

IN THE SUPREME COURT OF BELIZE, A.D., 2007

CLAIM NO. 343 of 2007

GIANPIERO LUPPI

CLAIMANT

BETWEEN AND

**INSURANCE CORPORATION
OF BELIZE LIMITED**

DEFENDANT

BEFORE: HAFIZ J.

Mr. Kareem Musa for the Claimant
Ms. Tania Moody for the Defendant

J U D G M E N T

BACKGROUND

1. This is a claim for the sum of \$37,012.00 or alternatively damages for breach of a contract of Insurance. This case is all about the interpretation of an Insurance Policy given to the Claimant by the Defendant.
2. The Claimant is the owner of a thirty two foot Colombian skiff bearing the name "Berserker" along with two Yamaha brand 200 Horsepower Outboard Engines.
The Defendant is an Insurance Company registered and carrying on business within Belize.

3. According to the Statement of Claim, by a contract of Insurance contained in a policy, reference No. ML/0001988 and dated the 26th day of April, 2006, the Defendant agreed to provide the Claimant with Marine Insurance in respect of the vessel "Berserker", the vessel's equipment and two Yamaha Outboard Engines and in particular to indemnify the Claimant against loss resulting from theft of the Claimant's vessel, the vessel's equipment and engines during the period April 13th, 2007.
4. On or around the 28th day of March, 2007 the Claimant's vessel, its contents and the two Yamaha Engines were stolen from its padlocked position on the Claimant's dock. The vessel "Berserker" was later recovered but was stripped of all its equipment as well as the Two Yamaha Engines that were attached to the vessel.
5. The Claimant notified the Defendant by way of a personal report and police report of the theft and of the loss resulting from the theft and claimed that he is entitled to be paid the sum of \$37,012.00 by the Defendant pursuant to the Contract by way of indemnity in respect of his loss resulting from the theft. The Defendant has refused to pay any sum to the Claimant resulting in this claim being brought to the Courts .
6. The defence is that the Claimant's claim does not fall within the conditions of the insurance policy and that the Claimant is not entitled to the reliefs claimed.
7. The Claimant, Gianpiero Luppi filed one witness statement and the Defendant filed one witness statement from Amelita Knowles.

Claimant's evidence

8. Gianpiero Luppi testified that in or around April of 2006 he visited the Defendant's branch office situated in Dangriga Town, Stann Creek District for the purpose of acquiring an insurance policy for his vessel, its accessories and the two engines. He was attended to by insurance agent Mr. Oscar Palanco, employee and agent of the Defendant Insurance Company. He said that prior to purchasing the policy, Mr. Palanco and him discussed the particulars of the policy in detail and in particular the secured location of his vessel on his dock situated on Ragged Caye which was thereafter included in his policy.
9. At paragraph 5 of his witness statement the Claimant said that he discussed in detail the coverage of the policy as it relates to theft and Mr. Palanco informed him that if the engines and/or accessories were stolen from the vessel but the entire vessel was not stolen then those items would not be covered but if the entire vessel was stolen and subsequently recovered with missing items (i.e. engines and accessories) then the policy would cover the stolen items.
10. Mr. Luppi said that based on the representations made to him by the Defendant's agent, Mr. Palanco, he purchased the insurance policy No. ML/0001988 from the Defendant on or around the 13th of April, 2006. Under the said policy, his vessel "Berserker" along with its accessories and equipment were insured for a total amount of BZ\$25,000.00 and the two Yamaha engines were insured for BZ\$12,500.00 each. The period of coverage for the said insurance policy was between April 13th 2006 to April 13th, 2007. (See paragraph 6 of his witness statement).

11. Mr. Luppi said that between the hours of 9:30 p.m. on the 28th of March, 2007 and 5:45 a.m. on the 29th of March, 2007 his vessel "Berserker" along with the two Yamaha engines were stolen from his dock situated on Ragged Caye where it had been chained with a padlock. Upon realizing that his vessel had been stolen he immediately contacted the police department and made a report of the theft.
12. After that he said he made a report of the theft with Belize Port Authority and made a claim with his insurance agent, Mr. Oscar Palanco, on the 29th of March, 2007.
13. Mr. Luppi further testified that in or around May of 2007 he was informed by a friend that his vessel had been recovered without the two engines or any of the attached accessories and equipment and was located at the Belize Coast Guard in Ladyville, Belize. According to Mr. Luppi's evidence this fact was later confirmed and on the 16th of May, 2007 he made a formal claim with the Defendant Insurance Company for his loss suffered, including the two Yamaha engines and the stolen accessories and equipment.
14. At paragraph 13 of his witness statement he said that he was informed in writing by the Defendant's agent, Mr. Oscar Palanco, that he would be compensated for his losses but on or around the 14th June, 2007 he received a letter from one Amelita Knowles informing him that his claim would not be processed.

