

# IN THE HIGH COURT OF SINDH AT KARACHI

## Admiralty Suit No.07 of 2018

[Fair Sea International FZC vs. MV “Miski” and others]

Dates of hearing : 05.09.2019, 06.09.2019 and 16.09.2019.

Date of Decision : 23.09.2019.

Plaintiff : Fair Sea International FZC, through Syed  
Noman Zahid Ali, Advocate.

Defendants : Nemo.

Dr. Chaudhry Wasim Iqbal, Official Assignee.

### **Case law and other Research material relied upon by Plaintiff’s Counsel**

1. The Maritime & Shipping Dictionary.  
By Aga Faquir Mohammad, Advocate Supreme Court of Pakistan.
2. British Shipping Laws  
General Editor  
The Hon. Sir Bushby Hewson  
Volume 11  
The Merchant Shipping Acts.

### **Case law relied upon by Defendant’s Counsel**

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### **Other precedents**

1. 2018 SCMR page-1828  
*[Bourbon Maritime (Pvt.) Ltd. vs. M.V. Salaj and others]*
2. PLD 1982 Karachi page-749  
*[Twaha vs. The Master M.V. ‘Asian Queen’ and 2 others]*
3. PLD 1991 Supreme Court page-1021  
*[Hong Leong Finance Limited vs. M.V. Asian Queen through Nazir High Court]*

**Law under discussion:** 1. Admiralty Jurisdiction of the High Courts Ordinance, 1980 (the “Governing Law”).

2. The Merchant Shipping Ordinance, 2001, (MSO)
3. Qanun-e-Shahadat Order, 1984 (Evidence Act, 1872); Evidence Law.
4. The Contract Act, 1872.
5. The Civil Procedure Code, 1908 (CPC)

## **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** -The present action at law has been preferred by Plaintiff against the Defendants with the following prayer clause\_

*“The Plaintiff, therefore, prays as follows:*

- a) *For a judgment and decree in favour of the Plaintiff and against the Defendants, jointly and severally, for US\$705,217.61 along with costs and interest / markup / damages / compensation and reimbursement of payments made by the Plaintiff of all third party claims @ 18% per annum until realization.*
- b) *To issue warrant of arrest of the Defendant No.1 which may be allowed to leave the port only in the event of furnishing security to the extent of the amount claimed in suit and if no security is furnished the Defendant No.1 be sold and the decretal amount be paid to the Plaintiff out of the sale proceeds of the Defendant No.1.*
- c) *Cost of the suit.*
- d) *Make such other or further orders as may be found fit and proper in the circumstances of the case.”*

2. As per averments, the Plaintiff is a corporate entity incorporated in the United Arab Emirates. Defendant No.3 is also a Company incorporated in the United Arab Emirates (*under its laws*) and is the Owner of Defendant No.1-‘MV MISKI’ (the subject Vessel); whereas the Defendant No.2 is the Master of ‘MV MISKI’. Plaintiff and Defendant No.3 executed a

‘Memorandum of Agreement’ (*MOA*) dated 15.12.2016 produced in the evidence as Exhibit PW/3, for, *inter alia*, to operate the above named subject Vessel-Defendant No.1 as commercial operator in accordance with the terms mentioned in the said (*MOA*). The subject Vessel-Defendant No.1 when arrived in Pakistan at the Karachi Port on or about 21.08.2017 and berthed on 25.8.2017 at Berth No.5, then, due to some technical fault, the subject Vessel got stranded at Karachi and finally abandoned by Defendant No.3 and since 09.10.2017, the Vessel is at Mooring No.4 and has become unseaworthy.

3. Syed Noman Zahid Ali, Advocate, for Plaintiff has argued so also pleaded in the plaint, that from 09.10.2017 and onwards, it is the Plaintiff, which is incurring expenses, though at the instructions and on behalf of Defendants, by providing supplies and necessaries, including bunkers, provisions / stores, foods supplies, water and fuel and other ancillary products to the Crew and Staff of Defendant No.1. Plaintiff has even paid out port dues and shifting charges. Learned counsel has vehemently argued that looking at the conduct of Defendant No.3, which has not even bothered to contest the present claim of Plaintiff.

