Neutral Citation No. [2019] EWHC 776 (Admlty)

Claim No. AD-2017-000157

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURT OF ENGLAND AND WALES

QUEEN'S BENCH DIVISION

ADMIRALTY COURT

Before Admiralty Registrar Jervis Kay QC

B E T W E E N:-

ELLIOT LAMBERT

Claimant

- and –

(1) V J GLOVER LIMITED
(2) CARL FRIDAY

Defendants

Appearances

For the Claimant – Tom Steward instructed by Ashfords Solicitors

For the Defendants – James Watthey instructed by Keoghs Solicicitors

Hearing dates: 11th, 12th, 13th and 14th December 2018

JUDGMENT

Introduction

1. The Claimant, Mr Elliot Lambert, seeks to recover damages due to a personal injury suffered while working onboard the Motor Fishing Vessel "REJOICE" (hereafter "the vessel" or "the boat"). Mr Lambert suffered a serious and unpleasant injury to his dominant left hand the effects of which are ongoing. He has claimed against the owners of the vessel, V J Glover Limited (the First Defendant), and the Skipper of the

vessel at the material time, Mr Carl Snell (the Second Defendant, who also appears to be known as Mr Carl Friday). The Claimant seeks damages in a total sum claimed of £582,348.76 plus interest.

Background

2. Before the court were the statements of case, including a Part 18 Request, a report by Mr Andrew Murray Ian Watts, with an addendum, a report of Mr Standley, with an addendum, the Experts' Joint medical report, the first and second witness statements of Elliot Lambert, the witness statement of Hayley Ford, the witness statement of Adam Harper, the witness statement of Dominic Bates, the first and second witness statements of Carl Snell, the witness statement of Lance Glover and the witness statement of David Smith and a surveillance report.

3. The "REJOICE" is a 'scalloper' with a length overall of approximately 12 metres, a breadth of about 5.20 metres, a draft of about 2.7 metres, and a gross tonnage of 22.44mt.. She was built in Sunderland by Lonsdale Marine in 1989, and is powered by one Cummins engine through a single shaft and screw, generating a maximum sea speed of about 12 knots, though her engine has been permanently de-rated to 221.00kW. She is registered by the MCA with a Small Fishing Vessel Certificate, and is on the British Registry with an official number B1011 and port letter BH220.

4. Elliot Lambert is 35 years old and, at the material time he was working onboard as a deckhand. He was a share fisherman, that is one who is self employed and is paid a share of the profits of each fishing trip. He had previously worked on a variety of fishing boats before joining this vessel. He has all the requisite MCA and 'Seafish' qualifications, including attendances on First Aid, Sea Awareness and Sea Safety courses and, since the age of 18, has worked continuously in the fishing industry, primarily out of Brixham, Devon. Mr Steward described him as experienced.

5. On 6th October 2016, the "REJOICE" was lying alongside in the 'new fishing harbour' within Brixham Harbour, Devon. She was moored starboard-side to a quay, with her bow pointing West to South-West. There were a number of other vessels moored in her vicinity. On the same day the vessel's skipper, Mr Snell, telephoned Mr

Lambert and invited him to go fishing. Mr Lambert left home at around 1800 and went to the “REJOICE” that day. At that time, the weather conditions had been and were poor. It is said that there was an Easterly Gale and, by the Claimant, that there was a wave height of around 3 to 4 feet within the harbour with an underlying swell of a further 2 to 3 feet and that the Vessel was surging against the harbour wall by a vertical distance of at least 3 to 4 feet.

6. I have seen a plan of Brixham which indicates that there is long pier to the East which would protect the harbour from weather with an Easterly component. In the South East and Southern portion of the harbour there is a yacht marina with a wave barrier lying off it. The ‘new fishing harbour’ has been constructed in the South West corner of Brixham just to the North of the ‘inner Harbour’ which dries at low water. The entrance is close to the Western end of the marina’s wave barrier. From the plan of the harbour the ‘new fishing harbour’ would appear to give reasonable shelter from all points and whilst I accept that the conditions in Brixham Harbour were rougher than usual and that the Vessel was moving relative to the quayside I suspect that the wave and swell heights given above are an overestimate.