Defendant's evidence

15. Amelita Knowles, the witness for the Defendant is the Administrator of the Claims Department of the Defendant. She said in her witness statement that on the 13th day of April, 2006, the Claimant executed and submitted to the Defendant the "Yacht and Motor Boat Insurance Proposal Form" which formed the basis of the contract of insurance between the Claimant and the Defendant. See Exhibit "A.K.1." for a copy of the proposal form.

16. She said that on the form, the Claimant requested insurance for his vessel, outboard motor No. 1 and outboard motor No. 2. That the Claimant did not request insurance for other boat equipment. That based on the proposal form, on the 26th day of April, 2006, the Claimant entered into a contract of insurance reference No. MHC/0001988 with the Defendant. She testified that it was in that contract of insurance that the Defendant agreed to provide marine insurance to the Claimant in accordance with the terms of the Policy and for loss and damage of the Claimant's vessel "Berserker" and its inboard and outboard motors upon the conditions set out in the policy during the period April 13th, 2006 to April 13th, 2007. The vessel itself was insured as set out in the Declaration page of the contract of insurance for \$25,000.00 and the Claimant's two Yamaha motors for \$12,500.00 each.

17. At paragraph 4 of her witness statement she said that in or around March 2007, the Claimant notified the Defendant orally that his vessel "Berserker" had been stolen from the dock where it had been chained. On 13th April, 2007 the Claimant submitted to the Defendant the Marine Claimant Form, Police Report, the Claimant's Statement attached, and his Claim for loss since his

vessel was stolen. She said that she reviewed the Claimant's statement on the Marine Claimant Form and the police report and both confirmed that the Claimant's vessel "Berserker" had been stolen from the dock where it had been chained and fixed. She then said that in May of 2007 the Defendant was informed that the Claimant's vessel "Berserker" had been recovered. However, the accessories and the boat's two Yamaha motors had been stolen. This was confirmed to the Defendant by the Claimant.

18. At paragraph 8 of her witness statement, Ms. Knowles said that upon revision of the Claimant's insurance proposal form and the contract of insurance, she wrote the Claimant on the 14th day of June, 2007 informing him that his claim for the two stolen engines and accessories would not be processed.
19. At paragraph 9 she said that she denied the Claimant's insurance Claim for a number of reasons she said:

"(i) The Claimant's claim does not fall within the conditions of the policy and as such is not entitled to any relief. Section 1: Theft - The insurance covers loss of vessel caused by theft of the entire Vessel, provided it is parked in a secured area (owners yard, garage for marina) provided a sum is stated for this purpose on the declaration page. The word "vessel" is defined in the Definition section of the policy to mean "your boat and machinery on the declaration page and its permanently attached equipment." The policy covers only loss of the entire vessel. The vessel was recovered and only the accessories and two motors were stolen. The policy does not cover partial loss. Since the vessel, its machinery

and its permanently attached equipment on a whole was not lost, the policy did not cover the Claimant's claim.

- (ii) I denied the claim also on the ground of the exclusions in policy. Section 15 – no claim shall be allowed in respect to loss and or damage while vessel is moored unless such loss damage results from collision with another vessel. The Claimant's vessel was moored/attached by chain to his dock when it was stolen hence no claim for loss can be honoured as per section 15.*
- (iii) I denied the claim also on the ground of the exclusions in the policy Section 26 – no claim shall be allowed in respect to loss where no physical damage to your insured property exists, evidencing collision. There was no physical damage caused by a collision so no claim for loss could be honoured.*
- (iv) The Claimant did not in writing nor orally inform the Defendant of any physical damages to the vessel, nor did he produce pictures showing signs of any damage to the vessel or its hull. Therefore, I also denied the claim on the exclusions in the policy, particularly section 25 no claim shall be allowed in respect to damage to vessel caused by theft or attempted theft.”*

- 20. At paragraph 10 Ms. Knowles said that she also informed the Claimant in the letter dated 14th June, 2007 that his claim for accessories was denied. She said that in the Claimant's proposal form dated 13th April, 2006, the Claimant did not

request insurance for other boat equipment. Furthermore, the insurance policy for the vessel defines vessel to mean the boat and machinery on the declaration page and its permanently attached equipment. The accessories do not fall within the definition of vessel nor is it permanently attached equipment. Furthermore, based on Section 1 – there is no insured sum provided on the declaration page for any accessories.

