

**COMMONWEALTH OF THE BAHAMAS**

**2022/COM/adm/0012**

**2022/COM/adm/0013**

**IN THE SUPREME COURT**

**Commercial Division**

**IN THE MATTER** of an Admiralty Action  
In Rem against the M.V. "CRYSTAL SYMPHONY"

**IN THE MATTER** of an Admiralty Action  
In Rem against the M.V. "CRYSTAL SERENITY"

**BETWEEN**

**DNB BANK ASA**

**Plaintiff**

**AND**

**THE OWNERS AND PARTIES INTERESTED  
IN THE MOTOR VESSEL "CRYSTAL SYMPHONY"**

**THE OWNERS AND PARTIES INTERESTED  
IN THE MOTOR VESSEL "CRYSTAL SERENITY"**

**Defendants**

**Before:** The Honourable Madam Justice Ntshonda Tynes (Ag.)

**Appearances:** Ms. Wynsome Carey and Mr. Darzhon Rolle for the Plaintiff  
Dr. Peter Maynard and Ms. Tamika Pinder for the Crew of the  
Motor Vessels "Crystal Symphony" and "Crystal  
Serenity" (Intended Caveator)  
Mr. Stephen Turnquest and Ms. Syneisha Bootle for Peninsula  
Petroleum Far East PTE Ltd. (Intervener)  
Mrs. Lena Bonaby for Nassau Cruise Port Limited and GPH  
Antigua Limited and holding brief for Mr. Robert Adams KC for  
SMS International Shore Operations US Inc.(Interveners)  
Ms. Kristan Stubbs and Ms. Vashti Bridgewater for the Admiralty  
Marshal

**Hearing Date:** 17<sup>th</sup> November, 2022

**DECISION**

**Tynes, J (Ag.)**

1. This is my abridged Decision concerning the Plaintiff's application for an Order for the determination of priority of payments against the proceeds of sale of the subject vessels and for payment out.
2. By way of a brief factual background, on the 4<sup>th</sup> February, 2022 the motor vessels "Crystal Symphony" and "Crystal Serenity" were arrested in Freeport, Grand Bahama at the instance of Peninsula Petroleum Far East PTE. Ltd. in two actions (2022/COM/adm/0008 and 2022/COM/adm/0009). On the 24<sup>th</sup> February, the vessels having been released by Peninsula, were again arrested, this time by the Plaintiff herein pursuant to warrants of ship arrest issued in its own two actions (2022/COM/adm/0012 and 2022/COM/adm/0013). In March, 2022, Orders for the Appraisal and Sale of the vessels were made in the Plaintiff's actions. By June, 2022 both vessels were sold for US\$25,000,000.00 and US\$103,000,000.00 respectively and the proceeds of sale deposited into a joint bank account pursuant to the terms of the Order. Creditors were given notice by an advertisement by the Admiralty Marshal on the TradeWinds website in accordance with the Order that "any person with a claim against the Vessel or the proceeds of sale thereof, upon which he intends to proceed to judgment, should do so before the expiry of the period of 30 days...". In the meantime, at different stages, the various claimants took steps to participate in these proceedings, most of them as Intervenor. By the 5<sup>th</sup> August, 2022, the Plaintiff obtained Judgment in Default. On the 27<sup>th</sup> September, 2022, the Plaintiff filed the instant applications by Notice of Motion for an Order for the determination of priority of payments to the Claimants against the

proceeds of sale of the subject vessels and for the payment out of the amounts found due to the various Claimants.

### **The Application**

3. As usually happens when there are insufficient funds to fully satisfy the respective claims of all claimants, a dispute has arisen between the claimants concerning their respective rights to be paid out of the proceeds of sale of the vessels “Crystal Symphony” and “Crystal Serenity”.
4. The rank or order of priority of claims is governed by sections 277 through 281 of the Merchant Shipping Act. Those provisions offer protection to certain categories of claims in circumstances where there are insufficient funds available to satisfy all competing claims as in the instant case. For example, claims of crew members for unpaid wages are secured by maritime liens and are ranked higher in priority than registered mortgages so that, as has happened here, limited available funds would not be subsumed in their entirety by mortgagees leaving unpaid crew members without. The provisions of sections 277 through 281 of the Act are clear as they relate to the order of priority of claims and in that regard do not appear to be in dispute.
5. As I understand it, the dispute between the parties concerns the interpretation of the provisions of the Act and/ or their application in practice as it relates to the making of payments out. The Interveners (except for Peninsula) and the Intended Caveator are of the view that as priority maritime lien holders they are entitled to payment out of the proceeds of sale of the vessels notwithstanding that they hold no judgments in their favour. In addition, they maintain that by virtue of the provisions of the Act ordering

