

DUKE PACIFIC FINANCE LTD -v- THE OWNER OF THE SHIP "TIKI"

In the High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 50 of 1990

Hearing: 31 May 1990

Judgment: 7 June 1990

J. Corrin for the Plaintiff

The Defendant appeared in person

WARD CJ: On 6th April 1990, summary judgment was entered for the plaintiff in this action including possession of the ship "Tiki" and all appurtenances.

On 14th May 1990, the owners Mr and Mrs Yates had not moved from the vessel and an application was made by the plaintiff for a writ of attachment. On the 15th May, I found there had been a clear contempt but, in order to allow the Yates to remove their property from the vessel, I committed Mr Yates to prison but suspended the order if the timetable was adhered to.

The timetable included the requirements that Mr Yates was to draw up an inventory of all items he felt may be appurtenances and agree it with Miss Corrin by Friday 18th at 4.00 p.m. Any items not agreed were to be left on the vessel and directions sought from the Court. Possession of the vessel was to be given to Miss Corrin or her agent for the plaintiffs at 9.00 a.m. on Monday 21st May.

The defendant seeks directions on appurtenances and personal items and the plaintiff seeks enforcement of the committal order on the grounds that the terms for suspension have been breached.

I deal with the matter of the appurtenances first.

At the time I made my order on 15th May, I was told there was only dispute over a very few items and so I worded the order that Mr Yates must draw up an inventory of all items he feels may be appurtenances and agree it with Miss Corrin.

As it has now turned out there is dispute over a large number of items and the wording I used was, therefore, unfortunate. It was further complicated by a mistake in

the order drawn up by counsel so that it read "An inventory of all items to be removed from the vessel to be drawn up by Mr Yates". As a result of that Mr Yates, who had by that time packed many of his possessions, attempted to draw up a list from memory. Having seen that list, Miss Corrin became aware of a number of other items which she claims are appurtenances.

I shall not go through the arguments of counsel or of Mr Yates but I am guided by the case of *Coltman v. Chamberlain* (1890) 25 QBD 328 for the definition of appurtenances and I shall deal with each of the disputed items in turn according to the tests set out in that case.

Much argument was directed at the question of whether items that had been listed in an inventory drawn up in July 1987 when the vessel was purchased and a general survey report made for valuation purposes in 1989 but which are now missing, have been removed by Mr Yates since these proceedings or previously.

When possession of a vessel is sought, the person seeking possession takes the vessel as he finds it. If items that had previously been there are missing at the time possession is given, that is an end of it. I have seen the affidavits and heard evidence on these matters and must decide in these cases whether they were disposed of before these proceedings commenced. Where I feel, on the evidence, that the items were probably removed before the proceedings I cannot go further.

Taking the list of items in paragraph 16 of Miss Corrin's affidavit of 22nd May 1990 I rule as follows:-

(i)&(ii) **Charts.** Mr Yates said he had removed a number of charts including those of Papua New Guinea and local waters. all charts that were on the vessel at the time of arrest are clearly appurtenances and must be returned. This applies to all charts of any waters.

(iii) **Sangeon all band receiver.** This item has caused a great deal of difficulty. On board are radios that are clearly appurtenances. This is a receiver only. No doubt it is a useful item and would be useful for receiving weather reports etc. I have heard no evidence of the capability of the radios on board and so I must assume they are capable of all the normal range of functions found in

ships' radios. Thus I find, on balance, that the Sangeon is not an appurtenances.

- (iv) **Microwave.** This item is additional to the normal galley cooker. It was not fitted in the sense of being mounted in any panelling but stood free on a shelf. In general, any reasonable cooking apparatus that had been on the vessel and in use is an appurtenance. Evidence was given that this replaced one in the vessel when it was purchased and was used by the Yates when living on the vessel. I find it is an appurtenance.
- (v)&(vi) **Television and Video Cassette Recorder.** I am not satisfied on the evidence that these items were appurtenances.
- (vii) **Satnav.** There is no doubt this is an appurtenance. I accept it was removed from the vessel before it came into these waters and Mr Yates has retained ownership. He must produce documentary evidence of the present whereabouts of the equipment and an authority for the plaintiffs to take possession of it.
- (viii) **Scuba gear.** On a wooden hulled yacht of this vintage, I accept scuba gear may be an appurtenance. In this case there were three sets of diving gear and a dive compressor. Mr Yates told the court that two sets had been removed before this action commenced. I accept that. I also accept that an additional set which included a half tank was his daughter's personal property. However, I feel one set of dive equipment and the compressor are appurtenances. By dive equipment I mean all the usual scuba equipment apart from the mask, snorkel, fins and any wet, dry or protective suit, all of which I feel are

personal.