21. At paragraph 11, she said that the Claimant's claim does not address the deductible as set out in the policy of \$1,500.00, nor does it fall within the conditions of the policy and as such she denied the insurance claim.

Submissions by the Claimant

22. Mr. Musa submitted that the particular peril for which the Claimant was insured against was theft which occurred between the hours of 9:30 a.m. on the 28th March, 2007 and 5:45 a.m. on the 29th March, 2007.

He referred to ***Chitty on Contracts (Twenty Third Edition) at paragraph 1046*** on burden of proof which states:

“ The Burden is upon the assured to prove on the balance of probabilities that his loss or the event was proximately caused by perils insured against. Thus under an “all risks” insurance the assured must establish that the loss was due to a fortuitous event, and similarly where there is a claim for loss by perils of the sea, and though theoretically there is no need to go further and prove the exact nature of the casualty, in practice this generally has to be done.”

23. Mr. Musa also referred to the “Theft” Clause found in the Marine Hull & Machinery Policy No. ML/0001988 which covers loss of the vessel caused by theft of the entire vessel.

24. Learned Counsel submitted that the Defendant’s case at paragraph 4 of its Defence stated that the claim should not succeed on the basis that there was only a “partial theft” of the vessel, since the hull of the vessel was subsequently recovered a month and a half later. However, it is an undisputed fact that the entire vessel was stolen from its padlocked position on the Claimant’s dock situated at Ragged Caye. Furthermore, the fact that the vessel’s hull was subsequently recovered some time later does not change the fact that the entire vessel had been stolen.

25. Mr. Musa submitted that since the entire vessel was stolen, the theft clause found in Marine Hull & Machinery Policy No. ML/0001988 was activated and as such the Defendant ought to be bound by the same.

26. Learned Counsel further submitted that the terms of the contract are, in the opinion of the Claimant, absolutely clear and unambiguous. He referred to the case of

Melanesian Mission Trust Board v. Australian Mutual Provident Society (1997) 1 ECLR 128, P.C. where Lord Hope of Craighead said :

“Various rules may be invoked to assist interpretation in the event that there is an ambiguity. But it is not the function of the court, when construing a document, to search for an ambiguity. Nor should the rules which exist to resolve ambiguities be invoked in order to create an ambiguity which, according to the ordinary meaning of the words, is not

there. So the starting point is to examine the words used to see whether they are clear and unambiguous.”

27. Learned Counsel submitted that secondly, at paragraph 5 of its Defence, the Defendant states that the claim cannot succeed because according to Section 1, subsection 25 of the policy,

“No claim shall be allowed in respect to damages to vessel caused by theft and/or attempted theft.”

28. Mr. Musa submitted that it is for this reason the Claimant who is aware of the meaning of this clause did not make a claim for the damages to the hull. He said that the fact still remains that the Claimant’s entire vessel was stolen and to date he has been unable to recover the vessel’s permanently attached equipment valued at \$17,012.00 and the two Yamaha engines valued at \$25,000.00 under the said policy.

29. With regards to paragraph 7 of the Defence, the Claimant says that he was never claiming more than \$25,000.00 for the two Yamaha engines. As it is clearly stated on the Declaration page, the value of each engine is \$12, 500.00 which is why the Claimant is only claiming \$25,000.00 for the loss of his two engines. The remainder of the claim, being \$17,012.00, is for the loss occasioned by the theft of the vessel’s permanently attached equipment.

30. Mr. Musa then referred to paragraph 4 of the Insurance policy, where vessel means your boat and machinery on the declaration page and its permanently attached equipment. Counsel submitted that the value of the vessel stated on

the declaration page, (\$25,000.00), conforms with the definition of the term “vessel” in the insurance policy. The total value of \$25,000.00 is not only an assessment of the vessel’s hull, which is estimated at \$10,000.00 but is also inclusive of the vessel’s permanently attached equipment as set out in Schedule A of the Claim.

