

<b>DC Cruises LLC v L &amp; L Tours</b>
2020 NY Slip Op 30381(U)
January 27, 2020
Supreme Court, New York County
Docket Number: 652158/2012
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 35

\_\_\_\_\_  
DC CRUISES LLC

Plaintiff,

-against-

L & L TOURS

\_\_\_\_\_  
Defendant.

Index No.: 652158/2012

**INQUEST  
DECISION/ORDER**

This matter came before the court for Inquest subsequent to a decision on liability by Justice Shlomo Hagler dated February 4, 2019, to wit:

Upon the foregoing papers, it is ordered that this motion [of defendant] is denied and the cross-motion [of plaintiff] is granted as per the decision detailed on the record today.

Justice Hagler stated in the transcript of the oral argument on the motion and cross motion for summary judgment, in part:

I am granting summary judgment, to the Plaintiff, on the breach of the contract as to liability, because as of January 9<sup>th</sup>, even according to [defendant], [plaintiff] performed. [Plaintiff] did nothing wrong under the contract. [p, 21; lines 18-22]

This court conducted an Inquest over two days - January 22 - January 23, 2020. One witness was called by plaintiff, Mr. Fred Rappaport, President of DC Cruises LLC.

*Witness Credibility*

There is no magical formula which can be used to determine credibility. The tests used in one's everyday affairs to decide the reliability or unreliability of statements made by others are the tests applied in determining the weight to be given to the testimony of a witness. These items include the interest or lack of interest the witness has in the outcome of the case, the bias or

prejudice of the witness, if there be any, the age, the appearance, the manner of the witness as the witness testifies, the opportunity that the witness had to observe the facts about which he or she is testifying, the probability or improbability of the witness' testimony when considered in the light of all the other evidence in the case.

Testimony will be rejected as incredible as a matter of law only when it is "impossible of belief because it is manifestly untrue, physically impossible, contrary to experience, or self-contradictory" (*People v. Stroman*, 83 A.D.2d 370, 373, 444 N.Y.S.2d 463; *see also, People v. Christian*, 139 A.D.2d 896, 527 N.Y.S.2d 1019, *lv. denied* 71 N.Y.2d 1024, 530 N.Y.S.2d 559, 526 N.E.2d 51; *People v. Shedrick*, 104 A.D.2d 263, 482 N.Y.S.2d 939, *affd.* 66 N.Y.2d 1015, 499 N.Y.S.2d 388, 489 N.E.2d 1290, *rearg. denied* 67 N.Y.2d 758, 500 N.Y.S.2d 1028, 490 N.E.2d 1234).

A court may disregard testimony as being without evidentiary value, even if not contradicted by other testimony or evidence introduced in the case, if it "is incredible and unbelievable, that is, impossible of belief because it is manifestly untrue, physically impossible, contrary to experience, or self-contradictory" (*see Cruz v New York City Transit Auth.*, 31 A.D.3d 688, 821 N.Y.S.2d 97 [2d Dept 2006]).

"Minor inconsistencies in the testimony of prosecution witnesses do not render that testimony incredible as a matter of law" (*People v. Green*, 219 A.D.2d 856, 632 N.Y.S.2d 352 [4<sup>th</sup> Dept 1995]).

The court found Mr. Rappaport to be a credible witness. Notwithstanding the fact of his obvious interest in the outcome of the case, he testified in a direct, forthright uncontrived manner. There was no guise or deceit in his presentation of the evidence.

*The Evidence*

The damages evidence required extensive calculations and digesting of data including tax returns, ticket pricing, profit margins and operating expenses among and between the three entities involved. Additionally, testimony and documentary evidence relating to hours of operation of the boats and numbers of passengers had to be factored in. Plaintiff posited two formulas for determining damages. On cross examination, counsel for defendant made clear the best evidence of the number of passengers serviced by plaintiff was plaintiff's actual 2013 Captain's Log Book. At that point in the proceedings, counsels meticulously, physically counted every entry in plaintiff's 2013 Captain's Log Book to derive at the number of passengers serviced by plaintiff in the year 2013 and factored that data with the hours of service per cruise. This formula resulted in the lowest amount of damages for plaintiff. The court considered all three formulas for determining damages from this data digestion. The court found the formula relying on the 2013 Captain's Log Book to be the most reliable.

**Decision:**

It is hereby

ORDERED that after Inquest, the Clerk shall enter judgment in favor of plaintiff **DC Cruises LLC** and against defendant **L & L Tours**, in the sum of **\$489,634.68** together with interest from June 21, 2012 at the statutory rate of 9% per annum to be calculated by the Clerk, and it is further

ORDERED that counsel for plaintiff shall serve a copy of this Decision/Order with notice of entry on defendant within twenty (20) days of entry.

This constitutes the decision and order of the court.

Dated: January 27, 2020



Justice Carol Robinson Edmead, J.S.C.

**HON. CAROL R. EDMEAD**  
**J.S.C.**