7. It is the Claimant’s case that the Vessel was moored solely by a single rope, for’ard and aft, and there were no fenders. The deck lighting was not switched on. In other words, she was poorly lit and inadequately secured. Mr Lambert’s account is supported by the evidence of Mr Adam Harper, who was also present onboard that day. It is common ground that Mr Snell instructed Mr Lambert to clean the accommodation. This involved cleaning up some ‘protein powder’ which had apparently been spilled on the deck. The Claimant says that he began this work using a ‘hoover’ and that, when he asked Mr Snell where to dispose of the powder, Mr Snell instructed him to throw it overboard. Mr Lambert followed that instruction and threw it over the starboard side, away from the wind, with his left hand on top of the scallop dredge which, as can be seen in the photographs was stowed lying over the starboard bulwark or gunwale aft of the break in the forecastle in way of the after end of the wheelhouse and accommodation area.

8. It appears that in the course of doing this work Mr Lambert came out of the accommodation by the door in the bulkhead on the starboard side forward of the fishing deck and threw the unwanted protein over the starboard side. That would be over the starboard bulwark with the dredge lying over it. The Claimant had disposed of amounts of unwanted protein over the starboard side on a number of occasions and came out of the accommodation again to do so. In the course of doing so it is said that he placed his hand on top of the dredge preparatory to or whilst he was throwing the protein over the side and that his hand became caught between the dredge and a part of the quay or jetty alongside the vessel. Apparently the vessel was ranging or lifting at the time and his hand remained caught for some 4-5 seconds until she moved away from the quay once again. There is no doubt that the injury suffered was of a very unpleasant type and that the Claimant's use of his left hand has been substantially impaired. Mr Lambert suffered serious and lasting injuries to his left, and dominant hand. They have been described in the reports of Mr Watts and Mr Standley, the medical experts relied on by the Claimant and the Defendants respectively.

The Issues

9. The Claimant has put forward the following issues for consideration:
    a. Whether the Defendants owed the Claimant a duty of care, and the scope of that duty;
    b. Whether the Defendants breached that duty of care (and causation);
    c. Quantum;
    d. Whether the Claimant's claim is "*fundamentally dishonest*" within the meaning of s. 57 of the Criminal Justice and Courts Act 2015. The issue is whether the Claimant has dishonestly sought to suborn the Second Defendant into giving false evidence in relation to these matters and whether the Claimant should therefore be prescribed from recovering by reason of s.57 of the Criminal Justice and Courts Act 2015.

The Claimant's case on liability

10. The essence of Mr Lambert's case is that his injuries arose in circumstances where he was acting under the instruction of the Second Defendant in circumstances where the Vessel was inadequately secured in the prevailing weather conditions.

11. With respect to the allegation that the Claimant acted dishonestly with respect to the various messages that were exchanged between himself and Mr Snell the Claimant has submitted that he was not asking Mr Snell to lie but was, on the contrary, requesting that Mr Snell tell the truth, for example that the Vessel was inadequately secured, however Mr Snell has preferred to protect his own position.

12. The Claimant has relied upon the oral evidence of his girl friend, Ms Hayley Ford who gave evidence as to the Claimant's mental state at the time when the exchange of messages took place and stated that Mr Lambert was in a "*real state,*" and that she had to assist him with many tasks including sending messages on his behalf because he was not able to. The Claimant has also relied upon the evidence of Mr Adam Harper who was the third and last member of the crew to join the Vessel. Mr Harper confirmed that the weather conditions were poor which had led to him have serious reservations about 'going onboard'. He said he wanted to help Mr Lambert. The Claimant relied upon Mr Harper for confirmation that: (i) Mr Snell instructed Mr Lambert to tidy up the spilled protein powder; (ii) Mr Snell instructed Mr Lambert to throw it overboard; (iii) the Vessel was inadequately secured with only one rope forward and one rope aft; (iv) there were no springs to prevent the Vessel from surging, and; (v) there were no fenders mid-ships. The Claimant also sought to rely upon one Mr Dominic Bates, who was a chef in a restaurant in Brixham near to where the Vessel was moored to the effect that there were poor weather conditions on the relevant day and that the Vessel was not properly secured, unlike other vessels in the harbour.

