Case No: FTC/32/2011

[2012] UKUT 229 (TCC)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 27 March 2012

BEFORE:

MR JUSTICE MANN

BETWEEN:

PETE MATTHEWS AND KEITH SIDWICK

Applicant/Claimant

- and -

HER MAJESTY'S REVENUE & CUSTOMS

Respondent/Defendant

MR M BODDINGTON (represented by Accountax) appeared on behalf of the Claimant

MR A NAWBATT (instructed by HMRC) appeared on behalf of the Defendant

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Approved Judgment

1. MR JUSTICE MANN: This is an appeal from the First-tier Tribunal (John F Avery-Jones CBE and Andrew Perrin FCA) in a decision given on 14 December 2010. In that decision, for the reasons appearing in the written reasons released on 29 December 2010, the First-tier Tribunal rejected the claims of the appellants, Mr Pete Matthews and Mr Keith Sidwick, that they were employed as opposed to being engaged under contracts for services to provide entertainment services on various cruises. The significance of that is this; if they were engaged under a contract of employment, then under the provisions of 378 of the Income Tax (Earnings and Pensions) Act 2003, their earnings would essentially not be chargeable to tax. They were, however, assessed as having been provided with a contract for services which made them chargeable and challenged that assessment. Their challenge failed before the First-tier Tribunal and a further appeal has now been made by them to the Upper Tribunal. That was the matter that came before me.

2. This appeal, as I understand it, has significance beyond the cases of the two gentlemen whose appeals I have heard. There are another 12 appeals which are stayed pending my decision and I would imagine that there may be a significant number of other cases which may turn on this appeal. The point underlying this appeal was, in the end, a short one concerning the significance of the element of control which the various cruise lines were said to be entitled to exert over the two gentlemen, whom I will call "the performers".

3. Mr Boddington, a tax advisor who appeared for the performers, submitted that the First-tier Tribunal failed to give proper weight to the degree of control in the context of this case. Had that proper weight been given, then the decision would have been the

other way. He did not criticise any element of primary fact decided by, or any reliance on authority by, the First-tier Tribunal but he did criticise part of the decision which preferred one line (by analogy) rather than another. His criticism was of the logic deployed in one particular paragraph at the end of the relevant part of the decision, which was also reflected in brief in an earlier paragraph. However, because that criticism has to be seen in the context of the other findings in the decision, I need to set out those other findings in a little detail.

4. Since other appeals and cases may depend on this, it is also appropriate for a fairly full account to be given of the facts of this case. Before doing that, I briefly record that other matters which were pursued by the performers below, one point based on legitimate expectation and another challenging a discovery assessment, were not pursued on this appeal. This appeal concerns only the issue of whether the performers were engaged under contracts of employment or whether they were engaged under contracts for services.

5. The First-tier Tribunal decision

Mr Keith Sidwick describes himself as a piano showman using the professional name, Tommy Bond. Mr Matthews is a comedy juggler. The First-tier Tribunal found the following facts from an agreed statement of facts before it. I summarise where appropriate. The background appears from paragraph 3 of the decision.

(1) The appeal was in respect of the 2002-03 to 2007-08 years for Mr Sidwick and the 2005-06 to 2007-08 years for Mr Matthews.

(2) In the periods in question, Mr Matthews performed solely on board cruise ships during the periods under appeal. Prior to those periods, Mr Sidwick had carried out a

number of engagements as a self-employed artist. During the periods themselves, he carried out a small number of self-employed engagements other than his engagements on the cruise ships.

(3) In the periods in question, Mr Matthews worked on differing lines, lines I can describe as Royal Caribbean, NCL and Carnival. Mr Sidwick worked for Royal Caribbean, NCL, Carnival and Nippon Yusen Kaisha. Further details of their precise employment is not important. The fact is that across the period, they were engaged by three or more lines each, or for entertainment companies operating on other lines and were not for any season, or for the entire periods, engaged by one line only.

