

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW & EQUITY DIVISION

2014/CLE/gen/00571

BETWEEN

ROBERT J. ARNOLD

Plaintiff

AND

PAUL V. BAKER

Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Gail Lockhart-Charles with Rhyan Elliott and Cyd Ferguson for
the Plaintiff

Khalil Parker with Roberta Quant for the Defendant

23 and 24 January 2018, 16 May 2018, 24 May 2018, 11 June 2018, 18 July 2018,

28 September 2018, 17 October 2019 and 25 November 2019

Closing Submissions: 2 October 2020

JUDGMENT

WINDER J.

This is the plaintiff's (Arnold's) action for breach of contract and damages arising from the re-wiring of his sport fishing boat.

Background

[1.] Arnold is the owner of the Lamda, a 1994 34 ft. Intrepid sport fishing vessel, outfitted at all material times with two (2) 250HP Suzuki outboard gasoline engines and an on-board gasoline generator. In or about late 2007 Arnold hired the defendant (Baker) on the recommendation of fellow Lyford Cay resident William Hunter (Hunter) to carry out household repairs and general maintenance on the Lamda; which included keeping the Lamda clean and in operating condition.

[2.] In or around April/May 2008 Arnold says that he began experiencing what he termed as 'minor electrical malfunctions and anomalies' on the Lamda which affected the cabin lights, macerator pump switch and other electrical equipment. Arnold informed Baker of the issues that he had been experiencing. Baker advised him that the boat required re-wiring to solve the issues and that this could be done at a cost of \$50,000. Arnold agreed the price of the re-wiring. On 6 May 2008 Arnold wired Baker \$25,000, being half of the agreed amount for the re-wiring. Baker picked up the boat key from Pericles Maillis (Maillis), Arnold's friend and attorney and sailed the boat to Florida that afternoon.

[3.] On or about 21 May 2008 Arnold wired the second and final instalment of \$25,000 to Baker. Arnold says there was an express agreement between himself and Baker that the re-wiring work be completed by 1 June 2008. Arnold says not only did Baker not complete the re-wiring as scheduled, but for several weeks he did not even know where Baker had docked the Lamda. In an effort to recover the boat, he says that he contacted boat captain, Burke Mooney (Mooney) who on 17 June 2008 along with Maillis, found the Lamda docked in a canal in Ft. Lauderdale. On 3 July 2008 Mooney took delivery of the Lamda from Baker, at which time the re-wiring work was supposed to have been

completed. Mooney sailed the vessel back to Arnold's Lyford Cay residence on 11 July 2008.

[4.] Arnold claims that it was later revealed, as he used the Lamda, that the re-wiring work was not done to his expectation or at all. He identifies certain electrical defects which he claims arose with the Lamda between September 2008 and December 2008, including problems with the electrical workings of the Lamda, the outboard engines and the generator. He avers that the Lamda was inoperable throughout the 2008 and 2009 fishing seasons. Arnold claims that he made attempts over the course of that period to reverse 'the bad workmanship', but further electrical failure continued to plague the boat throughout 2009 and several years beyond.

[5.] Arnold says Baker breached the re-wiring agreement that he was engaged to perform as an independent contractor. He avers that at no time during the re-wiring was Baker his servant or agent. Arnold also accuses Baker of 'dishonestly and falsely inflating charges and invoices' for the work.

[6.] Arnold's complaint is found at paragraphs 23, 25 and 30 of the Amended Statement of Claim, which states:

23. The Lamda was brought over to The Bahamas in apparent sufficient working order and condition to make the voyage, in that the vessel safely arrived in New Providence with electrics and engines working.

...

25. In the events which happened as a result of the matters aforesaid the said vessel was not properly and immaculately wired and the final job was incomplete and/or improper and/or inadequate with (i) new wiring was not universally installed resulting in aging and worn and corroded electric wiring being left in place within the (largely hidden or inaccessible) parts of the vessel; and/or (ii) old and worn and deteriorating wiring (which the Defendant had urged needed complete replacement) had been left in place and re-used and large sections and amounts of old wires left in situ some in use, some redundant and with some of the new wires incorrectly aligned and/or not properly or systematically bundled, shrink-wrapped or otherwise insulated and secured, and with raw ends exposed etc. which caused minor

and major electric failures and malfunctions and breakdowns, starting soon after the vessel was handed over and continuously occurring and coming to light, as the Plaintiff and others entrusted by him to periodically use and examine the vessel, over the ensuing weeks, months and even years, at different times, who experienced breakdowns and progressively uncovered major and minor failures of electrical instruments and functions adversely affecting or damaging different functions of the vessel's machinery, equipment and performance and requiring repairs and requiring the Plaintiff to engage marine technicians, purchase materials, suffer breakdowns and equipment failures and incur periods when said vessel was out of commission, in the meantime each of the many occurrences causing the Plaintiff to suffer major disappointment and loss of use and enjoyment of his vessel during his holidays and periods of residence in the Bahamas, personally and as a guest amenity and without the fresh bounty of the sea which the Plaintiff was accustomed to gathering with his vessel, (below called "loss of amenity") particularized which the Plaintiff assessed at exceeding \$100,000.00 in expenditures actually paid out by him and at cost of an entire fishing year's use which as loss of amenity under this head the Plaintiff claims \$50,000 or such sum which to the Honourable court may be found upon enquiry to be just and equitable.

...

PARTICLARS OF (SOME OF) THE ELECTRIC FAILURE OCCURENCES

1. Discovered defects after the Lamda came back to The Bahamas in July 2008 or occurring before the 1st September 2008:-
 - a. The battery control cut-off switches did not shut down all the boats lights and systems, so that there was no way, short of disconnecting terminals to shut down all power to for example e.g. the forward cockpit lights and other lights.
 - b. The hidden (anti-theft cut off switch) had changed functions.
 - c. The fish finder – which is new and was working had a serious misconnection/ short or surging.
 - d. Much dead wire has been left in the boat, making future checking harder.
 - e. The split service did not allow charging of the instruments and general outlets so there was continuous extreme low voltage. In the result, the live bait well could not keep live fish for long periods, and the electric reel outlets and the Northstar GPS instruments were inoperable, blowing fuses each time replaced. To keep the live well operational, the generator had to be operated continuously which

was unsatisfactory (and in short order it too failed, as chronicled below).