31. Mr. Musa submitted that paragraph 9 (ii) of Ms. Knowles’ witness statement where she relied on section 15 of the policy which states that no claim shall be allowed in respect to “loss and or damage while vessel is moored unless such loss damage results from collision with another vessel.” should be disregarded as having not been included in the Defendant’s pleadings.
32. Further, Mr. Musa submitted that the Defendant waived its right to rely on this clause when it agreed to accept the Claimant’s manner of securing his vessel by padlocking same to his dock on Ragged Caye.
33. On the third reason for not allowing the claim because there was no physical damage evidencing collision Mr. Musa submitted that this ground was never set out in the Defendant’s pleadings. Further, section 26 of the policy deals specifically with damages to the vessel caused by a collision, not theft, and is therefore completely irrelevant to this claim.

Defendant's submissions

The Law

34. Ms. Moody submitted that the Claimant's Claim does not fall within section 1 of the Insurance policy and as such the Claimant is not entitled to any relief. She referred to Section 1 which deals with theft. Counsel submitted that the policy only covers loss of the vessel and the word "**vessel**" is defined in the Definition Section of the policy to mean "your boat and machinery on the declaration page and its permanently attached equipment". Ms. Moody submitted that the vessel, its equipment, and accessories and two Yamaha motors were stolen. But that the vessel was recovered and its permanently affixed equipment was recovered. Only the accessories and two Yamaha motors were not recovered. Counsel submitted that the policy does not cover partial loss and as such the policy did not cover the Claimant's claim.
35. Learned Counsel referred to Marine Insurance Law and Practice by F.D. Rose at p. 407 which states: The basic statutory classifications of loss are set out by Marine Insurance Act 1906, s-56:
- "(1) A loss may be either total or partial: Any loss other than a total loss, as hereinafter defined, is a partial loss.*
- (2) A total loss may be either an actual total loss, or a constructive total loss.*
- (3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total Loss."*

And at p 408 it states: “The basic statutory definitions of actual total loss and constructive total loss are amplified as follows:

“57(1) where the subject matter is destroyed or so damaged to cease to be a thing of the kind insured or where the assured is irretrievably deprived thereof there is an actual total loss.”

“60(1) Subject to any express provision in the policy, there is a constructive total loss where the subject matter is reasonably abandoned on account of its total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without any expenditure which would exceed its value when the expenditure had been incurred.”

36. Learned Counsel submitted that if the subject matter of the contract description is no longer available to the assured, there is an actual total loss but whereas if this is not the case, but avoidance of total loss appears impossible or is only achievable by expense exceeding the value of the subject matter, then there is a constructive total loss. She submitted that in this case, the vessel was recovered and did not cease to be a thing of the kind insured. That the insured is not irretrievably deprived of the vessel because the vessel is available to the insured, and so there is no actual nor constructive loss in the instant case.

37. Learned Counsel then referred to page 444 of the same author where it states that:

“Certainly the mere fact an assured is deprived of the possession or control of his property does not mean that he is likely to suffer a total loss. Thus, there is no total loss by deprivation simply because a ship owner has temporarily been deprived of the free use of his vessel, eg. By its

detention for eleven days to prevent it from proceeding to a port where British Vessels were embargoed. Similarly, mere sinking does not per se constitute an actual or constructive total loss. And there may be a constructive total loss but without abandonment, no eventual claim for a total loss where: corn is sunk but later raised and dried. Whether an assured is irretrievably deprived of a vessel prima facie depends on whether by reason of its situation, it is wholly outside the power of the assured or the insurer to procure its arrival, and this is likely to be the case if it can be physically salvaged" Frazer Shipping Ltd v Colton [1997] 1 Lloyd's Report 586.

38. Learned Counsel submitted that in this case, the insured vessel was initially stolen but recovered thus the vessel is not irretrievably deprived to the Claimant, nor is there any abandonment of the vessel to constitute total loss.

39. Learned Counsel then referred to page 419 where it is stated that:

"Consistently with the principle of indemnity, an assured is only entitled to recover if he has suffered loss; and if he has only suffered a partial loss, he should generally not recover for a total loss. Thus, if it transpires that an apparent loss never occurred, the insured cannot claim; and if it turns out that any apparent total loss was in fact only a partial loss, the assured's entitlement to claim is reduced accordingly."