The Defendants' case on liability

13. The Defendants contend:
    a. That the vessel was properly moored by two 'shore ropes' and one spring line;
    b. That the vessel did have sufficient fenders and the quay had sufficient fenders;
    c. There was adequate light, the vessel had her decklights on and the quayside was lit;
    d. Mr Snell did instruct the Claimant to clear up the accommodation area which included cleaning the 'protein' which spilt on the galley deck but: (i) Mr Snell

did not order the Claimant to dispose of the protein over the side into the harbour; nor (b) did he instruct the Claimant to do so between the vessel and the harbour wall. The Claimant should have put the debris into the bin in the galley.

e. The Claimant offered to bribe the Defendant by giving him £10,000 if he would support his own version of events.
f. The Claimant sent a fake message purporting to come from Mr Snell admitting that he was lying about the events leading up to the Claimant being injured. A single Joint Expert was appointed which has concluded that the message was probably a fake.
g. The Claimant's case fails because the sole or major cause of the injury was the Claimant's act of putting his hand over the side.
h. The Claimant's actions in throwing the protein debris over the side was volenti in the sense that he could see the dangers caused by the vessel's movement but he did it anyway;
i. The Claimant's actions in throwing the protein debris over the side was contrary to the Torbay Harbour Bye-laws Part 6, no.102 and the Claimant is not entitled to rely upon his own illegal or reprehensible conduct, *ex turpi causa non oritur actio.*
j. As to quantum the Claimant's case is exaggerated and there is outstanding expert evidence which needs to be considered with respect to his alleged disabilities, what work he can do in the future and whether he will need care and, if so, what.
k. The Claimant has acted dishonestly within the meaning of s.57 of the Criminal Justice and Courts Act 2015 and the claim should be dismissed unless the Claimant would suffer substantial injustice. The Claimant's arguments with regard to dishonesty are flawed and the submission that losing his claim would amount to substantial injustice is no answer, see *London Organising Committee of the Olympic and Paralympic Games v Sinfield.*[2018] EWHC 51.

14. At the trial oral evidence was provided by both parties which related to the issues of liability and whether the Claimant had acted honestly with respect to the Criminal Justice and Courts Act 2015. Although the parties' medical evidence, in the form of

experts' reports, is in evidence there was insufficient time to allow counsel to address the issues relating to the quantification of any damages which might be due. This is an area upon which I would have liked to hear the experts and have the assistance of counsel before coming to any conclusion on that aspect. In these circumstances I consider that it would be appropriate to consider the issues of liability, contributory negligence and the applicability of s.51 of the Criminal Justice and Courts Act 2015 to this case if any. Counsel for the parties have agreed that this is an appropriate course.

Consideration of the evidence

The Criminal Justice and Courts Act 2015

15. The Defendants have raised s. 57 of the Criminal Justice and Courts Act 2015. That provides:

    (1) "*This section applies where, in proceedings on a claim for damages in respect of personal injury ("the primary claim")—*

    (a) the court finds that the claimant is entitled to damages in respect of the claim, but

    (b) on an application by the defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary claim or a related claim.

    (2) The court must dismiss the primary claim, unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed."

16. It is clear from the wording of the section that it does not apply unless the court finds that the Claimant is entitled to damages under the claim. Therefore it is necessary to decide whether either of the Defendants is liable for damages before consideration is given to an application under the Act. However Mr Watthey has submitted that the court should take cognisance of the Claimant's conduct insofar as it is relevant to the credibility of the Claimant as a witness. In my view whether and, if so, to what extent the court should do so must depend upon the circumstances of each individual case. However, in the present case, it is not disputed that, on or about the 2nd or 3rd March 2017, there was an exchange of texts between the Claimant and Mr Snell. In his witness statement dated the 15th February 2018 the Claimant refers to the messages,

which he does not deny, but states that they were sent in order to ascertain what account Mr Snell was going to give of the incident.