- f. Some of the light switches were not connected at all, e.g. the entire panel above the live well was dead. The macerator pump worked from the new panel below the Northstar but the cockpit light did not. No cockpit lights for night fishing were working.
- g. One set of running lights were not working, likewise cabin lights.
- h. The generator failed in August, as the vessel was leaving the harbour, and even after a full run to and from the Staniard Rock, Andros Buoy, after a short stop at Jungle Cove Beach brought on low voltage signals in the engines.
- i. The vessel was experiencing unusually higher levels of electrolysis requiring extra, external zincs to prevent the same.
- j. At the time of the compiling of the above list (diarized on the 1st September 2008, the above did not represent a full inspection or survey finding.

30. By reason of each and every head or item of breach of contract and or negligence by the Defendant as above particularized the Plaintiff has suffered loss and damage as above set out and particularized. Further, taking into account the Plaintiff's age, health and condition and the trust placed in the Defendant by the Plaintiff and the Defendant's behaviour throughout, the Plaintiff seeks aggravated damages."

[7.] Baker agreed that the Lamda was experiencing electrical issues in or about early 2008 having been told of the electrical issues with the boat from Arnold. Baker says that he informed Arnold that he had previously used the services of McKenna Marine Electric Corporation (MME) located in Ft Lauderdale and that he believed the company was capable of performing the re-wiring of the Lamda. Baker's case is that he informed Arnold that the cost of the re-wiring would be \$50,000 and Arnold authorized him to proceed.

[8.] Baker denies that he was to personally be carrying out the repairs to the boat or that there was ever an agreed timeline for the repairs to be completed having regard to variables he had no control over. He says that he merely acted as agent for Arnold and reasonably discharged his duty. He avers that MME had done 'good work'. With regard to any delay in completing the work he says that the scope of the re-wiring work was

expanded which lengthened the time that it took to complete the repairs. At paragraph 18 of the Amended Defence he says the following:

“...The Lamda was received and inspected by the Plaintiff’s “servants and agents” without complaint to the Defendant. Mr. Pericles Maillis did a thorough inspection of the electrical system and operation of the Lamda in the Defendant’s presence upon delivery thereof. Mr. Maillis expressed no complaints about the work done or the condition of the vessel to the Defendant.”

[9.] Baker says that there was in fact no re-wiring agreement between himself and Arnold. He says that he turned over all of the invoices associated with the work carried out on the Lamda to Maillis. Baker says that at no time prior to the institution of these proceedings was he informed by Arnold that the work carried out on the Lamda was not satisfactory or that there were problems related to the work of MME. In paragraph 10 of his Amended Defence, Baker pleads:

“...The Plaintiff by himself and through his agents, including Mr. Pericles Maillis, and otherwise, having inspected, and accepted delivery of the Lamda, and having sailed, operated, and interfered with the Lamda for over five (5) years following the completion of the said work by McKenna Marine Electric Corporation, without complaint or any notice thereof to the Defendant, is barred by laches and acquiescence from seeking the relief claimed herein as against the Defendant.”

[Emphasis added]

At paragraph 33 of the Amended Defence Baker pleads:

“...Had the Plaintiff alerted the Defendant to its purported concerns within a reasonable time after delivery of the said vessel in 2008, the Defendant would have referred the said concerns to the independent contractor who provided the said services. The Plaintiff instead took delivery of the said vessel, continued to use the vessel, and allowed others to use and interfere with the vessel without any reference to the Defendant or the independent contractor who carried out the said repairs.”

At paragraph 35 of the Amended Defence Baker pleads:

“In the premises, the Plaintiff is estopped by his conduct and that of his said agent who accepted delivery of the vessel, in seeking to make the claims herein for

damages for breach of contract and/or negligence against the Defendant on the grounds that:-

- (i) By his conduct in using the vessel over a period of almost six (6) years without making any complaint to the Defendant he represented to him that the work was satisfactory;
- (ii) In reliance upon the said representation, the Defendant did not take any steps to record or remedy the alleged complaints of the Plaintiff as he was fully under the impression from the Plaintiff's conduct that the Plaintiff was satisfied with the work and in doing so has been irreparably prejudiced by the Plaintiff's said conduct."

[10.] Baker's pleadings also complains that MME, whom he says performed the re-wiring, was not made a party to these proceedings. He also contends that there was interference by several other marine contractors with the Lamda since it was brought back to The Bahamas by Captain Mooney. Baker says that this continued interference by third parties and the *"extended passage of time have all severely and unfairly prejudiced any defence of the quality of the work by McKenna Marine Electric Corporation on the Lamda almost nine (9) years ago at the date hereof."*

[11.] At paragraph 24 of the Amended Defence, Baker says that he undertook and performed additional works on the Lamda with Arnold's consent. The additional works were listed as follows:

- i. Repair a leak in the fuel tank which required removing the deck of the boat to remove the fuel tank;
- ii. Extensive fiberglass and paintwork associated with fuel tank removal and repair;
- iii. Installation of a new autopilot;
- iv. Replacement of a hatch;
- v. Repair companionway hatch;
- vi. Replace fuel tank sender;
- vii. Add fan to extract air from console;
- viii. Replace macerator pump in fish box;
- ix. Make and install new electrical panels;

- x. Remove and re-install underwater lights;
- xi. Replace solenoid for windlass;
- xii. Install new battery charger; Replace rotten fuel lines;
- xiii. Haul boat for engine service.

[12.] Contrary to Arnold's case that he had difficulty locating Lamda while it was in Baker's possession, Baker avers that Arnold was always aware of where the Lamda was docked while it was in Fort Lauderdale.