(4) The length of each engagement was described as follows by the First-tier Tribunal. So far as Mr Matthews was concerned, the average length of each engagement was 4 days and the average length for Mr Sidwick was 13 days. The average number of engagements per year was 38 for Mr Matthews and 16 for Mr Sidwick.

(5) All the lines who engaged them, with the exception of NCL, gave the performers written contracts.

(6) Both of the performers used the same booking agent namely Blackburn International (UK) Limited. It is a theatrical booking agency but neither of the appellants had a written contract with Blackburn. Blackburn apparently has a number of highly-skilled entertainment acts (including the appellants) on its books and is able to provide cruise lines with individuals to fill entertainment positions on their cruise ships. The cruise lines contact Blackburn when they have engagements to offer the appellants and Blackburn then provides the details of those engagements to the appellants. Blackburn does so for a commission. No tax or NIC was deducted in respect of the engagements of the performers and neither of them is registered for VAT.

6. Paragraph 4 of the decision of the First-tier Tribunal sets out the summary of the evidence heard and contains further important findings of fact.

(1) Mr Sidwick's professional name was described and it was said that on his website he describes his occupation as a piano showman, recording artist and composer. He has recorded four albums and the fifth is due to be released soon. Apart from performing on cruise ships, his income comes from assisting young performers to perfect their performances and recording backing tracks and CDs in his own studio.

(2) Mr Matthews' website describes him as an international comedy juggler. As I have already indicated, during the periods in question his work was solely performing on cruise ships but his and his agent's websites show that before and after those years he also performed elsewhere.

(3) Sample contracts were produced to the First-tier Tribunal and the First-tier Tribunal summarised various terms of those contracts. Since they can be said to relate to Mr Boddington's control point, it is necessary to set out the findings in relation to those contractual terms more extensively. To keep this decision manageable in its presentation, those findings appear verbatim in the appendix to this decision.

(4) The taxpayers were paid a daily or overall fee and not a fee for each performance.

(5) Across the periods in question, the performers had periods of consecutive engagements with some lines and other periods of discrete engagement with one line following upon an engagement with a different line. Paragraph 4(12) of the decision gives some extreme examples of engagements and the following examples appear:

> "For an extreme example, Mr Matthews entered into 11 consecutive engagements with Royal Caribbean Cruises Limited between 20 June 2007 and 3 September 2007 alternating between two different ships except that the last two were on the same ship. Mr Sidwick similarly entered into 8 consecutive engagements with Holland America Line Inc between 8 November 2005 and 19 April 2006 on 6 different ships.

> Although there is no evidence we infer that some or all of these were probably entered into at the same time and may have been in a single contract. The number of separate bookings may be fewer than the statistics in the annex reproduced above shows, although nevertheless each is a separate engagement in the sense that the appellant concerned was free to decide whether to enter into each one separately."

(6) Paragraph 13 contains matters which are relevant to the control point so I will set it out verbatim:

> "We did not detect any difference between the two Appellants in relation to what they did on board ship and so the following is applicable to both of them. While on board (and on their way to the ship if travelling with passengers) the cruise line expects the highest standards of behaviour by the Appellant concerned. The appellant will comply with the directions of the Cruise Director including certain matters of content of their act (in the sense of the Cruise Director not wanting a particular joke or piece included, or wanting a particular piece to be included, and not including jokes about faults on board the ship); timing (both in relation to rehearsal times and performance times in the sense of the Cruise Director wanting a shorter performance at certain times, an example given being so that passengers could see a volcano when the ship was passing it); taking part in additional activities such as a coffee chat, game show, the ship's television; being included in a 'walk down' (when staff come on stage); or hosting a table at dinner. Whether they comply with the Cruise Director's directions because that is required as a matter of interpretation of the contract, or because a good report from the Cruise Director is essential to their being engaged again is not something we can decide in the abstract as it will partly depend on rules and regulations which we have not seen and the type of directions. There also seem to be unwritten rules that are not strictly contractual but with which the Appellants as experienced entertainers understand. In practice the Cruise Director's directions are of great importance and had to be complied with."