17. If that were all there would probably be no significant conclusion which could be drawn about this exchange particularly as Miss Hayley Ford gave evidence that he was under stress in March 2017. It is clear that the Claimant was concerned about Mr Snell's response with regard to the lack of ropes, fenders and lighting and that he took the view that it "*it is only insurance*". It is difficult to read the exchange and avoid the conclusion that the Claimant was seeking to persuade Mr Snell to accept the Claimant's own version of events in return for a share of the damages recovered.

18. Mr Steward, for the Claimant, has submitted that "*It is not for one minute suggested that Mr Lambert's behaviour should be condoned. He was certainly naive, and it was clearly inappropriate*". However Mr Steward goes onto submit that the suggestion of fundamental dishonesty does not hold water on the basis that the Claimant did not actually ask Mr Snell to lie. That was a strange submission. There is, effectively, a clear offer to share the damages recoverable from the insurers if Mr Snell agrees to support Mr Lambert's version of events, at least with respect to the ropes, fenders and lighting. Whichever version of events the court accepts that appears to me to be an attempt to suborn a witness which can never be the act of an honest man. In my view that is an aspect which I should bear in mind when considering the Claimant's evidence as a whole.

19. It is to be noted that Mr Steward also sought to rely upon the message allegedly sent by Mr Snell in late March 2017 which, on the face of it, is an admission by Mr Snell that he had lied in his earlier account. However Mr Snell categorically denies having sent that message and it is submitted on his behalf that it must have been fabricated. This aspect is very unsatisfactory because the relevant machine belonging to the Claimant is no longer available for examination and further the expert evidence on the subject was not decisive although it was opined that the message in question could have been a fabrication. On balance it is not satisfactorily established whether Mr Snell did send it or whether its existence was manufactured by the Claimant to discredit Mr Snell. In this respect it is to be noted that Mr Snell had categorically refused to agree to corroborate the Claimant's version in the earlier messages and it

seems to me very unlikely that, having taken that stance earlier, he would have suddenly provided an unprompted retraction a few weeks later. In these circumstances I am of the view that it would be wrong in principle to take account of the alleged late March message as reflecting adversely on Mr Snell's probity for the purposes of this case and, for present purposes, I do not think that weight should be placed on that message in trying to establish the truth in this case.

20. However, in the course of cross-examination, Mr Steward drew attention to the fact that, in relation to an unrelated prosecution for fishing in a prescribed area brought against Mr Snell in August 2016 and heard on the 3rd March 2017, his account was not accepted by the court and he was convicted and fined. I accept that I should therefore bear this in mind when weighing whether Mr Snell has told the court the truth in the present case. In fact, as will hereafter appear, from the demeanour of the witnesses I have some doubt about the reliability or usefulness to be placed upon a considerable portion of the evidence presented by the witnesses of fact in this case. Bearing these factors in mind I now turn to the evidence presented to the court with respect to the incident in which the Claimant was injured.

21. *The instructions to the Claimant.* There is no dispute that the Claimant and Mr Snell were the first to board the vessel with a view to preparing her to go out on a fishing trip. Mr Harper joined somewhat later, perhaps by as much as 30 minutes. Further there is no dispute that Mr Snell instructed the Claimant to clean up the accommodation and to clean up the mess left from the broken bag or bags of protein in the galley. It is the Claimant's case that he was instructed to throw the detritus overboard and that he used the 'hoover' and then emptied its contents over the side. Mr Snell stated that he wanted the Claimant to clear up the accommodation but that he did not give an instruction to throw the rubbish overboard. He stated that there was a bin in the galley and there were also plastic bags from the food which had been brought onboard for the forthcoming fishing trip into which the rubbish could have been placed.