Evidence

[13.] At trial Arnold gave evidence on his own behalf and called, Maillis, Mooney, David Nixon and Julian Burrows. Baker gave evidence in his own case and called Hunter and Peter Andrews as witnesses.

Robert Arnold

[14.] Arnold's evidence was that prior to his engagement of Baker the Lamda had been "experiencing many electrical malfunctions and other anomalies, some of which were recurring issues such as the cabin lights and the macerator pump switch." Arnold says that there was an express term of the agreement between himself and Baker that the re-wiring work would be done by 1 June 2008 as he intended to fish during the mutton snapper and tuna season which occurs in June. He relied on email exchanges between him and Baker.

[15.] On 30 May 2008 Baker sent an email to Arnold settled as follows:

"Bob,

I had to go to Lauderdale a couple of days ago to solve an issue with the fuel tank. The old one was foamed in place and it absorbs salt water and corrosion is expedited. With the new tank we have put rubber blocks in to hold the tank in place, that way the tank dries out and we can put drainage in that compartment so we avoid the corrosion.

I had to fly back to the UK for a few days, I will be in Lauderdale to pick up the boat up on the 6th as long as the weather is good. The wires are going

back in now. The only hold up may be the service of the engines as I have to take the boat down the river to haul out. I will keep you abreast of things.

The wall paper guy let me down on Monday and did not call or show up. I was unable to get a hold of him so unfortunately the TV box will not be finished. I re-wired it so it goes up and down. The wire for the mechanism was badly designed so when the manufacturer comes up with the solution I will install the new system. My phone does not work here but I should be able to pick e-mails up every few days.

I hope your knees are getting better and you are in less pain.”

On 2 June 2008 Arnold responded in an email to Baker, settled as follows:

“Dear Paul – Understand you have had some difficulties which happen to us all. However – I really must insist that the engine service be completed before you bring her back; I know that the engine people can come to you to do the service, although it is obviously better if you go to them. I have made my wife stay in New York a full further week, as if she knew the TV was still not ready she’d be justifiably ticked off and I want you to get the building job. However, you must understand Paul that a great deal of time has elapsed, not inconsiderable sums have been remitted and you’ve had ample chance to get things done. Best – Bob.”

On 3 June 2008 Arnold sent a follow-up email to Baker settled in part as follows:

Dear Paul –

...

You know I have Capt. Mooney at hand to assist, and I do not know where my boat is or whom I might contact in your unexpected absence to arrange for the collection of items from the Mailbag to place on board, drive the boat up to be engine serviced etc etc

If only you would communicate with me I wouldn’t have to bother you-which I find unpleasant. After all you just up and left the house without a word of explanation until your e-mail and why keep yourself under pressure when you know T can make alternative arrangements? It’s not fair to yourself or to me. So please telephone me...or better still e-mail me where the vessel is and whom I should speak with to get Mooney to have the engines serviced right away. Also I want to cast an independent eye over where and how my \$50,000 has been spent!! Yours – Bob Arnold

[16.] Arnold says that the email exchange demonstrates that Baker would not have been able to meet the expressed deadline and that he breached the agreement to re-wire the boat having only commenced the work, it appears, on 4 June 2008. Baker he says had assured him that he would pick up the boat on 6 June 2008. On or about 11 or 12 June

2008 Arnold says that he advised Mooney to locate the Lamda and to conduct an independent assessment of the work done and to assist in servicing the boat's engines. Mooney was also to assist in 'upgrading the boat's apparel, safety equipment and tackle'.

[17.] During cross-examination, Counsel for Baker suggested that the problems that the Lamda was experiencing stemmed back as far as 2003 which included electrolysis along with other electrical and wiring issues. Arnold's response to this suggestion was that the Lamda was no different in that regard to any other boat. However, he did not recall any specific prior incidences.

[18.] Arnold maintained during cross-examination that it was Baker who suggested the Lamda needed complete re-wiring including the price tag of \$50,000. He disagreed however, with the suggestion that Baker advised him that he knew of contractors who possessed such expertise in Fort Lauderdale. He says that he was told by Baker that he 'had a superb team at his disposal'; and says he was never advised that MME would be performing the work. When questioned if he knew whether or not Baker was a marine electrician – he responded that Baker was not.

[19.] The repairs outlined in the defence were put to Arnold and he stated that there were those he was aware of and others that he was unaware of. Counsel for the defence suggested to Arnold that the fact that he asked Baker to show him how the \$50,000 had been spent demonstrated that the money was not spent with Baker personally. Arnold unequivocally disagreed with this suggestion. He did agree however that he expected that there was an increase in cost and that he declined to pay Baker any additional funds for the additional repairs. Arnold says that he did not pay for any additional work that Baker claimed he performed on the boat because he felt as though he had been 'bilked' out of \$50,000.

[20.] Counsel for Baker put to Arnold that the work done on the Lamda's auto-pilot was just another example of Arnold utilising the recommendations of others, in that instance Mooney, to have work carried out on the boat. Arnold also denied this assertion. It was further suggested that all three men (Mooney, Maillis and Arnold) inspected the boat while

it was berthed in Florida. Arnold agreed but says that the Lamda was found covered in marine growth with the engines down. Counsel for Baker directed Arnold to his evidence where he exhibited an invoice for 1400sq ft of electrical wire that was purchased and installed in the Lamda. Arnold's evidence was that he did not believe it to be true.

[21.] Arnold agreed with the suggestion that he made a conscious and deliberate decision to exclude Baker from being aware of or helping address his concerns regarding the Lamda's alleged electrical issues post re-wiring. He stated that Baker had betrayed his trust and that he did not want Baker to go near the boat. Arnold says that he did not raise any of his concerns with MME as he did not know who they were. He was directed to receipts regarding MME's involvement with the re-wiring of Lamda since at least June 2008. Arnold agreed that he had sought legal advice from a London based law firm in 2012 but that no demand letter or other notice was ever issued to Baker until 2014 when the Writ in this matter was issued.