To augment his arguments, the learned Advocate has referred to the relevant pages (73 and 76) from the Book on Shipping Laws as mentioned in the opening paragraph of this decision and has referred to the Maritime and Shipping Dictionary containing definition of ‘**necessaries**’, which is reproduced for reference\_

*“Goods or materials and in some cases services provided to the ship for its operation or maintenance. The specific classes of goods, materials and services which qualify as necessaries vary to some extent from jurisdiction to jurisdiction, but in general necessaries include such items as bunkers, supplies, repairs towage and stevedoring”*

It is further argued that the Defendant No.3 has defrauded the Plaintiff, *inter alia*, as the two cheques issued in favour of Plaintiff, upon presentment were dishonored. Copies of these cheques were produced in the evidence as Exhibit PW/53; that despite assurances, the Defendant No.3 failed to settle the outstanding amount of Plaintiff and in this regard an E-mail was also sent to Defendant No.3 dated 29.08.2017, which is produced in the evidence as PW-6, but without yielding any results. Plaintiff has produced number of documents and invoices in support of its claim, which as per the pleadings of Plaintiff now stand at US Dollars-705217.61 (*US Dollars Seven Lacs, Five Thousand and Two Hundred Seventeen*). In the same breath, the learned counsel argued that applying the equitable principle, the claim of Plaintiff may be given preference over a claim of a mortgagee, because the latter has not acted diligently, *inter alia*, knowing that the ship owners were insolvent, they (Mortgagee Bank) filed a delayed proceeding.

It is clarified that the said Mortgagee Bank, namely, Commercial Bank International PSC, has filed a separate Suit No.01 of 2019 in respect of loan advanced to Defendant No.3.

4. Arguments heard and Record perused.

5. It is necessary to mention that evidence was recorded on Commission and the Report of learned Commissioner dated 25.04.2019 is on record along with the deposition. It is a matter of record that including the present *lis* other connected suits filed by different parties are also against the same Defendants, that is, subject Vessel and its Owner (*Jubba General Trading Company LLC-Defendant No.3*). Following are the other Admiralty Suits which are all clubbed together in order to avoid any conflicting decision\_

1. Admiralty Suit No.02 of 2018.
2. Admiralty Suit No.03 of 2018.
3. Admiralty Suit No.01 of 2019.

4. Admiralty Suit No.06 of 2018 (already decided by Judgment dated 06.09.2019).

6. Even though the matter proceeded *ex parte* against the Defendants but it is still the duty of the Court to evaluate the claim of Plaintiff and the evidence led within the parameters of law. Two following points require consideration\_

1. Whether any relationship exists between the Plaintiff and Defendants?

2. Whether Defendants are liable to make any payments to Plaintiff?

7. It is also necessary to point out that original documents relating to the transaction in dispute have been produced in the evidence by Plaintiff's witness (PW-1) and some material record relates to TransBridge Logistics Pakistan (Pvt.) Ltd., but no representative from TransBridge was earlier examined. The learned counsel for Plaintiff states that due process of law require that the claim of Plaintiff be adjudged on merits and he requested that he may be allowed to examine some authorized representative of the said TransBridge. In order to do complete justice in the matter, the representative of TransBridge, namely, Sartaj Muhammad Khan was examined as PW-2 and he produced certain documents, which will be discussed in the following paragraphs. Despite providing opportunity to the learned counsel for the parties in other connected suits (as mentioned above), no one opted to cross examine the said witness on that day.