22. As Mr Watthey has submitted, the Claimant and Mr Harper have provided accounts which are inconsistent with each other and with their own previous accounts. It was

notable that Mr Harper gave evidence with regard to the instruction to throw the rubbish overside but he was not onboard when the Claimant began the work of cleaning the galley. It is not logical that the Claimant would have, as he says, made several trips to throw rubbish over the side and thereafter, after Mr Harper had arrived, for Mr Snell to have given instructions that he should do that. The Claimant and Mr Harper gave various different accounts of the words used in giving the instruction. It is also notable that the early correspondence from the Claimant's solicitors did not mention the instruction and was not raised until 20th June 2017. Taking into account the demeanour of the witnesses I do not accept the Claimant's account as to being instructed to throw the rubbish overboard. In this respect Mr Harper was asked whether Mr Lambert had made him an offer to share his recovery of damages with him. Although he denied this I was not impressed by the manner in which Mr Harper reacted to this question. Bearing in mind that Mr Lambert had made a similar offer to Mr Snell I have concluded that it is probable that Mr Lambert did make such an offer. I consider that Mr Harper gave his evidence in an attempt to assist the Claimant and that the inconsistencies in that evidence and his demeanour were such that his account cannot be trusted.

23. As an alternative the Claimant suggested that Mr Snell must, in any event, have been aware that he was throwing the rubbish over the side. However for all or most of the material time Mr Snell was on a higher deck working on the Gilson. By reference to the photographs, the position where Mr Snell must have been working and the structure of the vessel itself I do not consider that Mr Snell was in a position where he would have been able to see the Claimant putting the rubbish over the side. Moreover it is highly probable that he was concentrating on his own work and it is unlikely that he was paying attention to the Claimant coming out of the accommodation from time to time to throw the rubbish over board.

24. Even if he had seen the Claimant throwing rubbish over the side the question still remains as whether he should have ordered the Claimant not to do so. Despite the local bye-laws none of the crew considered that throwing food stuffs over the side, unlike for example discharging oil or other ecologically damaging material, was something which was proscribed. Whatever the precise effect of the local bye-laws I

did not find this somewhat pragmatic approach to pollution surprising. In this respect the question is whether the act of throwing rubbish over the side was so intrinsically dangerous to the Claimant that that Mr Snell, as skipper of the vessel, ought to have told Mr Lambert not do so.

25. *The mooring ropes.* Mr Dominic Bates gave evidence on behalf of the Claimant. He was a chef working in a restaurant near to where the Vessel was moored on the 6th October 2016. He told the court that during the week leading up to the 6th October 2016, the date of the incident, the weather had been "*quite vicious*" and the wave and swell in the harbour had been unusually high and that all the vessels were pitching and surging in the harbour. He stated that he particularly noticed the noise coming from "REJOICE" and stated that "*It looked as though it had not been properly secured*". He could not see whether the boat had fenders. He stated that he thought that "*the vessel was moored fore and aft with one, maybe two ropes at each end and I do not recall seeing any spring ropes which of course is normal for vessels of this size and type in Brixham harbour*". In his oral evidence in chief he stated that he could not remember which day it was when he saw her moving. He saw her from the balcony of the restaurant at a time when it was dark. He did not observe her during daylight hours. He could not be sure how high the swell was and did not know the relevant tidal rise and fall of water on the jetty. In cross examination he accepted that there was lighting on the quay. He stated that he could not see any springs but his recollection as to what mooring ropes were in use was very vague. He presumed that the vessel had fenders but could not see them. In addition Mr Snell gave evidence that at the time when Mr Bates said he observed the vessel she was not, in fact, in Brixham. In all the circumstances I do not consider that Mr Bates' evidence was of any real assistance in deciding how the vessel was moored on the 6th October 2016.

26. Mr Harper has given evidence that there was only a head line and stern line and no springs, that the vessel was surging dramatically under the heavy sea conditions. He has also stated that there were no fenders midships "*therefore the vessel was slamming into the quay on a regular basis*". However he accepted that he did not know the vessel well. He had no idea of the state of the tide at the relevant time. It was dark when he boarded and I doubt whether he paid any particular attention to the

presence of fenders. I had the clear impression that his stated knowledge as to whether there were fenders amidships was derived from the manner in which the vessel was contacting the quay. Given the structure of the quay to which I will refer below I consider that is not a sensible basis for making any conclusions as to whether fenders were or were not present. As I have already stated, he did not impress me as a witness upon whom reliance could be placed.