(7) The decision records that HMRC wrote to the cruise lines asking a number of questions, one of which was whether the entertainer had freedom to determine the artistic content of the performance subject to any restrictions in the contract. All said that they did.

(8) It is recorded that in some respects the appellants are treated more like crew than passengers but they may, for example, dine with passengers. So far as their treatment

as a member of the crew is concerned, they wear badges, some of which say "employee ID" and they were given some crew training such as water-tight door training if, as was common, their cabin was in the crew's quarters. Food and accommodation were provided free but they were expected to pay gratuities at the recommended rate and they would not share in any gratuities. They were expected not to occupy a bar stool if a passenger was standing and not to occupy places in the hot tub when passengers were waiting. Compliance with the dress code was required, whereas it was merely encouraged for the passengers.

7. Paragraph 5 of the decision listed factors which the First-tier Tribunal considered to be relevant. I do not need to set out all of the reasoning. I need to do that only in one or two respects. The factors which were treated as being relevant by the First-tier Tribunal were as follows:

(1) Mutuality of obligation.

(2) Personal service and right of substitution.

(3) Control, to which the Tribunal added the following:

> "There is no doubt that the contracts give a lot of control to the Cruise Director. So far as the content of the performance is concerned we find that the Appellants have artistic freedom but within certain limits such as timing, length and unacceptable content. If the Cruise Director goes further than this in trying to dictate content we consider that this is an expression of his wishes that it is in the Appellants' interest to comply with if they want to be booked again, rather than a legally binding direction."

(4) As to whether the appellants were in business on their own account, the Tribunal found that they were indeed in business on their account in that they sought separate engagements with crew lines and Mr Sidwick had other self-employment income.

Having accepted an engagement fee for the cruise, it was fixed and they could not earn more by working more.

(5) Business risk - the performers had the risk of not being engaged at a particular time by any cruise line but once booked, there was little or no risk.

(6) Provision of equipment - Mr Sidwick (obviously) did not provide his own piano but Mr Matthews provided his own props.

(7) Length and number of engagements and exclusivity - the Tribunal pointed out that the performers earned their living when performing on cruise ships by entering into numerous separate engagements, an average of 16 engagements per annum of 13 days each with 6 cruise lines for Mr Sidwick, and an average of 38 engagements of 4 days each with 6 cruise lines for Mr Matthews.

(8) The payment terms - they were paid a daily rate.

(9) The provision of benefits - they received free accommodation and meals in the same way as crew.

(10) Rights of termination - there were short-term engagements for which this was not particularly relevant.

(11) The intention of the parties - all of the contracts were in writing stating that they did not create an employment.

(12) Whether they were part and parcel of the organisation - from the passengers' point of view, the appellants would seem no different from the ship's permanent employees. They wore employee badges.

8. Paragraph 6 contains what Mr Boddington says is one of the two areas in the decision so I need to set it out:

> "6. Essentially, the contentions of the parties were that Mr Cobelli and Mr Boddington concentrated on the terms of the contracts with cruise

> lines from which they contend that in particular the degree of control means that the Appellants are employed. By contrast Mrs Hodge concentrates on the working pattern of the appellants and contends that they enter into numerous separate engagements in the course of their self-employment, the terms of each separate engagement not being of particular significance. For the reasons set out below we prefer Mrs Hodge's contention and regard the Appellants in the same way as actors entering into separate engagements."

Mr Boddington challenges that finding.

9. Paragraphs 7 to 9 of the First-tier Tribunal decision set out references to various authorities whose deployment was not challenged. Those authorities were Davies v Braithwaite (1933] 18 TC 198, Fall v Hitchen (1972) 49 TC 433 and an unpublished Special Commissioners' decision involving the actors Mr Alec McCowen and Mr Timothy West.