40. Ms. Moody submitted that in this case the actual loss never occurred as the vessel was recovered, and only the vessel's accessories and two Yamaha motors were stolen. Thus, the assured has no entitlement to claim for a partial loss.

41. Learned Counsel then referred to page 343 where it states the law on exclusion:

“The effect of an exclusion, as with any contract term, is a matter of construction. However, where there is inconsistency between the cover provided by the policy and the exclusions, the exclusions generally prevail. See the case of:

CT Handelsbanken Norewegian Brance of Svenska Handelshanken AB (Publ) v Dandridge (the Aliza Glacial)
[2002] 2 Lloyd’s Rep 421.

42. And at page 346 it states:

“Exclusion clauses appear in all the main Institute clauses both the general clauses and the war and strikes clauses. Their principal aim is obviously to exempt the underwriters from liability in certain circumstances. But in doing so, some of them also fulfill a further function, that is, in cases where a risk is not excluded from both the general clauses and the war and strike clauses to provide for the allocation of risks either to the general clauses or to the war and strikes clauses and also thereby to prevent recovery under both types of clauses.”

43. Learned Counsel submitted that the Claimant’s claim is denied based on Section 15 of the exclusion clause in the insurance policy which states that *“No claim shall be allowed in respect to loss and or damage while vessel is moored unless such loss damage results from collision with another vessel”*. That the insurer is liable only if there is a collision. Counsel submitted that “Collision” when used alone without other words, means two navigable things coming into contact. She referred to **Chandler v Blogg** **[1989] 1 QB 32, 35-36 per Higham JK.** and **F.D. Rose** at

page 308 in Marine Insurance Law and Practice which states:

“The insurer under the 3/4 ths Collision liability clause must indemnify the assured in respect of “any sum or sums paid by the insured to any other person or persons by reason of the assured becoming legally liable by way of damages . . . Where such payment by the insured is in consequence of the vessel ... coming into collision with any other vessel. The relevant liability is one for damages for tort, which tort must be the proximate cause of the liability. Branson J. held in Furness Withy & Co. Ltd v Duber [1936 2 KB 461 at pg 468 that the liability must be proximately caused by the collision and that the relevant liability is one which “arises as a matter of tort, and not as a matter of contract.”

44. Ms. Moody submitted that the Claimant’s vessel was moored/attached by chain to his dock when it was stolen and there was no collision with another vessel hence no claim for loss can be honoured as per Section 15 of the Exclusion clause in the insurance policy.
45. She further submitted that the Claimant’s claim is denied based on Section 26 of the Exclusion clause in the insurance policy which states that no claim shall be allowed in respect to loss where no physical damage to the insured property exists evidencing collision, nor was there any physical damage to the vessel as a result of a collision. Thus no claim can be honoured for any loss.
46. Learned Counsel further submitted that the Claimant’s claim is denied based on section 25 of the Exclusion clause in the insurance policy which states that that no claim shall be allowed in respect of damage caused by theft/and or attempted theft. Further that the Claimant did not in writing

nor orally inform the Defendant of any physical damage, nor did the Claimant produce pictures showing signs of any damage to the vessel. Counsel said that at paragraph 11 of the Claimant's witness statement, the Claimant avers to signs of minor damage to the vessel's hull. However, Section 25 of the exclusion clause of the insurance policy excludes any claim for damage caused by theft or attempted theft.

47. Ms. Moody submitted that the Claimant's Claim for insurance is for accessories as set out in schedule A of its statement of claim: Bimini Top, Dual control box, Tie bar rod ends, 2 x 1000 gph bilge pumps, Gps/fidhfinder and Dual ignition box. However, the insurance policy does not cover accessories of the vessel. Furthermore, on the Yacht and Motor Boat Insurance Proposal Form submitted and executed by the Claimant which formed the basis of the contract of insurance, the claimant requested insurance for the vessel, outboard motor No. 1 and outboard motor No. 2. There was no request for insurance for other boat equipment as set out in Schedule A of the Claimant's Statement of Claim. Also, the insurance policy for the vessel defines "vessel" to mean the boat and the machinery on the declaration page and its permanently attached equipment. Machinery (Motor) in the insurance policy means an inboard/outboard motor including remote controls, electric harness, the battery and pressure control tanks.