priority of claims, the Plaintiff/ Judgment Creditor must await payment to the maritime lien holders before it can receive any payment whatsoever notwithstanding its Default Judgment and the absence of judgments in favour of the other claimants. No legal authority (other than the provisions of the Act as interpreted by the relevant Interveners and Intended Caveator) was cited in support of these contentions. (Up to the time the application was heard, not only was the Plaintiff the only claimant with a Judgment in its favour, but of the other claimants, only Peninsula had commenced an action in rem against the vessels.)

6. If the Interveners and Intended Caveator are right that they need not obtain judgment (or consent) in order to receive payment, it would mean that an interested party can forgo normal court procedures whereby judgments are obtained (be it by default or otherwise) and forgo obtaining the consent of all claimants (whose interests would be affected by disbursement) yet expect to receive a payment out.
7. Not only is this argument not supported by clear legal authority, it does not seem reasonable or in the interest of justice. Neither does it seem reasonable or in the interest of justice that a judgment creditor should be kept out of the fruits of its judgment because it ranks lower in priority than other claimants who are slow or reluctant to prosecute their claims. Nor is it necessary for a judgment creditor to await indefinitely payment to higher ranking claimants when the court has at its disposal the ability to insure the protection of priority claimants by ordering that sufficient funds be reserved to satisfy future favourable judgments and any costs to be incurred in pursuit thereof.
8. I am persuaded by the contents of note 75/24/6 of Vol.1 of *The Supreme Court Practice*, 1999 Ed. which states, “The Court has no jurisdiction to order payment out from the

proceeds of a sale by order of the Court, to persons other than judgment holders or, in the case of the residue after all claims have been satisfied, the defendant (*The Saxon King*, 1975 Fo. 253 (unrep.)). Exceptionally, payment out may be ordered to any person where the defendants and all other parties interested in the proceeds of sale (judgment holders interveners and caveators) consent. (*The Valiant*, 1977 Fo. 446 (unrep.)) Payment out on account may be ordered where all parties consent, or where the priorities are such that it is clear the claimant will ultimately be entitled to at least the amount ordered. See *The Reina* (No. 2) [1963] 2 Lloyd's Rep.513.”

9. I therefore agree with Plaintiff Counsel that entitlement to payment out of the proceeds of sale of the vessels must depend on a claimant either having obtained judgment or having obtained the consent of the other claimants. It is also my view that the protection afforded claimants by the provisions of the Act ordering priority of claims can be achieved by the retention of sufficient funds to secure the potential future judgments of the prioritised claimants.
10. In the result, my order regarding the Plaintiff's applications are in similar terms to those contained in the Plaintiff's respective draft Orders save that additional clauses shall be inserted i) recognising by declaration in the existing “clause 1(e)” GPH Antigua Limited's rank in priority as a maritime lien holder, ii) retaining the appropriate amounts (i.e. \$15,540.50 and \$13,588.50 respectively) in the Joint Account as security for a final judgment which may be obtained by GPH Antigua Limited, iii) retaining \$2,000,000.00 as security for the potential future costs (along with interest) which may be incurred by the relevant claimants (namely, the Crew, SMS International Shore Operations US Inc., GPH Antigua Limited, Nassau Cruise Port Limited as well as the

Department of Inland Revenue) in prosecuting their respective claims to judgment. Additionally, at clause 2(e), the sum stated should be retained in the Joint Account instead of paid to NCPL as security for a final judgment which may be obtained by NCPL.

11. I have not included provision for the payment of the Plaintiff's costs associated with the arrest and sale of the vessels not because the Plaintiff is not entitled but merely because the Plaintiff had not included the same in its draft consent Orders. However, should this matter or any other need to be accounted for or addressed, the claimants are at liberty to apply.
12. The relevant Interveners and Intended Caveator are urged to prosecute their respective claims with despatch should they so choose.
13. I thank Counsel for their submissions which were useful in assisting the court with coming to grips with the factual background as well as the progress of the actions from the issuance of the Writs up to the November hearing.

**Dated this 19<sup>th</sup> day of December, A.D. 2022**

**Ntshonda Tynes  
Justice (Ag.)**