10. Paragraphs 10 to 14 of the decision then set out the meat on the decision and the Tribunal's reasoning. For that reason, again, I need to set them out. They read as follows:

> "10. One of the problems is that a standard contract may be used for actors who fall into either category. The context in which the contract is entered into has to be considered as well as the terms of a particular contract.
> 11. The same distinction between holding a post and entering into a series of separate engagements is illustrated outside acting by Hall v Lorimer (1992) 66 TC 349, in which Mr Lorimer entered into between 120 and 150 separate engagements in a year ranging between 1 and 19 days with 20 or more production companies as a freelance vision mixer. He was held to be self-employed.
> 12. In giving weight to the various factors listed above control is the principal one relied on by the Appellants. We consider that much of this is required by the context of a cruise ship. The passengers have paid for their trip and the staff (whether employed or self-employed) are paid to serve the passengers. It is to be expected that the staff will be closely controlled so as to achieve the cruise line's objective because the staff are in the public eye at all times. This factor seems to us to have less bearing on the employment status of the staff than might be

> the case if the context were different. It is not the case that self-employed have complete freedom over what they do. An actor can discuss points of interpretation with the director as an equal but in the end the director's wishes will prevail. We put forward the example of the Tribunal telling an undoubtedly self-employed barrister to move on to the next point. This is not a contractual control but it would make no difference to the barrister's status if he had contracted to abide by the Tribunal's directions.
> 13. The factor principally relied on by HMRC is the pattern of work and the distinction made in Davies v Braithwaite between a post (or series of posts) and engagements entered into as part of self-employment. We consider that the Appellants are firmly on the Davies v Braithwaite and Hall v Lorimer side of the line and not the Fall v Hitchen side. They do not have a series of posts with the various cruise lines, lasting an average of only 13 days for Mr Sidwick, or 4 days for Mr Matthews, but earn their living by entering into a series of separate engagements with a number of different cruise lines in a similar way to actors but with far shorter engagements than normal for actors.
> 14. In the context of engagements on board ship we consider it right to give more weight to the Davies v Braithwaite point than to control. On that basis we find that each engagement is not an employment but that the Appellants in the course of their self-employment enter into a series of engagements with different cruise lines."

11. The criticism of the FTT decision

Mr Boddington's criticism centred around paragraphs 6 and 12, which I have read. He starts by pointing to what he says is the central matter of control as he says it appears from Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497 at 515:

> "I must now consider what is meant by contract of service. A contract of service exists if these three conditions are fulfilled. (1) The servant agrees that, and in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (2) He agrees, expressly or impliedly that in the performance of that service, he will be subject to the other's control in a sufficient degree to make that other master. (3) The other provisions of the contract are consistent with its being a contract of service."

12. Mr Boddington submits that control is the key factor, and that in this case there was a close degree of control. The First-tier Tribunal is said to have erred in rejecting this as the main touchstone in paragraph 6 and in relegating its importance in paragraph 12 or,

alternatively, in not making it clear whether they regarded the level of control as being insufficient or merely relegated it to some lesser, unspecified level below that which it ought to have taken. Had a proper emphasis been given to the degree of control of the performers' activities, the result would have been different. He accepted that the function of the First-tier Tribunal was to weigh various factors in order to determine the nature of the relationship in this case and that it was not open to the Upper Tribunal merely to substitute its own judgment. In order for this Tribunal to interfere, he accepted there had to be some perversity in the decision or some error of law or some irrelevant factor considered or relevant factor disregarded.

13. He did not criticise the actual factors taken into account and listed above, or say that there was anything missing, but he did say there was an error of logic in paragraph 12 in that the First-tier Tribunal sought to explain away the significance of control as being attributable to the physical context of the performance of the contract when, in fact, it should not have been so explained away. That is also a criticism of paragraph 6 which cross-refers to the later paragraph 12.

