. the Owners of the Motor Vessel "Grand Classica", the Applicant

**HEARING DATE:** February 23, 2021

**RULING**

**Hanna-Adderley, J**

1. This is an application by the Paradise Cruise Line Owner Ltd. ("**the Applicant**") for the Release from arrest of the Motor Vessel "Grand Classica" pursuant to Order 67 Rule 13 (4) of the Rules of Supreme Court ("**RSC**") and/or the Courts inherent jurisdiction by providing security for its Release; for an order setting aside the Warrant of Arrest filed herein on January 15, 2021, costs and for such other relief as to the Court seems just. This application was commenced by way of a Summons filed February 16, 2021, supported by the Affidavit of Shakira Clarke filed February 19, 2021. The Owners rely on written Submissions augmented by oral Submissions made on February 23, 2021.

2. The Plaintiff meets this application with the Affidavit of Philip Pinder filed herein on February 23, 2021 and oral Submissions made on February 23, 2021.

3. Order 67 Rule 13 (4) provides:

"(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent."

And Order 67 Rule 13 (6) provides:

"(6) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal either — (a) pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release; or (b) lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred. "

4. There is usually some urgency associated with arrest applications and the Court in most cases will err on the side of caution and arrest the vessel. At this juncture the Court is concerned with satisfying itself that the Plaintiff has made out a prima facie case and that the security being proffered by the Applicant to secure the release of the Vessel is sufficient. The parties have not been able to arrive at a consent position in respect of the amount of the security.
5. Admiralty Marshall's fees are prescribed by statute although it is not unusual for the Admiralty Marshall to include the fees of his staff /or agents. Security services usually have to be engaged in order to arrest and keep secure the Vessel and legal fees incurred by the Plaintiff in having had to engage Counsel to carry out this exercise. The Plaintiff is also entitled to interest on the sum due to it. These are charges and expenses that the Court must consider when determining what sum is reasonable to cause the Owners to set aside as security for the claim.
6. Mr. Edwin Knowles, Counsel for the Plaintiff submitted, in part, that by February 1, 2021 he and Mr. Kevin M. Sheehan President of the Applicant had arrived at a Consent position for the Release of the Vessel. That the Plaintiff had agreed, among other things, to accept a Personal Guarantee from Mr. Sheehan, Admiralty Marshall's fees, Security costs, interest and legal fees totaling as at that date \$144,850.50. That once the Applicant retained

Counsel the Applicants position changed. That the attorneys intend to challenge the entire Writ of Summons and Statement of Claim. That now the sticking point between the parties is that the Defendant does not wish to include or add onto that sum any additional costs such as future legal fees and would prefer to go to trial. Mr. Knowles admitted that he had received the sum of \$144,850.00 from the Defendant already but that this money was sent and received at a time when the parties had a consent position. That more legal fees have been incurred between February 1 and 17.

7. Mrs. Kenra Parris-Whittaker submitted, in part, that the proposed LOU was amended to change the jurisdictional clause to that of only the laws of The Bahamas would apply. That the position of the Owners is that the amount of the security is based on the Plaintiff's best arguable case. That from correspondence between Mr. Michael Hall and Lisa Schilling exhibited to Shakira Clarke's Affidavit the amount as of November 2020 owed to the Plaintiff was \$301,679.47. That the LOU usually covers the claim plus interest and cost. That the Plaintiff cannot claim for costs owed to third parties, eg Bahamas Customs. The Plaintiff is also claiming for future legal costs in the sum of \$224,000.00 when this action may not proceed to a trial but to another interlocutory application to determine whether the claim can be sustained. Further the Plaintiff has already been paid over \$60,000.00 in legal fees, which covered a time when the Applicants had not yet engaged Counsel. She estimated that any further legal fees in any subsequent interlocutory hearing would not exceed \$15,000.00. She submitted that what was being asked for was excessive and that this would only serve to increase damages at the end of the day. She submitted that LOU should be at best in the sum of \$400,000.00 which would allow for \$100,000.00 in future legal fees.

### **Analysis and Conclusion**

8. The email correspondence from Mr. Hall to Mrs. Lisa Schilling who wrote:  
"Good afternoon Lisa please see attached report  
This is all the out of pocket expenditure from last year totaling some \$301,679.47 out of the \$917,685.39  
Once all out of pocket is paid we can transfer the balance of expenses to BPCL to be settled directly with vendors, we can document and complete this process in writing."
9. Based on an email from Mr. Oneil Khosa to Mr. Knowles on February 10, exhibited to Mr. Pinder's Affidavit, Mr. Michal Hall had agreed to accept and the Defendant/Owner was



prepared to wire \$200,000.00 to the Plaintiff to secure the immediate release of the Vessel, thereafter 4 instalments of \$50,000.00 and that together they would work with the Vendors to transfer liability and agree payment plans with them. From Mr. Knowles response to Mr. Khosa the following day Mr. Knowles was insisting upon the personal guarantees from Mr. Sheehan and others.

10. At paragraph 5 of Mr. Philip Pinder's Affidavit he states that the Plaintiff now requires, among other things, security by way of the LOU in the sum of 1.21 Million dollars. He further states at paragraph 53 that in addition to the \$913,886.74 the Plaintiff requires additional security services costs in the sum of \$16,204.00, interest in the sum of \$61,693.61 and future legal \$224,000.00, totaling sum \$300,897.61.
11. I am satisfied on the evidence that the Plaintiff has made out a prima facie claim against the Applicant for the sums already disbursed by it and for the sums that it is liable for as agent for the Applicant. These exchanges between the parties demonstrate to me that the Plaintiff's current out of pocket expenses total \$300,001.00 and its exposure for liability is in fact the balance of the sum claimed. There is also an acceptance by the parties that the Plaintiff is directly liable to its Vendors providing services to the Vessel. Why else would they have agreed to work together to transfer liability and to enter into payment plans with them. If the Applicant is genuine in its proposal to reimburse the Plaintiff the out of pocket expenses forthwith and to enter into a Novation with each of the Vendors it should have no difficulty entering into an undertaking for the sum claimed plus interest and reasonable future legal fees. I agree with Mrs. Parris-Whittaker that \$1,200,000.00 is excessive.

### **Disposition**

12. (1) Pursuant Order 67 Rule (13) (6) before the Vessel is released pursuant to an order from this Court all fees due to the Admiralty Marshall and all other fees and expenses in connection with the arrest of the Vessel and the care and custody of it while under arrest, and of its release inclusive of security costs as of February 23, 2021 in the sum of \$16,204.00, shall be paid by the Applicant.
- (2) Mr. Knowles has already been paid his fees for attending to the Release of the vessel in the sum of \$14,000.00 and I make no further Order in respect thereof.
- (3) The LOU from The American Steamship Owners Mutual Protection and Indemnity Association Inc., once the jurisdictional clause has been amended so that the jurisdiction

for all enforcement procedures in The Bahamas, shall be in the sum of \$973,100.72, inclusive of interest in the sum of \$9,213.98 and future legal costs in the sum of \$50,000.00.

13. The Warrant of Arrest is Discharged.

14. The costs of this application be costs in the cause.

Dated this 25<sup>th</sup> day of February A. D. 2021

  
**Petra M. Hanna-Adderley**  
**Justice**