27. Mr Lambert's evidence is contained in two witness statements dated 15th February 2018 and 15th May 2018. Oddly they are both described as his 'second witness statements'. His only reference to the fendering and mooring is: "*The boat was surging dramatically up and down and as there were no fenders or springs this meant that the vessel hammered into the jetty*". His written evidence provided no direct information as to what fendering was in place or as to what ropes were in use. That was only elicited during evidence in chief when he stated that when he went onboard at about 1900 from the quay the "*vessel was surging up and down, side to side and fore and aft. . . one bow line, one stern line, no spring ropes, no midships fenders. Just one over at the stern and one at the bow.*" In cross examination he said that there should have been at least 6 fenders to protect the dredges. He was shown photographs of the boat indicating that there were fenders over the side (albeit on a different occasion) but stated that there should have been 7 or more to protect the gear. He then said: "*There was no fendering – would have protected my hand a bit more*".

28. With respect to the lack of springs he said that he was telling the truth and that springs would have stopped surging and reduced movement. He said: "*Springs stop a vessel going back and forth*" and "*it would have stopped the injury*". With respect to tending the ropes he stated that he was not instructed to do so and was just a deckhand. He agreed the ropes were slack, that the vessel was surging up and down 2-3 feet so that it was necessary to hold on as the boat was also rocking. He was aware that other boats were also moving about. The vessel was slamming into the jetty about every minute. There was no discussion about it with Mr Snell and the Claimant did not think that the vessel was damaged or that she might be damaged.

29. Mr Snell's statement evidence as to how the boat was moored and fendered was to the effect that: (i) there were two 'shore ropes' and one spring line and (ii) that there were permanent fenders, three on each side of the quarters which were pulled in when the boat went to sea. There were also thick rubber tyres which were also taken in when at sea. In addition there were usually two spare fenders on the deck which would be tied to the gear which he considers would have been attached at the time because of the weather. In oral evidence he maintained his position and, by reference to the photographs of the vessel, he identified the fenders over the stern and the fenders attached to the dredges. He also pointed out the rubber strips down the face of the quay's pilings. Given the conditions at the time he was sure that the fenders were in place at the relevant time. He also disagreed that the "REJOICE" was moving more than other boats in the area and threw further doubt upon when Mr Bates said he saw the boat because, as he said, the vessel was not in Brixham at the time when Mr Bates said he saw her and did not come back until the 5th October.

30. In my view the evidence of Mr Snell as to how the vessel was moored and fendered was more credible than the other evidence put forward. He was the skipper of the vessel and would have first hand knowledge of the moorings and fenders usually put out. It would be most unusual for a skipper of a vessel to leave her without at least one spring. He did not attempt to improve his case by claiming that there were two springs which might, arguably be considered better practice.

31. *Lighting.* The Claimant alleges that the lighting was inadequate. The Claimant's solicitors' letter before action states that there was no deck lighting "*of any substance*" and the Particulars of Claim state that there was lighting was "*not all switched on*". Mr Harper accepted that the lighting was on. Mr Snell stated that the lights were on. In my view it is significant that Mr Snell was working on the Gilson at the material time. It would be extraordinary if he did not have the vessel's lights switched on in order to facilitate that operation. In addition it needs to be borne in mind that there were lights on the quay and that the light in the accommodation must have been switched on to allow the Claimant to do his work of cleaning. The Claimant's evidence was that he brought the rubbish out of the accommodation and threw it over the side close to the door into the accommodation. There must also have been some light from the accommodation door onto the relevant area where rubbish

was thrown over the side. In all the circumstances it is impossible to accept that lack of light was a causative feature in this case.