**POINT NO.1.**

8. The present suit has been filed through Mr. Muhammad Asif Habib, who has presented the Board Resolution of Plaintiff as Exhibit PW/2, available at page-11 of the evidence file, wherein, *inter alia*, the said representative has been authorized to give evidence also; he has testified as

PW/1. The Memorandum of Agreement (as referred above) has been exhibited as PW-3, correspondence dated 04.05.2017 Exhibit PW-4 between Plaintiff and Defendant No.3 and the correspondence dated 29.08.2017 by Plaintiff to the Managing Director of Defendant No.3, captioned as Final Notice, *inter alia*, for settlement of outstanding dues, which is produced as Exhibit PW-5, establish the relationship between the Plaintiff and Defendant No.3, hence, the Point No.1 is answered in Affirmative that a business relationship exists between the Plaintiff and Defendant No.3.

### **POINT NO.2**

9. Plaintiff itself has stated in the plaint so also deposed in the evidence that it has incurred and still incurring expenses for supply of necessaries and other products to Defendant No.1 since or about 09.10.2017 and onwards, when the Defendant No.1 (subject Vessel) is berthed at Karachi Port; therefore, only those documents can be considered, which relate to this period and onwards, or, when the subject Vessel entered territorial waters of Pakistan and not before that. **Secondly**, many outstanding invoices of Plaintiff as well as its grievance about dishonoring of cheques relate to a period when the subject Vessel was at the Port of United Arab Emirates and hence the monetary claim of Plaintiff before the above mentioned date in respect of purported illegalities committed by Defendants cannot be subject matter of this proceeding but the Plaintiffs could have or may institute an independent proceeding in a Court of competent jurisdiction. **Thirdly**, considering the undisputed record and pleadings (of Plaintiff), it appears that Defendant No.2 (Master MV “MISKI”) is neither a necessary nor proper party and since issues involved in the present *lis* can otherwise be effectually and completely decided, thus, Defendant No.2 has been deleted from the array of Defendants.

10. Depositions of PW-1 and PW-2 though remained unchallenged, but the same is to be evaluated by applying the above criteria about the date and jurisdiction, thus, Plaintiff is entitled to the amount(s), which are stated in the following documents produced in the evidence\_

- i. Document-PW/56 Pak Rs.2170000/- (*Rupees Two Million One Hundred Seventy Thousand only*).
- ii. Document-PW/61 by the Gwader Port Authority imposing anchorage charges of Rs.72497/- (*Rupees Seven Thousand Four Hundred Ninety Seven only*).
- iii. Document-PW/62 provision of Bunkers-US\$-23850 (*US Dollars Twenty Three Thousand Eight Hundred Fifty only*).
- iv. Document-PW/63 supply of Bunkers US\$-1176 (*US Dollars One Thousand One Hundred and Seventy Six only*) *US Dollars*.
- v. Document-PW/67 provision of eatables US\$-2169.60 (*US Dollars Twenty One Thousand Six Hundred Nine and Sixty only*).
- vi. Document-PW/68 provisions of eatables US\$-2155 (*US Dollars Two Thousand One Hundred and Fifty Five only*).
- vii. Document-PW/72 payment of wages to one of the Crew members US\$-2640 (*US Dollars Two Thousand Six Hundred and Forty only*).
- viii. Document-PW/84 for supply of foods and eatables US\$-88720 (*US Dollars Eighty Eight Thousand Seven Hundred and Twenty only*).

11. As mentioned in the preceding paragraph, the second witness-PW-2 (*Sartaj Muhammad Khan*) also deposed. He has produced Board Resolution on behalf of TransBridge, for appearing and giving evidence in this matter, as PW-2/1. The said witness also produced Memorandum and Articles of

Association (in original) as PW-2/3. Appointment of said TransBridge as Agent of Fair Sea International FZC vide a correspondence dated 24.07.2017 and Agency Agreement between the Plaintiff and the said TransBridge has been produced in the evidence as PW-2/4 and PW-2/5, respectively. The second witness has further deposed that being Local Agent of Plaintiff, the said TransBridge incurred heavy expenses in respect of subject Vessel. The witness has corroborated the evidence given by the above named Asif Habib-PW-1.