48. Learned Counsel submitted that the accessories do not fall within the definition of vessel nor is it permanently attached equipment nor machinery and that there is no insured sum provided on the declaration page for any of the accessories set out in Schedule A of the Claimant's Statement of Claim thus the Claimant cannot claim for same.
49. Ms. Moody submitted that, furthermore, the Claimant did not address the deductible in its claim as set out in the insurance policy of \$1, 500.00 on the declaration page, and the claim should be adjusted accordingly.
50. Learned Counsel submitted that the Claimant's claim cannot succeed because it does not fall within the conditions of the insurance policy and is excluded by the Exclusion clauses adherent in the insurance policy.
51. Issues to be considered
 1. Whether the Claimant's claim for partial loss falls within the terms and conditions of the insurance policy reference number MHC/0001988.
 2. Whether the Claimant's claim is excluded by sections 15, 25 and 26 of the exclusion clause outlined in the insurance policy.
 3. Whether the items claimed for are permanently attached equipment or accessories.

Determination

Issue 1: Whether the Claimant's claim for partial loss falls within the terms and conditions of the insurance policy reference no. MHC/0001988.

52. It is not in dispute that there was a theft of the entire vessel. The assured has proven that there was a theft of the entire vessel. See paragraph 7 of the Claimant's witness statement where Mr. Luppi said that between the hours of 9:30 p.m. on the 28th of March, 2007 and 5:45 a.m. on the 29th of March, 2007 his vessel "Berserker" along with the two Yamaha engines were stolen from his dock situated on Ragged Caye where it had been chained with a padlock. Further, the Defendant at paragraph 2 of their Defence says the Police Report shows that the vessel, its contents and its two Yamaha engines were stolen from the dock where it had been chained.
53. Unfortunately for the Claimant, and I say this because of what transpired thereafter, the vessel was found in May of 2007 stripped of the two engines, its accessories and equipment and the vessel also showed signs of minor damage to its hull. Mr. Luppi on 16th May, 2007 made a claim for the loss of the two engines and the stolen accessories and equipment. By letter dated 14th June, 2007 Ms. Amelita Knowles informed the claimant that his claim would not be processed. This letter states:

“Upon reviewing your proposal form (copy enclosed) dated 13 April 2006 we noted that the accessories were not insured. Furthermore, the vessel was recovered without the engines for which you have submitted a claim.

However, the policy at section I Coverage – Theft states as follow:

This insurance covers loss of the vessel caused by theft of the entire vessel, provided it is parked in a secured area (Owner’s yard, garage, or main marina) provided a sum is stated for this purpose on the declaration.

In view of this, we regretfully notify you that we are unable to process your claim.”

54. In her witness statement at paragraph 9, Ms. Knowles gave several reasons for the denial of the claim, the first of which is that the policy does not cover partial loss. I agree with Mr. Musa that the starting point for the Court is to examine the words used in the policy to see whether they are clear and unambiguous.

See the case of **Melanesian Mission Trust Board v. Australian Mutual Provident Society** supra.

What are the words used in the policy?
The Insurance Policy at Section I states:

*COVERAGE: YOUR PROPERTY
PROPERTY INSURED*

Under this heading appears several sub headings – **Perils Insured, In Commission and Laid Up, Theft, Exclusions, Additional Coverages.**

55. Firstly, I will look at ‘theft’ and the interpretation given to that section by the Defendant. The section states:

“Theft

*This insurance covers loss of the **vessel** caused by theft of the entire vessel, provided it is parked in a secured area (Owner’s Yard, garage or marina) provided a sum is stated for this purpose on the declaration page”.*

In the Definition Section of the Policy, “Vessel” - means your boat and machinery on the declaration page and it’s permanently attached equipment.”

56. Ms. Knowles who is the Administrator of the Claims Department for the Defendant said that the policy covers only loss of the entire vessel. That the vessel was recovered and only the accessories and two motors were stolen and that the policy does not cover partial loss. She said that since the vessel, its machinery and its permanently attached equipment on a whole was not lost, the policy did not cover the Claimant’s claim.
57. Ms. Moody in her submissions for the Defendant said that the claim does not fall within section 1 of the Insurance policy as the policy does not cover partial loss.