Pericles Maillis

[22.] Maillis' evidence was that he has known Arnold since the 1990's and their friendship is such that he has been allowed to use the Lamda when Arnold is out of the country, to ensure that the boat was always working and ready to go. In April 2008 he took the Lamda out on a fishing trip. The Lamda was experiencing 'minor anomalies', the cabin lights didn't work, neither did the macerator pump switch.

[23.] In May 2008, Maillis says Baker collected the Lamda's keys from his office to take the boat to have the re-wiring done. He later went to Fort Lauderdale with Mooney and found the Lamda berthed in a canal. He says that he observed that Baker failed to raise the engines, causing electrolysis and damage to the lower units of the engines. Additionally he says that he witnessed the wiring work taking place on the boat and that the work appeared to have only recently begun. He says that the re-wiring was not completed by 1 June 2008 and that the work that was completed was not up to par. He says that his boating experience caused him to realise that the persons he found working

on the boat were cutting the ends of wires and putting on end attachments – the existing wires on the Lamda were not being removed and replaced as per the agreement between the parties.

[24.] Maillis says he had to personally clean the below-water salt intakes on the boat in July 2008 and later the trim tab shafts, because it was left unattended in the canal in Fort Lauderdale. He says that the Lamda did come safely to The Bahamas, however the boat experienced a series of electrical problems after it arrived. In August 2008 he personally both 'verbally and in writing' informed Baker of what he classed as 'serious defects' which arose on the Lamda, which indicated that no re-wiring had taken place. Maillis testified that Baker expressed a desire to help but that at that point he did not consider him to be trustworthy and he was of the opinion that Arnold held the same belief.

[25.] Maillis accepted that there were electrical issues with the Lamda before but he says that he could not specifically re-call electrolysis being a problem. He says that all boats have some electrolysis problems which was why zinc was installed on the engines and hull.

[26.] Maillis says that taking weather into consideration he believes Arnold lost 2 to 2 ½ years of fishing days (using 100 days a year as his benchmark for a fishing year). Maillis says that he wrote Baker with a long list of things that was wrong with the Lamda and that Baker responded saying that he was concerned and he wanted to rectify the problems. Baker, he says, was indeed excluded from any further dealings with the Lamda because he was not considered trustworthy.

Captain Burke Kelley Mooney

[27.] Mooney's evidence was that he met Arnold about 20 years prior. Over the years he performed maintenance and odd jobs as needed on the Lamda. He would drive the Lamda from Arnold's Lyford Cay home to Ft Lauderdale where it would be serviced. He would return it, sometimes with Arnold aboard. He described the Lamda as having an interior fiberglass hull with an exterior hull on top. He says that the wiring of the boat is

laid between these two layers to make a single hull. In light of the construction of the hull with the wiring placed in between two layers, Mooney says that he felt it would be "very difficult" to achieve the re-wiring that was said to have taken place. Mooney says he spent time on the Lamda and acknowledges that there were electrical problems on the boat because of its age.

[28.] Mooney says that he was engaged by Arnold to find the Lamda in Ft Lauderdale and report back to him. He says he was advised that the work to the boat should have been completed by 1 June 2008. Mooney's evidence was that he located the Lamda sometime between 11 or 12 June 2018 in Fort Lauderdale after being given the location of the boat by Arnold. He says he found two persons aboard the Lamda when he arrived, Seron Ferguson and a woman. He says he observed the woman replacing the terminals which were located on the ends of wires in the main electric panel of the boat. He says he visited the boat on three separate occasions while in Ft Lauderdale. On the second visit the boat was unattended. On the third occasion Maillis was also present, the boat had been moved to Dania to a boating facility. At that time he met Baker working on the boat and was told by Baker, after he enquired as to what he was doing, that he was completing the re-wiring of the boat.

[29.] On 3 July 2008 Mooney says he took delivery of the Lamda from Baker and he performed some 'minor work' to the boat, completing the work list provided by Arnold. By his account Baker had no further involvement with the boat from that point. Mooney says that at the behest of Arnold he conducted a visual inspection of the work done on the Lamda – which included the checking the fixtures and terminals connecting to the cabin lighting. On the 11 July 2008 Mooney says he sailed the Lamda through Bimini and delivered her up to Arnold's Lyford Cay home.

[30.] At the time Mooney says he had no reason to believe that there was anything wrong with the boat after the sea trial from the United States to The Bahamas. He says that no issues were raised by Arnold who was also aboard the Lamda for the voyage from

Ft Lauderdale back to his Lyford Cay property. Once the boat was delivered Mooney says that he returned to his Ft Lauderdale home.

[31.] In cross-examination Mooney was directed to an email between Maillis and Arnold dated 16 November 2008. That email was settled in part as follows:

'We had a bad rat problem – did not realize but a considerable amount of food, mayonnaise and ketchup containers left in the cupboard – from Ft Lauderdale I presume...'

...

'...I was quite disappointed that Burke took delivery and brought the boat over and clearly never made an attempt to clean it Bolton Style.'

It was put to Mooney that Baker did not deliver the Lamda to him in the condition described by Maillis in the email and that Arnold accompanied him on the return to New Providence. Mooney agreed that Arnold was aboard the boat, but disagreed that the condition of the boat was any different than described in the email by Maillis.

David Nixon

[32.] David Nixon (Nixon) was declared an expert in boat mechanics. He says that sometime in 2008/9 he was performing routine maintenance on a boatlift on Arnold's property where he saw Maillis. Maillis asked him to look at the Lamda because he was about to embark on a fishing trip, however he was unable to set out due to 'the pumps and stuff' not working on-board.

[33.] Nixon was questioned about his knowledge of the functionality of the Lamda prior to that day and whether he was aware that the boat had a rat problem. Counsel for Baker suggested that the rats could have damaged the wiring on the boat. Nixon agreed that such damage by rats could be a possibility. It was also suggested to Nixon that the presence of old wiring on the boat did not necessarily mean that new wiring was not put into place. Nixon disagreed and went on to say he knew the difference between brittle wiring that is old and bite marks from rats.

