

BETWEEN

M.J. CHRISTIAN LIMITED a
duly incorporated
company having its
registered office at
Papatoetoe, boat builder

Plaintiff

A N D

THE SHIP "CHARIOTEER"

Defendant

Hearing: 16 October, 1984

Counsel: R.B. Brabant for Plaintiff
E.J.M. Rawnsley for Defendant

Judgement: 16 October, 1984

(ORAL) JUDGMENT OF VAUTIER, J.

This is an action in rem in the Admiralty Jurisdiction of this Court whereunder the plaintiff by its amended statement of claim filed on 20 July, 1984 is claiming the sum of \$10,632.05 as the balance claimed to be due and unpaid in respect of various work carried out by it on the ship named as defendant in the action. According to the statement of claim the work was involved with the construction of teak decks, interior accommodation and various fixtures and fittings

and other boat building construction work. Such a claim may properly be brought in terms of the Admiralty Jurisdiction of this Court by virtue of the specific provision in that regard contained in s.4 of the Admiralty Act 1973.

The statement of claim alleges that invoices were supplied in respect of the work and details of these are given in the statement of claim the dates thereof running consecutively month by month between 30 November, 1982 and 14 March, 1984. The last substantial invoice is shown as rendered on 28 February, 1984.

The matter comes before the Court today on the basis of a motion by the plaintiff seeking judgment against the defendant ship by default and counsel has stated that reliance is placed upon R.29, Sub-clause 6 of the Admiralty Rules 1975, Serial No. 1975/85.

The file in the proceedings shows that a warrant of arrest was obtained against the ship and this is dated 21 June, 1984. It should also be mentioned that there were filed in this Court on 16 July, 1984 memoranda of appearances in terms of R.11 of the Admiralty Rules 1975. These memoranda state that they are filed on behalf of Ijay Consolidated Limited therein described as owner of the ship "Charioteer" and on behalf of Francis Alfred Herbert Innes-Jones therein described as alleged owner of the ship "Charioteer". Rule 13 of the Admiralty Rules 1975 states:

"Every defendant who enters an appearance in, and intends to defend, an action shall, unless the Court or a Judge gives leave to the contrary, file in Court and serve a statement of defence on the plaintiff within 30 days after the day on which a statement of claim is served upon him."

The parties who thus entered appearances in this action have not complied with the Rule referred to by filing any statement of defence as required. The plaintiff in this situation proceeded pursuant to R.29(1) of the Admiralty Rules to file an affidavit verifying the facts upon which the action is based. This affidavit deposes to the work referred to in the various invoices having been carried out on the vessel, to the invoices being duly rendered to the person who had given instructions for the carrying out of the work and the fact that the amount of \$10,632.05 as referred to in the amended statement of claim remains owing and unpaid to it in respect of the work carried out as previously mentioned. The affidavit referred to also discloses the situation with regard to the obtaining of the warrant of arrest of the ship as previously mentioned. This was withdrawn pursuant to an arrangement made between the solicitors acting for the plaintiff company and the solicitors acting for the parties previously mentioned as entering appearances whereunder the sum of \$9,449.43 was to be held in trust by them and paid out either pursuant to agreement between the parties or the order of the Court but not otherwise. The letter recording the situation concluded with the following paragraph:

"We confirm also that on the basis of this undertaking, you and your client will forthwith file in the High Court at Auckland a notice withdrawing the warrant of arrest and we look forward to your confirmation that that has been done. For procedural reasons, we will not file memoranda of appearance until the warrant has been withdrawn and we confirm your undertaking not to take any steps in relation to the substantive proceedings until our client has had the opportunity of filing memoranda of appearance and a statement of defence and counterclaim."

Notwithstanding the terms of that letter the situation remained with no statement of defence filed and no further action taken in relation to the defence of the claim against the ship. By letter dated 18 July, 1984 the plaintiff's solicitors made specific reference to R.13 of the Rules and called upon the parties previously mentioned to file a statement of defence in terms thereof within 30 days of the date on which the amended statement of claim was served upon them. They concluded their letter by saying:

...we also are concerned to ensure that there now be no delays in bringing the matter to a finality one way or the other and it is our intention accordingly to apply for a date of hearing for this action as soon as we are properly able to do so unless of course the matter is resolved to our client's satisfaction in the interim."

There still being no action taken in relation to the proceedings the notice of motion now before me was filed on 18 September.

There has now been filed in the Court on the day preceding the hearing date allocated for the present motion a document bearing the endorsement "Statement of Defence to Amended Statement of Defence and Counterclaim". This document commences "The Defendant says" and it then proceeds to set forth a pleading to the various allegations of the amended statement of claim, each prefaced by the word "it". Following this pleading the document contains what is designated as a counterclaim still opening with the words "The Defendant". It is then pleaded that the ship is owned by the company previously mentioned, Ijay Consolidated Limited and that that company by its director entered into a contract with the plaintiff for the carrying out of work as previously described and there are then allegations that the work was not in designated respects carried out in a proper workmanlike manner. A counterclaim for general damages of \$5,000 is advanced, together with a prayer for judgment for such sum as is necessary to complete the repairs.

It is noteworthy that in the statement of defence put forward to the plaintiff's claim there is an allegation that the sums referred to in the invoices "did not become immediately due and owing but that a credit period was specifically agreed to by the plaintiff". There is thus no indication at all of the period of credit thus claimed to have been agreed upon.

There is a further allegation as to some of the invoices relating to work done other than in respect of the ship but again no particulars. Such a pleading, particularly at this stage of the proceedings, cannot be regarded in my view other than offensive.

The question is whether in these circumstances the Court should exercise the discretion which counsel for the defendant concedes it clearly has by virtue of R.29(6) to enter judgment against the ship, notwithstanding the pleading which has thus belatedly been filed. It is to be noted of course that the company referred to, Ijay Consolidated, has not placed itself in a position wherein it has any standing to counterclaim against the plaintiff. To do so it must clearly, as the Rules contemplated, apply to be made a party to the action. It could then of course have proceeded by way of counterclaim as it is now seeking to do.

It is my conclusion that there is no proper justification in all the circumstances to which I have referred for the plaintiff being kept out of the moneys which it claims in respect of the repairs. It is to be noted that there are not even any particulars given in the pleading filed which would indicate that the company Ijay Consolidated Limited had any sustainable counterclaim for even as much as the amount of the plaintiff's claim. What is more important, however, is that that company has

obviously delayed far too long for it to be just that the disposal of the action against the ship should be held up while the counterclaim is litigated. There will of course be nothing to prevent that counterclaim being litigated as soon as a company seeking to advance that claim complies with the necessary procedural requirements and it takes sufficient interest in the matter to prosecute its claim with diligence. That it certainly has not done at the present stage.

I accordingly conclude that the plaintiff should have judgment against the ship pursuant to the Rules and that judgment will be for the amount of \$10,632.05. I conclude that the plaintiff is properly entitled to claim that the Court should exercise its jurisdiction to award interest and interest at the rate fixed by the Judicature Act is to be included in the amount of the judgment as follows:

For the period from 26 July to 20 July, both inclusive, on the sum of \$9,449.43

For the period from 21 July to today, both inclusive interest is to be computed at the same rate on the amount of \$10,632.05.

The plaintiff is also entitled to costs in accordance with Table C of the First Schedule to the Code of Civil Procedure on the basis of the scale for an undefended action for the amount of \$10,632.00 together with disbursements as fixed by the Registrar.

I allow in addition a sum of \$75 in respect
of the writ of arrest proceedings.

A handwritten signature in black ink, appearing to be "W. B. G.", written in a cursive style.