32. *How the injury occurred.* The Particulars of Claim state: "*On the sixth occasion the Claimant went for'ard and placed his left hand on top of the for'ard scallop dredge whilst emptying the hoover with his right hand over the side. As the vessel surged upwards, his left hand became trapped between the scallop dredge and the bottom of the top of the quay*" (emphasis added). That is consistent with his first witness statement in which he has said: "*As the vessel came up under the quay my left hand became jammed for about 4-5 seconds and I was in extreme pain*". However in oral evidence he said that his hand was caught by a wooden piling and that his "*hand must have been over the scallop dredge . . . hand dragged up in surging motion.*" In cross examination by Mr Watthey he said that his hand was "*caught between the piling and the dredge . . . [the] hand was over the side that is how the injury occurred . . . I think my hand came into contact with the rubber.*" That was not consistent with the Particulars of Claim or his statement. In fact from the evidence as to the tide and the position of the vessel against the quay at the relevant time it would not have been possible for his hand to have been caught between the dredge and the underside of the quay.

Findings of fact

33. Having heard the evidence I consider that the events leading up to and including the Claimant's hand being injured were as follows:
    a. On the night of the 6th October the vessel was lying moored starboard side to in Brixham.
    b. I accept Mr Snell's evidence that she was moored by a head rope, a stern rope and one spring.
    c. The weather conditions were severe and the "REJOICE" was moving. She was probably rising and falling with the water motion in the harbour and was probably rolling and surging to some extent. She was described as slamming against the quay at intervals but the movement was not so great as to prevent the crew from working to prepare the vessel for sea.

d. The tidal information supplied shows that low water had been 15.12 and high water was predicted for 21.55. Therefore at the material time it was about half tide and the tide was flooding. It follows that unless the ropes had been tended by the crew after they boarded, and the evidence was clear that the ropes were not tended, there would have been a certain amount of slack in the ropes. There was no discussion or suggestion that the ropes should be tended or taken in and, although that might have reduced the movement in the vessel, the fact that they were not tended suggests that the crew were not concerned about the safety of the vessel from that point of view. Indeed the Claimant said in evidence that he did not consider that the vessel was in danger of being damaged.

e. The configuration of the quay was that it had a slab of concrete at the top. Below that there were pilings which led down to the seabed. There was a cavity behind the pilings and below the concrete slab at the top of the quay. The pilings had rubber facings which would have the effect of protecting the face of the pilings and any vessel lying alongside.

f. I accept Mr Snell's evidence that there were fenders along the side of the boat outside the dredges but, because of the cavity behind and between the pilings, these would have had little practical effect unless they were positioned precisely in way of a piling. With a vessel moving as the "REJOICE" was it would not be practical to tend the fenders so as to keep one or more directly between the side of the vessel and the pilings. Therefore the most effective fendering was probably provided by the rubber facing on the pilings. In the case of a steel built working boat such as a fishing vessel I do not consider that was improper unless the vessel herself was considered to be in danger which was not the case.

g. I accept Mr Snell's evidence that the vessel's deck lights were lit. But even if they were not I consider that there was sufficient light provided by the quay lights and the light from the accommodation door to permit the Claimant to discharge the rubbish over the side in safety.

h. It is common ground that the Claimant was asked to clean the accommodation space and that this involved 'hoovering' the spilt protein from the deck in the galley. There were various options as to what could be done with the rubbish. The Claimant himself stated that he had cleaned the boat on previous

occasions and that the rubbish was usually left onboard and the dumped when she came back from sea. This strongly supports Mr Snell's evidence that there was a 'bin' in the galley. Indeed I would be most surprised if there was not and I do not accept the Claimant's evidence on that point. In addition Mr Snell said that there were the plastic bags from the stores purchased before boarding which could have been used. However the Claimant chose to put the rubbish over the side. For the reasons given above I do not accept the Claimant's evidence that he was 'instructed' to do so by Mr Snell. I consider that the decision to put the rubbish over the side was his own.

i. In any event I consider that whether or not the Claimant was instructed to discharge the rubbish over the side was not a matter which was, of itself, causative of the Claimant's injury. The reality is that the act of putting rubbish over the side is not intrinsically dangerous providing that the crew member doing it acts in a sensible and seamanlike manner.

j. The Claimant's original explanation was that he put his hand on top of the dredge and as the vessel lifted it was caught under the quay. However as it was only half tide the vessel was too low for the top of the dredge to have been in proximity to the underside of the quay at any time material to this case. At the trial the Claimant's evidence was that his hand was crushed between the dredge and the rubber facing on a piling.

k. In my view that version is the only possible way in which his hand could have been injured at the time it was but it has an important consequence because it must mean that the Claimant had placed his hand in a position where it was on the outboard side of the dredge rather than simply on top of it. In evidence the Claimant accepted that his hand must have been outside the dredge for it to have been caught and injured.