[34.] Nixon says he advised Maillis at the time that there were problems at the stern of the boat where the bilge pump was located.

[35.] When questioned as to whether he had himself documented any of the problems he claimed to have observed, or had been asked to do so by Maillis, Nixon says there was no documentation.

[36.] Upon re-examination Nixon went on to describe the method he used to determine that the wires that he saw in the Lamda were old. He told the Court that he bent some of the wires and he could hear them crackle under pressure. This crackling sound he says does not take place with new wiring when bent.

Julian Burrows

[37.] Julian Burrows (Burrows) gave evidence that he was a marine technician. He deposed that on or about 3 March 2009 he inspected the lower units of the Lamda's engines and determined that the trim and tilt motor assemblies were inoperable and two zincs were also replaced. Burrows accepted that Arnold had hired and paid another independent contractor to ground the electrical supply at the dock at Arnold's Lyford Cay home in an attempt to solve the Lamda's electrolysis issues.

Paul Baker

[38.] Baker's evidence was that he performs boat maintenance which involves captaining, small miscellaneous repairs, organizing and overseeing projects for clients. He says that he has 32 years' experience in total in boating, having worked in various capacities throughout that time. His relationship with Arnold he says was one where he would function as a project manager for Arnold. He would be employed on behalf of Arnold to perform whatever work that was necessary at the time. He says that in the past

he has taken the Lamda to a company called Brown's Boat Basin in Florida for Arnold to have work done on it. He says, depending on the job he had to perform, he either charged an hourly wage or a percentage and the expenses directly related to the job.

[39.] He says that Arnold advised him that the Lamda had been experiencing electrical issues and that he advised Arnold that the boat required re-wiring to address the various electrical issues that it was experiencing. Baker says that he recommended MME as the contractors to perform the re-wiring. He testified that at no time did he hold himself out to be a marine electrical contractor but he did advise Arnold as to the \$50,000 cost to have the re-wiring done. Arnold informed him that he wanted to go ahead with the recommendation and have the Lamda re-wired. Baker denied that there was any re-wiring agreement with Arnold and says that the Lamda was taken to Fort Lauderdale by him but not under an express timeframe to have the work completed by MME. He says that his role was to disburse the money for the repairs.

[40.] Baker says that Arnold had two other agents (Maillis and Mooney) who checked on the work that was being done in Fort Lauderdale on the Lamda. Upon completion of the work, Baker says that he delivered all of the receipts, invoices and other documents related to the work performed on the Lamda to Maillis. He contends that he spent over and above the \$50,000 paid out by Arnold to perform the repairs required on the boat.

[41.] After the Lamda was returned to The Bahamas, Baker says he was asked by Maillis to attend the boat with him and go over the work. He says that they did so and Maillis did not express any concerns to him about the work or the condition that the Lamda was in. He says that Maillis thanked him and indicated that the work was satisfactory. Baker says that he witnessed Arnold and Maillis fishing in the boat several times after the boat was re-wired and returned to The Bahamas.

[42.] Baker deposed that he has experienced extreme prejudice because of what he considers the lateness of Arnold's claim. He says that MME should be the defendant in these proceedings. The company has however, relocated from the address in Fort

Lauderdale where they had performed the work on the Lamda. Further he says Arnold's wilful delay in instituting these proceedings has also deprived Arnold from being able to contact MME and raise any concerns he had earlier. Further, and in addition to the passage of time and the extended use and interference with the boat by Arnold, his agents, guests, and friends over the years, Baker contends that even an independent expert would not be able to assess the work done by MME almost a decade prior to these proceedings.

[43.] At all material times, says Baker, he was acting as the agent of Arnold and never gave a guarantee or indemnity of the work performed by MME. When asked by Counsel for Arnold if he had a contract with MME, Baker said that he did not but Arnold had a verbal contract with the company. Further, he claims that Arnold visited the Lamda several times during the seven (7) weeks that the repairs took to complete and he even spoke to Alan McKenna (identified as the principal of MME) during that time. He says prior to work beginning on the boat, he spoke to Arnold about the scope of the work and they discussed the option of MME coming to New Providence to work on the Lamda or taking the Lamda to Fort Lauderdale to MME instead. Arnold he says opted to have the boat repaired in Fort Lauderdale.

[44.] Baker says that he did in fact verify that the boat had been re-wired. In fact he went through the boat thoroughly with Mooney before the voyage to New Providence from Fort Lauderdale. When the boat arrived at New Providence he also went through the boat with Maillis.

[45.] While in Fort Lauderdale, Baker says the Lamda was docked at G&L Marine as MME did not have a boat yard. He says that this was agreed with Arnold to avoid daily charges associated with ship yards. This measure he says would also allow the outboard engines on the Lamda to be worked on. He denied that Arnold was told that the re-wiring would be done in less than a month. Baker denied the suggestion that Arnold had no knowledge of where the Lamda was berthed. He says that either Arnold or his house

manager, was advised at all times of where the boat was and his house manager had all of the details including telephone number, address and e-mail for MME.

[46.] Baker was asked about Seron Ferguson who was said to have worked on the Lamda re-wiring for MME, in response he says that he never met Ferguson or all of the people who worked for MME. He also contended that he never performed any re-wiring work on the Lamda himself. Baker explained that invoices showing Seron Ferguson and any other person who worked for MME were given to Maillis. He was paid the last instalment of \$25,000 after he had done this. This was before the boat was brought back to New Providence.

[47.] Baker's evidence was that he delivered the Lamda to Mooney after a test voyage. They both went through the boat to ensure that it was working and he showed Mooney the new instruments that were installed on-board which included a new depth finder and auto pilot.

[48.] After the boat was returned to Arnold, Baker says he received an email from Maillis stating that there were concerns. However, he says despite having received the email, it appeared that there was a determination not to let him back on-board the Lamda. Further, he says he was never reimbursed the sum of \$16,000 which was the cost of the extra work that he had put into the boat while in Fort Lauderdale. He says that the deal with Arnold was \$45,000 for MME and \$5,000 for him of the \$50,000.