12. The three reported Judgments, viz. (i) 2018 SCMR page-1828-*Bourbon case*; (ii) PLD 1982 Karachi page-749-*Twaha case*; and (iii) PLD 1991 Supreme Court page-1021-*Hong Leong case*], *inter alia*, about the settlement of different claims has been carefully examined. As far as wages of Crew and Master of subject Vessel is concerned, the same are covered by Sections 549, 550 and 551 of the Merchant Shipping Ordinance, 2001, as rightly referred to by the learned Advocate for Karachi Port Trust [KPT]. This category of claim is a maritime lien, which has been discussed in detail in the third reported Judgment referred herein-above (*Hong Leong case*); maritime lien is a charge on the res and travels with it. This type of claim has a precedence over the claim of a mortgagee; whereas, the claim with regard to necessaries will be considered after settlement of last two claims. There is a judicial consensus that the charge of a Port Authority is ranked at the top of all claims, provided the latter has acted diligently. This has been discussed in detail in the aforementioned reported Judgment of *Bourbon case* (by our Apex Court).

13. The Karachi Port Trust (KPT) has already filed its latest claim before the learned Official Assignee through its learned Advocate, Mr. Agha Zafar Ahmed, which has been incorporated in the Reference No.07 of

2019, filed by the Official Assignee in all these connected matters. On 16.09.2019, no one has raised any objection to the claim of KPT and thus Reference No.07 of 2019 was taken on record.

In order to appreciate the arguments of learned counsel in the present *lis*, the overall conduct of KPT and the Mortgagee - Commercial Bank International PSC (Plaintiff of Suit No.01 of 2019) has been taken into the account.

The Reference No.03 of 2019 states, *inter alia*, that KPT undertook to deposit publication charges for sale of Defendant No.1 and when queried, it is not disputed by learned counsel for the Parties (in all these Suits) that in fact it was paid by KPT. **Secondly**, the undisputed record of these Cases/Suits shows that KPT is vigilantly pursuing its claims, which is evident from the earlier References of the learned Official Assignee. **Thirdly**, and consequently, the exception about order of preference of claims as laid down in the Bourbon case (*ibid*) is not attracted to the undisputed facts of present case. KPT has throughout participated in the proceeding in a diligent manner and its claim has to be given first preference. Similarly, the Plaintiff of Suit No.1 of 2019 (Mortgagee Bank) has produced record of the case which they instituted at Sharjah Federal Court of First Instance [UAE] against present Defendant No.3, which is now decided in favour of above Mortgagee and will be considered by this Court in Admiralty Suit No.01 of 2019; besides the claim of Mortgagee Bank as pleaded in above Suit No.01 of 2019. No conclusive evidence has been brought on record by Plaintiff (of present *lis*) that the above Mortgagee has not initiated proceeding or acted negligently, which justifies the modifying or disturbing the order of priority of claims.

Although the subject decisions are given in separate suits, but for the purposes of settlement of claims, the rule laid down in respect of order of

priority in the reported Judgments above, shall be followed by the learned Official Assignee from the sale proceeds of the subject vessel, which in the intervening period was sold, as mentioned in the Reference No. 6 of 2019 (dated 11-9-2019), without any objection. Therefore, *first* the claim/outstanding dues of Karachi Port Trust (“KPT”) is to be settled; then the wages / claims of crew as determined in already disposed of Admiralty Suit No.06 of 2018; where after claim of Mortgagee Bank subject to decision in Suit No.01 of 2019 and then other claims.

14. In view of the above, the suit of the Plaintiff is partly decreed to the extent of US Dollars-120,710.6 (*US Dollars One Lac Twenty Thousand Seven Hundred and Ten only*) and Pak Rupees-22,42,497/- (*Rupees Twenty Two Lacs Forty Two Thousand and Four Hundred Ninety Seven only*).

**JUDGE**

**Karachi**  
**Dated: 23.09.2019.**

M. Javaid/PA