- (ix & (x) **Two outboard motors.** These are clearly appurtenances and must be returned.
- (xi) **Furunograph.** There is a dispute whether this was an additional depth sounder or simply a recording graph. On balance I do not believe Mr Yate's account that it was the latter. I feel there were two depth sounders but I accept his evidence that the Furuno was removed before these proceedings and not replaced. Had it been present it would clearly have been an appurtenance.
- (xii) **Liferaft.** I accept Mr Yates evidence that there never was a liferaft. However all dinghies are appurtenances. Mr Yates says the Metzler was his personal dinghy that he brought on the boat. That may be so but it has clearly become an appurtenance.
- (xiii) **Washing machine.** This was a replacement supplied by the Yates when the previous one became irreparable. Mr Yates agrees the drier is an appurtenance and I rule the washing machine is also.
- (xiv) **Hand bearing compass.** I accept on balance that this was discarded before this action. However Mr Yates' answers in cross-examination suggested he used binoculars as an aid to coastal navigation. As a result, Miss Corrin claimed the binoculars as an appurtenance. In general terms, a pair of binoculars kept on board a vessel is an appurtenance. However, they can be and frequently are personal items and, in view of the interjection of Mrs Yates that this particular pair was the personal property of her deceased son, I accept she did not intend

them to become part of the vessel's appurtenances and they did not.

- (xv) **Barometer.** There are two of these. Mr Yates agrees one is an appurtenance. I rule they both fall into this category.
- (xvi) **Assortment of Tools.** Mr Yates agrees to removing tools from the vessel but also insists he has left other tools on board. Any tools kept on the vessel are liable to be appurtenances. I have not been given anything approaching an exhaustive list. I rule that all woodworking, metal-working and mechanic's tools including any power tools in these categories are appurtenances and must be returned.
- (xvii) **Spotlight.** I accept Mr Yates' evidence that this has long ago been discarded.
- (xviii) **Flares.** The evidence suggests these are inadequate to satisfy any reasonable safety requirements but I am not satisfied there were any others apart from those left on board.
- (xxix) **EPIRB.** This was left on board and is clearly an appurtenance. Miss Corrin complains it is useless but I fail to see any order the Court can make to help her on that.
- (xx) **Pumps.** The main complaint of the plaintiff appears to be that the pumps were not all working. Again, this may be inadequate to render the vessel safe for a sea passage but I can do nothing. They are clearly appurtenances and I am not satisfied any have been removed.
- (xxi) **2 Hi-Fi Systems.** On balance, I feel these are

appurtenances and Mr Yates has agreed that.

(xxii) **Sextant.** Unless there is evidence that it was left on the bridge for general use, I feel prima facie a sextant is a personal item and not an appurtenance. In this case it is not an appurtenance.

(xxiii) **Table.** There seems to be some confusion about this item. An opaline editing table has been removed from the vessel and Miss Corrin does not claim it. All other tables whether fixed or not are to be regarded as appurtenances and to remain on the vessel.

Claim is also made by the plaintiff to the dive compressor which I have already dealt with and a console which Mr Yates accepts is an appurtenance and I so rule.

For the avoidance of doubt, I also rule that all items on exhibit JY 4 to Mr Yates' affidavit of 30th May that have not already been referred to are also appurtenances and must be left on board. I further order that Mr Yates must, at a time convenient to Miss Corrin, go on board "Tiki" and identify each item on that list. This, and the return of any appurtenances removed must be done within 7 days of this order.

As far as paragraph 2 of Mr Yates' summons is concerned, I do not understand exactly what is meant and make no order. I refuse to make the orders sought in his paragraphs 3 and 4. I also refuse his application for costs. I am satisfied these matters could have been resolved by him without recourse to the court in all but a very few items.

I now pass to the application for a committal order.

As I have already stated, I found a previous contempt and made a committal order but suspended it. Miss Corrin's application is based on a claim that Mr Yates has breached the conditions of that suspension. Her main complaint is that the requirement to hand over the vessel was not properly observed and the requirement that disputed items should stay on board was ignored in some cases.

The first complaint relates to the handing over of the keys. This was done at Miss Corrin's office on Monday morning rather later than ordered by the Court. Two keys were handed over. One was for the engine but the other fits nothing and Mr Yates

suggests it has, somehow, been switched for the key he gave to Miss Corrin. He says that he handed over the keys to the cockpit doors and the engine. In his earlier affidavit, he had said he handed over the key to the control panel padlock and the cockpit doors. When asked about that in court, he said he was unsure whether he had handed over the control panel padlock key. I did not believe his evidence on this matter and it seems significant to me that, when he had earlier been cross examining the yachtmaster who was on the vessel shortly afterwards, he put to him that the control panel key was hanging by the radio.