[49.] During cross-examination Baker averred that he never invoiced Arnold as was put to him, instead he created a summary of the invoices from MME for the Lamda. He says that the original invoices totalled \$51,000 apart from \$16,000 for additional work he paid for himself.

[50.] Baker admitted during his oral evidence that there were some areas of shoddy workmanship which he tried to rectify on the boat. He says he met with Maillis to see how

they could go forward and rectify the problems, however a list of problems never came up until it was time for Court.

William Hunter

[51.] Hunter testified that having employed Baker for about 20 years he could not recall whether Baker had taken any time off in June 2008 around the time the re-wiring work was said to have allegedly taken place. Hunter told the Court that he did introduce the parties but did not become involved in their dealings and that he had in fact specified to the parties that he was not interested in being caught in the middle. He says that he heard nothing of what the parties were working on until Baker revealed that a law suit was in the works.

Peter Andrews

[52.] Peter Andrews testified that he had no knowledge of the work that Arnold employed Baker to perform on the Lamda. He says that Arnold has never asked his opinion of Baker either. He says that Baker engaged MME on his behalf and that they rewired his boat. This work he said was done in New Providence with Alan McKenna having come to his property and performed a remarkable job.

Analysis and Disposition

[53.] The claim is for breach of what Arnold says was a re-wiring agreement. He claims that there is no evidence to show that the Lamda was actually rewired. He sought to rely on the evidence of Burrows as to the condition of the boat's engines. Counsel for Arnold submits that Baker did not call anyone from MME to testify that the work had been done. They submit that Arnold relied on Baker, as pleaded, to get the re-wiring work performed and that Baker's contention, that he never held himself out to be a marine electrical contractor, is a "straw man" argument or a distortion of the case against him. They also submit that:

- (1) Arnold never asserted that Baker was a marine electrician, but that he advised Arnold that he had a superb team that could get the re-wiring done.
- (2) Baker, contrary to his evidence, did personally work on the boat.
- (3) There is no credibility in Baker's assertion that the MME re-wiring contract was with Arnold and not himself. They contend that Arnold nor any of his representatives had any dealings with MME with regard to re-wiring the Lamda. They say that this is evidenced by the fact that there were no invoices or any other documents from MME to Arnold. The only invoices were from Baker to Arnold.
- (4) Notwithstanding the remarkable job that Andrews testified that Baker secured with MME in re-wiring his boat, Counsel for Arnold submits that that simply was not the case with Arnold and the Lamda.
- (5) There was no evidence to back Baker's claim that Arnold was trying to save money on the project so this is why the Lamda was docked at a private residence in Ft Lauderdale as opposed to having the boat worked on in New Providence. There was also they say no evidence of Arnold trying to bargain with Baker to have the price of the works lowered.
- (6) When Arnold became concerned about the whereabouts of the Lamda, Baker hastily put together a team of people which did not include Alan McKenna whom Andrews had testified had done an excellent job on his boat. Instead the team put together by Baker were negligent in both their management and care of the Lamda. This they say is backed by the evidence of Maillis regarding the condition he found the Lamda in when he saw it on 11 June, 2008. Their contentions they say are also backed by Burrows' evidence on the state of the outboard engines on the Lamda's return to New Providence.

[54.] Insofar as the claim for damages is concerned, Counsel for Arnold relies on **Jackson v Horizon Holidays Ltd [1975] 3 All ER 92**. In *Jackson* a family booked a vacation through the defendant travel agent. The hotel was not available and they were given alternative accommodation that was supposed to be up to the standard of the hotel originally booked. This however ended up not being the case and the family was crammed

into unsatisfactory accommodation at the alternative resort. The judge awarded damages for both diminution in value of the vacation and mental distress to Jackson. Damages were based on the finding that the family only had half of the value of the holiday. They say that *Jackson* shows that Arnold is entitled to recover the \$50,000 paid to Baker with interest as the Lamda was not completely or competently re-wired.

[55.] Counsel for Arnold also relies on the case of *Omak Maritime Ltd v Mamola Challenger Shipping Co [2010] EWHC 2026* to broker the point that Arnold is entitled to be placed in the same position that he was in prior to the \$50,000 pay out for the re-wiring. The payment they reiterate should be returned to Arnold. As set out in their Amended Statement of Claim, Counsel for Arnold says he has suffered loss of use of his boat for a considerable period of time following the alleged re-wiring work. They cite the case of *Dando v Chartered Trust plc [1999] Lexis Citation 2517* in support of this claim. In that case the plaintiff hired a caravan that was said to have been in deplorable condition and ultimately had to be towed. The plaintiff was awarded the return of his deposit, payments and damages for loss of use.

[56.] Arnold also relies on *Halbury's Laws of England/Damages (Volume 29 (2019))*/7. Measure of Damages in Tort/(2) Torts other than Those Involving Personal injury/(i) Torts Involving Chattels/419. Loss of use of non-profit-earning chattel, as follows:

In the case of a chattel which is not employed for profit (for example, a private car or an asset of a public authority), the owner is in general entitled to hire a replacement and claim the reasonable cost of so doing. No account is taken of whether the item was strictly necessary to the claimant: the owner of an expensive car is entitled to hire a prestige replacement even if a cheaper model would provide perfectly adequate transport.

Even if this is not done, however, a private owner is in principle entitled to general damages for loss of use.

The value ascribed to loss of use of the Lamda by Arnold in his statement of claim is \$45,000 based on 90 days of lost fishing at \$500 per day.