Duty of care

34. It must be borne in mind that, as has long been recognised by the Admiralty Court, fishing operations are even more potentially dangerous than more ordinary forms of seafaring which carry their own inherent risks. To that extent those who take part in such operations must be volunteers to the ordinary dangers involved in the industry such as working on an unstable platform in whatever weather conditions are being experienced. However it is also the case that a skipper owes a duty to his crew not to

negligently expose them to dangerous situations from which they cannot protect themselves by the exercise of good seamanship in carrying out their duties. Good seamanship, invariably, involves the exercise of common sense as exemplified by the old adage "*one hand for the ship and one hand for yourself*" with respect to how a seaman should perform his duties.

35. With respect to owners they are usually considered to be vicariously liable for negligence committed by the masters or skipper which they appoint. Thus they are equally liable if a skipper, by his negligence or fault, causes a collision or other injury to property or person. As the Claimant in this case was self employed share fisherman he was not an employee of the Second Defendant. Nonetheless a ship or vessel is considered to be property for the purposes of the Occupiers Liability Act 1957 and it follows that the owner is under a duty to maintain the vessel and its operation in a reasonably safe condition in respect of those who are onboard with his permission. In this sense it is incumbent upon the owner to ensure that both the equipment is in good order and that the person appointed as skipper is reasonably competent.

36. Bearing the findings of fact which I have made above I have come to the conclusion that Mr Snell was not at fault with respect to any of the allegations of fault made against him with regard to the mooring, fendering or lighting of the vessel. In any event I do not consider that those alleged aspects would, even if proved, have had any causative potency. Nor do I consider that there was anything improper or inherently dangerous in the instruction given to clear up the spilt protein in the galley.

37. In my judgment there was no failure by Mr Snell with respect to his duty of care to the Claimant. Mr Lambert was asked to carry out the job of cleaning the vessel's accommodation which included cleaning up the spilt protein in the galley. How that was to be accomplished was left to Mr Lambert. Mr Lambert could have placed the rubbish in the bin in the galley or could have placed it in the plastic bags available from the stores brought onboard as he himself said had been done in the past. In my judgment the decision to put the rubbish over the side was made by Mr Lambert himself. I do not consider that there is anything inherently dangerous in throwing

rubbish over the side providing that the member of the crew doing that did not place a part of his body in an obviously dangerous place.

38. Given the fact that the vessel was moving about in the prevailing conditions, which was a fact which was obvious to those onboard, it would have been more sensible if Mr Lambert had placed the rubbish in the galley bin or in the available plastic bags but the decision to throw it overboard was not negligent providing that the person doing it took reasonable care not to place his hand in an obviously dangerous position. That is demonstrated by the fact that the Claimant had made 6 trips from the accommodation for that purpose before the time when his hand was injured. In my judgment it is a fundamental tenet of good seamanship not to place any part of one's body between any part of a ship and a jetty whatever the weather conditions. This is something which is, or should be, obvious to every person in any way involved in the operation of any vessel however large or small.

39. The Claimant has suffered a serious and debilitating injury but, in the circumstances of this claim, I consider that the injury to the Claimant' hand was not caused by any fault of Mr Snell but was entirely caused by the Claimant's own fault in failing to take sensible and reasonable care of himself. I further dismiss the allegation that the First Defendant is at fault as the injury was not caused by a person for whom the First Defendant is vicariously liable, nor was it caused by a defect in the vessel or her equipment. Further I do not consider that there is sufficient evidence to establish that Mr Snell was not a proper person to be appointed as skipper of the vessel or, in any event, that the instruction to clean the galley arose as a result of any lack of competence on his part.

40. I therefore judge that the Claimant's claim is dismissed and, in these circumstances, s.57 of the Criminal Justice and Courts Act 2015 does not apply.

Dated this 27th day of March 2019