14. Mr Boddington also advanced a further ground of appeal based on what he said was an erroneous reliance on Davies v Braithwaite which he said failed to reflect the changed employment landscape which has arisen since that case was decided.

15. The resolution of this appeal

It seems to me that this appeal must fail. Mr Boddington correctly identifies the limits of the powers of intervention of this appellate tribunal but has not identified any relevant error of the First-tier Tribunal. The characterisation of the relationship in this

case is an assessment that has to take into account a number of factors. The First-tier Tribunal clearly identified those factors and their choice has not been criticised. What is criticised on analysis is the relative weight given to those factors and in particular to the relative weight given to control. It seems to me that that criticism is misplaced.

16. First, control does not have the degree of primacy which Mr Boddington's submissions give it. True it is that it is the second of three matters listed in Ready Mixed Concrete, but it is not given it a determinative status there. It is a necessary but not sufficient factor. The third element of MacKenna J's formulation leaves room for a lot of other factors, and in this case those factors are those listed by the First-tier Tribunal apart from those falling within his category one.

17. Second, once that is understood, there is no apparent error in the First-tier Tribunal approach to the question of control. They weighed the control against other matters and in particular the pattern of engagements, and made their assessment. That is something they were entitled to do. It does not matter that one cannot identify what rung of the ladder control was "relegated" to. That is not a relevant inquiry. It was considered and found to be not determinative enough. Other factors pointing the other way were more significant. In fact, the degree of control was explained away in paragraph 12 in the words:

> "It is to be expected that the staff will be closely controlled so as to achieve the cruise line's objective because the staff are in the public eye at all times. This factor seems to us to have less bearing on the employment status of the staff than might be the case if the context were different."

18. That is an entirely justifiable conclusion. For example, the requirement of a certain degree of behaviour when "off duty" and not performing is not control over the

employment activities and the performer. It is a degree of control which is required because the performers are part of a community confined on a ship for days on end and in which the ship has its own standards. It is not really related to the engagement as a performer at all. The requirement to comply with the ship's regulations is probably a requirement imposed on all people on the ship; crew, passengers, entertainers and all others. The First-tier Tribunal's reasoning is, therefore, perfectly clear and perfectly justifiable. There is no error of logic, law or principle. I can detect no ground for interfering with the decision, and although it is not relevant in those circumstances, would go so far as to say that I would be very likely to have reached the same conclusion myself had I been called on to take the decision based on the material in the decision itself.

19. The second ground of appeal

The second ground of appeal is that the Tribunal's decision wrongly relied on Davies v Braithwaite and Fall v Hitchen. Mr Boddington pointed out that the nature of employment has been refined in recent years in the authorities, including in legislation, so that it is much more appropriate now to find a series of engagements to be "fractured" contracts of employment rather than a series of engagements for services. Accordingly, the sort of considerations set out in those cases (and in particular in Davies v Braithwaite) were not so likely to lead to the conclusion that they were contracts for services in this case and made it more likely that they were a series of contracts of employment. Accordingly, the First-tier Tribunal was wrong to prefer the Davies v Braithwaite line of cases in paragraph 13 of the decision.

20. This ground fails as does the first one. Mr Boddington did not criticise any of the reasoning in Davies v Braithwaite though he did point out that as a result of Hall v Lorimer [1994] IRLR 171, it was now probably more appropriate to refer to a contract of employment than a "post". At the end of the day, his submission was that on the facts of this case, it was now more appropriate to view the performers as employed rather than engaged to provide services, but that is precisely the question which the First-tier Tribunal addressed. They adverted to the distinction in Davies v Braithwaite and the relevance of a pattern of work, which is still relevant, and allied the case to Davies more than to Fall. That is a legitimate way of expressing themselves. The only way of attacking that conclusion is by the complaint about the failure to give enough significance to control, so the point ultimately comes back to that point (as Mr Boddington conceded). At that point, it fails again.