However, I am satisfied on balance that Mr Yates was handing over the vessel in accordance generally with the court order. That he was obstructive and difficult is clear and he was, I suspect, deliberately late but I do not feel that is sufficient to amount to a contempt. The requirement that a defendant comply with the terms of a court order does not include the need to do so with a smiling face or pleasant countenance.

The second matter of complaint is complicated by the mistake in the first order typed up. I accept that Mr Yates has now supplied a list of possible appurtenances and that it was late largely, if not entirely, because of that mistake.

However, my order also stated that any disputed items must remain on the vessel pending further directions of the court. In this matter I do not feel Mr Yates has tried to comply with the order.

In the case of the Video Cassette Recorder, he knew it was being claimed by the plaintiff and, having collected it from the repair shop, he left it in the Manager's office at the Yacht Club. He argues that, as it was not on the vessel when the order was made, it could not "remain" on the vessel. He claims he did not feel that items which had been removed could remain on the vessel and did not feel he was failing to complying with the court's order if he left them ashore.

I do not accept that. He is playing with words to justify an action he knew was obstructive. Had he mentioned the whereabouts of the Video Cassette Recorder to Miss Corrin I may have attached more weight to his suggestion but he deliberately did not tell her.

In the case of the outboard motor the same applies. When, on the Monday, Miss Corrin was going to the yacht from the Yacht Club, she noticed there was no outboard motor on the tender. She asked "what about the Outboard?" I am satisfied from the evidence that Mr Yates knew then that the motor was also in the Manager's office. Instead of saying so, he replied "What outboard?" and said no more. He tells the Court

that this was because Miss Corrin appeared upset at the time. I do not accept that as a reason for his conduct. Telling her the whereabouts of an item she was claiming would have helped the situation.

Miss Corrin also suggested that, when he removed the scuba gear, he knew from Miss Corrin's letter that it was disputed. I am not satisfied the letter necessarily made that plain as it could be taken as referring to the tanks alone.

Finally the Sangeon radio receiver. It is clear that, because of the wording of the inventory, there was confusion between this and a CB radio. Clearly Mr Yates felt the radio was a personal item he should be allowed to remove from the vessel. However the evidence satisfies me that he must have known it was a disputed item.

In her letter of 18th May 1990 Miss Corrin wrote -

"With regard to (2) (CB Radio; Sangeon All Band Receiver) you have informed me that the same was never aboard the vessel, but only a hand held receiver. Is this the "Sangeon all band receiver" listed on the Survey report? If so there is no difficulty with this item".

As it appears Miss Corrin intended still to claim the Sangeon receiver, that was an extremely badly worded passage. I would not have been surprised if My Yates had taken it to mean the claim to the Sangeon receiver was not being pursued. However, it is clear that, whilst he felt the letter was disclaiming the item, he must have entertained some doubt because he went to Miss Corrin's office with it to show her. She then pointed out that, however that passage read, she had not intended to abandon her claim to the radio and did still claim it. Unfortunate though the events may have been up to then, Mr Yates agrees that he knew she was claiming it but feel he could still act on the wording of the letter. He never placed the radio on board.

I am satisfied that the manner in which he dealt with this item, the outboard and the Video Cassette Recorder was a deliberate and clear attempt to avoid the court order.

That is a failure to comply with the conditions of the suspension and is also a contempt in itself.

The original committal order was made because of a similar disregard of an order of the Court. Having been given the chance of suspension of that order he has deliberately failed to comply with some of the terms of the suspension. I made it plain at that time what would be the consequence of failure to comply.

The patience of the Court has been exhausted. The Court has an inherent power to commit for contempt to ensure compliance with its orders or to commit as punishment for failure to do so. The orders have now been substantially complied with and so I must decide the appropriate penalty. I note that far from any contrition, Mr Yates has argued his case to try and justify his actions with, I am satisfied, a disregard for the truth and a determination to delay the matter as much as possible.

I feel imprisonment would be an appropriate order here but, bearing in mind the circumstances in which the Yates now find themselves in a strange country without the boat that was their home, I shall deal with it by way of a fine.

Mr Yates is to pay \$400 fine or four days imprisonment in default. Whether he pays or serves the default period, it does not affect the seven day period I have ordered earlier in this judgment as Mrs Yates is still at liberty and can deal with such matters for any portion of the period that Mr Yates may be unavailable.

(F.G.R. Ward)
CHIEF JUSTICE