58. I disagree with the interpretation given by the Defendant to the Insurance Policy which is that the policy covers only loss of the entire vessel. There is no dispute that the entire vessel was stolen so there was a *'theft of the entire vessel'* as stated in the policy. In my view, the words *'loss of the vessel'* does not mean that the vessel must cease to exist. The word 'loss' in this policy is not defined. However, it can be seen from the authorities cited by the Defendant that when one speaks of loss in an insurance policy, it could mean either a total loss or a partial loss. See ***Marine Insurance Law and Practice by F.D. Rose*** page 407, and 408 cited by Ms. Moody where the losses are explained. At page 407 paragraph 21.3 of the same author it states:

"Whether or not a loss has occurred is a question of fact; but, for the purposes of marine insurance, it is a matter of law rather than of fact or language whether the loss which has occurred is classified as a partial loss, a constructive total loss or an actual total loss."

59. In the case at bar there is no dispute as to the classification of the loss as the boat was recovered and the claim is for a partial loss. This is not a case where the Court has to make a determination on whether there is a partial loss, actual total loss or constructive total loss. The evidence is that a total loss had actually occurred but this changed when the boat was recovered and before any formal claim was made. In other words, there was a change in circumstances reducing the loss from a total loss to a partial one.

60. The Insurance Policy does not specify whether the insurance covers "total loss" or "partial loss". The words used are "loss

of the vessel caused by theft of the entire vessel". I disagree with Ms. Moody that the assured has no entitlement to claim for a partial loss. In my view, the words used are clear and unambiguous. The ordinary meaning of the words used does not exclude a partial loss. I find that the Claimant is entitled to claim for a partial loss.

Issue 2: Whether the Claimant's claim is excluded by sections 15, 25 and 26 of the exclusion clause outlined in the insurance policy.

61. Ms. Knowles also stated at paragraph 9 of her witness statement that the claim is denied because of the exclusion clauses 15, 25 and 26. What are these clauses? Under the heading '**Perils Insured**', it states that:

*"We will pay for **Direct Physical Loss or Damage** to the property from any external cause, subject to the exclusions and conditions of this policy.*

62. Under the heading '**Exclusions**' it states.

.....

"15. Loss and or damage while vessel is moored unless such loss or damage results from collision with another vessel.

.....

25. Damage to vessel caused by theft and/or attempted theft.

26. Loss where no physical damage to your insured property exists, evidencing collision."

63. The words ‘*Direct Physical Loss or Damage*’ under the heading of Perils Insured in the Definition section of the Policy means:

“Direct Physical Loss or Damage” – means the actual damage to your insured property resulting directly from an insured peril”.

And **“Property Damage”** - means physical injury to, or destruction of tangible property.

I will deal with each of these exclusions separately.

64. Section 15 - Loss and or damage while vessel is moored unless such loss or damage results from collision with another vessel

In my view, the Claimant’s claim is not made on the basis of collision with another vessel or damage while the vessel is moored. Therefore, the arguments made with regards to Section 15 by both the Claimant and Defendant is irrelevant. There is no evidence given by the Claimant that there was a collision with another vessel or that damage occurred while the vessel was moored. The claim is based on theft alone. I find Mr. Musa’s argument irrelevant because the manner of parking is not in issue. As for the Defendant, the argument is irrelevant as the claim is not based on a collision.

65. Section 25 - Damage to vessel caused by theft and/or attempted theft

Here again, the Claimant did not make a claim for any physical damage to the vessel although there was damage to the hull of the vessel. This physical damage was caused when the boat was stolen and rightly so a claim could not be made because section 25 excludes a claim for damage caused by theft. I agree with Mr. Musa that the Claimant did not made a claim for damages to the hull.

66. Section 26 - Loss where no physical damage to your insured property exists, evidencing collision.

This section is also inapplicable as this is not a case where there was a collision and there exist no physical damage. I agree with Mr. Musa that this section is completely irrelevant to this claim.

67. It is my considered view that the claim is not excluded by sections 15, 25 and 26 of the Exclusion Clause in the said Insurance Policy.

Issue 3: *Whether the items claimed for are permanently attached equipment or accessories.*

68. The particulars of the items stolen and their value are set out in the Schedule as mentioned in paragraph 5 of the Statement of Claim. These items are:

Two (2) Yamaha Outboard Engines valued and Insured at \$12,500.00 each	\$BZ 25,000.00
Bimini Top	1,832.00
Steering	3,000.00
Tie Bar	200.00
Tie Bar Rod Ends	572.00
Steering Wheel	150.00
2 batteries, cables, fittings	1,101.00
2 x 1100 gph bilge pumps	533.00
GPS/Fishfinder	1,544.00
Dual Ignition Box	1,045.00
Dual Control Box	<u>2,035.00</u>
GRAND TOTAL	\$ <u>37,012.00</u>

69. The Defendant at paragraph 8 of their defence said that the Insurance Policy does not cover loss or theft of the vessel's accessories or equipment. Ms. Moody submitted that the Claim for Insurance is for accessories as set out in Schedule A of the Statement of Claim. In her submissions, Ms. Moody referred to 6 of the items listed in the Schedule as accessories. See paragraph 47 above.