[57.] Regarding any mitigation on the part of Arnold, Counsel for Arnold submits that the electrical difficulties which arose with respect to the Lamda were rectified as they arose. They assert that Baker made no effort to offer a competent expert to them to bring about a solution. Further they say Arnold is unapologetic about his refusal to allow Baker the opportunity to resolve any issues that arose with the re-wiring. They rely on the case of ***Iggleton v Fairview New Homes [2007] EWHC 1573 (TCC)*** to bolster their position that it would have been inappropriate to allow Baker to access the Lamda considering his poor performance of the re-wiring and the lack of trust that existed on Arnold's part as a result. They rely on paragraph 79 of ***Iggleton*** as follows:

“...it would take a relatively extreme set of facts to persuade me that it was appropriate to deny a homeowner financial compensation from admitted defects, and leave him with no option but to employ the self-same contractor to carry out the necessary rectification works’.

[58.] The defence contends that the Lamda was returned under her own power to Arnold. The institution of these proceedings almost six years after Arnold took possession of the boat constitutes extreme delay. They submit that the claim by Arnold remains unparticularized and unproven. They further rely on ***Horsford v Bird and others [2006] UKPC*** to attack the claim for loss of amenity by Arnold saying that the claim has not been established and in any event is unrecoverable in the circumstances.

[59.] Counsel for Baker also relies on the Court of Appeal case of ***Deborah Gilbert v BH Riu Hotels Limited t/a Riu Palace Paradise Island SCCivApp No.143 of 2019*** to make the point that special damages must be pleaded and proven under the law. They submit that their request pre-trial for Further and Better Particulars of the amount of damages pleaded by Arnold was fruitless. With regard to Arnold's claim for general damages they say that he has failed to plead or prove any actual damage or loss suffered. They submit that Arnold has not proven his claim that Baker did not simply act as his agent for the re-wiring of Lamda.

[60.] Baker submits that there was no relevant expert assessment or report of the re-wiring work done on the boat to provide evidence to the Court that the work was defective. He submits that Arnold's continued use and enjoyment of the Lamda constituted interference with the boat for 6 years. Further the delay in the bringing of this action has prejudiced the defence and any potential evidence that could have been obtained from MME who they say carried out the re-wiring. They also say that Mooney's admission to sailing the Lamda between The Bahamas and Florida shows that Arnold had a long history of using agents to take care of the boat.

[61.] Concerning Nixon's evidence, the defence submits that the "crunch" test that he described for determining whether the wiring on a boat was old or new had no scientific foundation. They add that the Lamda has a long history of electrolysis issues, which cannot be attributed to the dockage in Florida while the re-wiring was taking place.

[62.] Baker relies on the section 44 of the Limitation Act in support of his reliance on the doctrines of acquiescence and laches as follows:

"Nothing in this Act shall affect equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise."

[63.] Counsel for Baker submits that Arnold failed to produce any evidence that he hired and/or paid a competent electrician to resolve his alleged wiring issues still existing after the works Baker had done. They say the evidence of Maillis where he says that Arnold chose to work on the Lamda incrementally rather than return the boat to another marine electrician or Baker shows the prejudicial nature of bringing the claim on the brink of the expiration of the limitation period. Meanwhile Arnold continued to interfere with the boat by using it.

[64.] Counsel for Baker relies on the dicta of Lady Hale in the case of ***Bettermint Properties v Dorset CC [2014] 2 All ER 1*** to support their defence of laches as follows:

"Here the equitable doctrine of laches may provide the answer: inaccurately summed up in Latin tag, *vigilantibus, non dormientibus, jura suvenient* (the law

supports the watchful not the sleeping). Sullivan LJ's reference to sleeping on his rights comes from the words of Lord Camden LC in *Smith v Clay* (1767) 3 Bro CC 369m at 640: 'A Court of Equity has always refused its aid to stale demands, where a party has slept upon his rights and acquiesced for a great length of time: Nothing can call forth this into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the Court is passive and does nothing.' Her Ladyship goes on to opine at page 15 therein that: "the general principle is that there must be something which makes it inequitable to enforce the claim. This might be detrimental reliance by others on, or some sort of prejudice arising from, the fact that no remedy has been sought for a period of time; or it might be evidence of acquiescence by the landowner in the current state of affairs, In *Lindsay Petroleum Co. v Hurd* (1874) LR 5 pc 221, the judgment of the Board, given by Lord Selbourne LC..., contains the oft-quoted passage (at 239-240): 'Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which would otherwise be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable.'

[Emphasis added]

[65.] They say prejudice has also come to Baker as he was unable to locate witnesses due to the delay of the institution of these proceedings. During the delay they reiterate that Arnold, Maillis and other un-named third parties continued to interfere with the Lamda. Additionally, Baker was unable after such considerable delay to locate MME or its principle, Alan McKenna or Seron Ferguson MME's employee, in 2014 when the claim came to his attention.

[66.] In support of their assertions of delay by Arnold they also rely on the case of ***P & O Nedlloyd BV v Arab Metals Co. (No 2) (CA) [2007] 1 WLR 2288*** as follows:

“I also think that the distinction between mere delay and delay which has an adverse effect on the position of the defendant or others is sufficient to explain the dicta in the cases on which he relied. Equally, however, I can see no reason in principle why, in a case where a limitation period does apply, unjustified delay coupled with an adverse effect of some kind on the defendant or a third party should not be capable of providing a defence in the form of laches even before the expiration of the limitation period. The question for the court in each case is simply whether, having regard to the delay, its extent, the reasons for it and its consequences, it would be inequitable to grant the claimant the relief he seeks.”

[67.] In their submissions the defence also remarks that no reasons have been given for the delay in prosecuting this matter by Arnold.

[68.] In relation to what was described as the modern approach to the defences of laches and acquiescence counsel for Baker rely on *Re Loftus (deceased)* [2006] All ER 1110 and the dicta of Chadwick LJ as follows:

“The inquiry should require a broad approach, directed to ascertaining whether it would in all circumstances be unconscionable for a party to be permitted to assert his beneficial right. No doubt the circumstances which gave rise to a particular result in the decided cases are relevant to the question whether or not it would be conscionable or unconscionable for relief to be asserted, but each case has to be decided on its facts applying the broad approach.”