70. Mr. Musa in his submissions accepted that the GPS/Fishfinder which is for \$1544.00 is an accessory and will not pursue the claim for the said fishfinder. The other five items in contention are therefore, the Bimini Top, Dual

control box, Tie bar rod ends, 2 x 1000 gph bilge pumps and the Dual ignition box.

71. I agree with Ms. Moody's submission that the insurance policy does not cover accessories of the vessel and that by the Yacht and Motor Boat Insurance Proposal Form submitted and executed by the Claimant which formed the basis of the contract of insurance, the claimant requested insurance for the vessel, Inboard/outboard motors No. 1 and No. 2. See the Declarations page of the Policy.

72. The meaning of "Vessel" as shown in the Definitions used in the Policy is stated as

"Vessel" - means your boat and machinery on the declaration page and its permanently attached equipment."

There is no definition for permanently attached equipment. There are definitions for vessel equipment and machinery which states:

"Vessel Equipment" – means:

- 1. Portable boating equipment and accessories owned by you and used with your vessel;*
- 2. Dingies and their tenders and their inboard/outboard motors owned by you used to service your vessel.*

"Vessel Equipment" does not include boat trailers, fuel, provisions, cameras, portable radios, fishing equipment, water skis and other sporting equipment, personal effects, other than (citizen band radio and ship to shore radios).

“Machinery” (“Motor”) – means inboard/outboard motor including remote controls, electric harness, the battery and pressure control tanks.

73. As can be seen from the Definition for vessel equipment it mentions portable boating equipment and accessories and also listed exclusions to the said definition. The Definition does not address what is permanently attached equipment.

74. The Inboard/Outboard Motors, No 1 was insured for \$12,500.00 and No. 2 was insured for \$12,500.00 which is a total of \$25,000.00. I find that from the definition of machinery that Motors No. 1 and 2 are covered by the Insurance Policy.

75. I am not satisfied by the evidence that the Bimini Top and the 2 x 1100 gph bilge pumps are permanently attached equipment. I find that the Steering, Tie Bar, Tie Bar Rod Ends, Steering Wheel, 2 batteries, cables, fittings, Dual Ignition Box and Dual Control Box are equipment that are permanently attached to the vessel. I disagree with Ms. Moody that these items are accessories.

Deductible

76. The issue of deductible was not addressed in the Claimant's claim. The 'Declarations' page of the policy states under the heading of 'Deductible' the following:

*The following deductible amount will apply to each loss after all other adjustments have been made:
\$1500.00.*

77. I agree with Ms. Moody that the claim should be adjusted in accordance with this condition in the policy. That is, \$1,500.00 must be deducted from the loss claimed.

78. Conclusion

The Claimant is entitled to claim a partial loss caused by theft of the entire vessel.

The Claim is not excluded by sections 15, 25 and 26 of the Exclusion Clause outlined in the Insurance Policy.

The Defendant is entitled to deduct \$1,500.00 from the loss claimed.

The following items with their value stated are permanently attached equipment:

Two (2) Yamaha Outboard Engines valued and Insured at \$12,500.00 each	\$BZ 25,000.00
Steering	3,000.00
Tie Bar	200.00
Tie Bar Rod Ends	572.00
Steering Wheel	150.00
2 batteries, cables, fittings	1,101.00
Dual Ignition Box	1,045.00
Dual Control Box	<u>2,035.00</u>
GRAND TOTAL	\$ <u>33,103.00</u>

79. In the light of my findings the following order is made:

Order

The Claimant is entitled to claim \$ 31,603.00.
(being \$ 33,103.00 less \$1,500.00 deductible).

Costs of \$3,000 for the Claimant.

Court fees for the Claimant \$250.00

Interest at 6% per annum from 25th July, 2007.

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MINNET HAFIZ
SUPREME COURT JUDGE

Dated this 26th day of September, 2008