[69.] At the heart of the claim is a complaint for breach of contract for the re-wiring of the Lamda. The starting point therefore is to determine the terms of the oral contract agreed by the parties concerning the re-wiring of the Lamda. The legal test to be applied is what a reasonable man would have understood Baker and Arnold to have agreed having regard to the evidence (*Shogun Finance Ltd v Hudson* [2003] UKHL 62). Notwithstanding the involvement of Maillis, as regards the terms of any contract for re-wiring the only direct witnesses to those terms, which were undoubtedly oral, were Baker

and Arnold. Having listened to the witnesses and having observed their demeanour as they gave their evidence, I have no hesitation in indicating that I preferred the evidence for Baker. I am satisfied that Baker was merely the agent for Arnold in the same way as Mooney and Maillis have acted on occasions and in different capacities.

[70.] Baker's role was to facilitate the re-wiring of the Lamda and the installation of new equipment on behalf of Arnold. Baker recommended MME, having previously engaged them on behalf of Peter Andrews. I am therefore prepared to find that Arnold was well aware that Baker was not a marine electrician and that others would be engaged to do the actual work of re-wiring the Lamda and his role limited to disbursement of the sums for work done. The engagement for him was as an agent to facilitate the re-wiring engagement with MME.

[71.] Arnold's evidence is that he did not enter into a contract with MME, his agreement was with Baker and Baker alone. This evidence, in my view conflicts with Arnold's admission that he demanded that all receipts in Baker's possession relative to the work be turned over to him upon what he thought was the completion of the re-wiring work and; that he had them checked by an accountant. Arnold's evidence in this regard is more consistent with Baker's evidence that his role was to disburse the money for the repairs. Whilst Arnold paid out the sum of \$50,000 for the re-wiring work there was no evidence presented that he ever requested or received any warranty or guarantee from Baker concerning the work.

[72.] As contended by the defence, the boat was seaworthy enough for Arnold to use. It managed, without incident and complaint, the sea trial with Mooney prior to his taking delivery from Baker. It also managed, without incident or complaint, the trip back to Nassau from Florida with Mooney and Arnold on board. It would not be, on the evidence, until months later that any complaint is made by Maillis to Baker. Arnold says that he chose to conduct the repairs as they arose, rather than having the entire works corrected/re-done or alternatively engaging another party to survey the boat and give a

true assessment of whether the re-wiring was improperly done or an estimate of what the corrective works would actually cost from an expert perspective.

[73.] I was not satisfied, on balance, that there was evidence that the rewiring was not done or was done so improperly to expose Baker to personal liability, either contractually or in negligence, under the agency arrangement for the work of others. Baker accepted in his evidence that some aspects of the works were shoddily done, which he attempted to rectify. I therefore was not prepared to accept that Baker's presence on the boat, doing some work, was an indication that he undertook to do the wiring when both Mooney and Maillis gave evidence of seeing other persons engaged in electrical work on the Lamda, when they visited it in Florida. The experts called did not satisfy me, through their expertise or their examination of any wires, that the work done was sub-par or that the issues which the Lamda may have been experiencing was associated with work poorly done. The experts, in my view did not examine the Lamda contemporaneously with the completion of the rewiring. I was not satisfied on my assessment of the facts that there was a nexus between the work done and any challenges experienced by the Lamda. Additionally, I could not exclude, on balance, other causes for the problems being experienced by the Lamda, unrelated to re-wiring. I therefore accepted Baker's submission that there was no relevant expert assessment or report of the re-wiring work done on the boat to provide acceptable evidence to the Court that the work was defective.

[74.] Further, Arnold having brought this claim after the 11th hour, I am not satisfied that he has met the defence of laches with an adequate response or reply. There is no doubt that this claim was brought just shy of the limitation period, which in and of itself does not disqualify the claim in the eyes of the Court when the defence of laches and acquiescence was raised. In ***Brooks v Muckleston 1909 2 Ch 519*** the English Court stated:

“...And even a comparatively short period of delay (that is, of laches or “standing by”), not satisfactorily accounted for, tells heavily against a plaintiff in equity, suing in respect of an equitable right or for equitable relief – Scil; Because the delay is evidence of a waiver of the right to action.”

Arnold has not accounted for the delay in bringing this action against Baker. Arnold's decision to fix the problems with the Lamda as they arose, in all the circumstances, is not one that stands up in the face of equity as a satisfactory explanation for the delay. ***Stackhouse v Barston 19 Ves 453*** expressed "*the disinclination of courts of equity to listen to stale demands, when the claimants have long slept upon their rights, without labouring under any disability to exert them...*".

[75.] I did not find that there were any provisions for remedies in the oral contract in the event of default on and/or breach of the contract by either party. I accepted Arnold's evidence that he had lost confidence in Baker after the problems that he started experiencing with the Lamda - that was his right. However, after deciding to not engage Baker again it was not his right to delay the making of any demand or the institution of proceedings when no additional evidence of probative value was offered in explanation.

[76.] Baker avers, and I accept, that MME could not be located due to the lapse of time between the re-wiring work and his being served with this action. This unfortunately is one of the consequences of delay, witnesses or businesses can and do sometimes become unavailable or cease to exist. The delay in my view has undoubtedly prejudiced Baker and I would apply the equitable doctrine of laches to afford him a defence to any damages claim of Arnold.

[77.] It has also been submitted on behalf of Arnold, that Baker made no attempt to offer a competent expert to rectify the alleged problems that were being experienced on the boat. This complaint is unfair as there was no evidence that Baker was ever entreated to do so and the evidence was quite the opposite. Arnold made it abundantly clear that he did not trust Baker and did not want him near the Lamda. I accept that this was his right based on his submissions. As such, and based upon what I have determined to have been the oral contract, I do not believe that Arnold would have accepted a recommendation from Baker on whom to engage.

[78.] In all the circumstances therefore, Arnold's claim is dismissed. Baker shall have his reasonable costs to be taxed in default of agreement.

Dated this 30th day of June 2021

A handwritten signature in black ink, appearing to read 'I. R. Winder', written in a cursive style.

Ian R. Winder

Justice