21. Conclusion

I therefore dismiss this appeal.

22. Costs

I have to decide whether the normal order for the unsuccessful party to pay the successful party's costs should apply in this case. The Revenue seeks its costs of this appeal. Mr Boddington resists those costs on the footing that these two cases are effectively test cases (there are 12 others behind this case), who would apparently not share the cost burden if I make an order for costs against Mr Boddington's clients. I am told there is no problem for his clients in relation to their own costs of this appeal. They are being funded by their professions. However, as I understand it, there is no arrangement covering the adverse costs which I am asked to order. Mr Boddington

says that since this has been a test case, for which the Revenue have had some benefit, it would be wrong and unfair to saddle his two clients, the two appellants, with all the costs of this appeal. He would not resist an the order that they pay one-fourteenth of the costs each.

23. At first, I thought there was something in that point. However, maturer reflection and the submissions of Mr Nawbatt for the Revenue have convinced me otherwise. Mr Nawbatt tells me that the idea of a test case and of taking these two as test cases came not from the Revenue but from the other side. I think that is an irrelevance because the Revenue ultimately agreed to it and the 12 other appeals have been stayed at the First-tier Tribunal level. There was no order for costs in the First-tier Tribunal because of the costs regime there.

24. As Mr Nawbatt correctly points out, the decision to appeal from the First-tier Tribunal was that of the appellants. If they thought it worthwhile appealing, notwithstanding the fact that they apparently have no arrangement in place to share the burden of any adverse costs, then that would be a matter for them. If they choose to appeal without having any cover, it would be wrong for the Revenue to suffer from that in terms of not having an order for costs which it would otherwise have. The Revenue did not agree that this appeal should take place or would necessarily be useful. The decision to appeal was entirely a decision of the appellants.

25. Those arguments seem to me be entirely correct. Mr Boddington's point does not amount to a sufficient reason for rejecting the prima facie rule that the loser pays the

winner's costs and I shall determine that the unsuccessful appellants will the pay the costs of this appeal.

26. We now come to numbers. At first sight, I was concerned about the level of expenditure on documents, but that has now been explained to my satisfaction. Compared with commercial litigation, these are relatively modest sums, though that is not, of course, the be all and end all of an assessment. In the circumstances, the total bill sought being £10,577.80, I shall assess the costs at £10,000.

Appendix

Matthews & Anor v Revenue & Customs [2011] UKFTT 24 (TC)

4.

(4) Celebrity Cruises Inc.

(a) The Appellant is described as "guest entertainer"

(b) The contract provides that "While on board any of the vessels, Artist shall be subject to, and be governed himself/herself if (sic) accordance with the rules and regulations of the vessel and its Captain. Failure to comply with shipboard rules and regulations shall be grounds for immediate dismissal." We did not see a copy of any rules and regulations.

(c) The contract is terminable if "Artist's performance does not meet accepted standards as determined by CCI's on board management (in CCT's sole discretion)" and also "if Artist fails to comply with any of CCI's shipboard rules or regulations."

(d) Both parties acknowledge that the Artist is an independent contractor.

(5) International Cruise Services Limited

(a) The Appellant's services are to be provided "at all reasonable places and hours, and such other entertainment as may be requested by the Vessel's Cruise Director; that Contractor will welcome and socialize with passengers..."

(b) "...failure to perform the Services to the standards required by ICSL shall be deemed a breach of this Agreement and ICSL may terminate this Agreement at the sole discretion of ICSL without notice and without further obligation to Contractor."

(c) "Both parties acknowledge and agree that Contractor is an independent contractor and not an employee of ICSL..."

(6) Cunard Line Limited

(a) The contract is for "separate [ ] minute cabaret shows repeated on each day."

(b) "Nothing in this agreement shall be construed to create the relationship of principal and agent, employer and employee, joint venturers, partners or any similar relationship between the Parties."

(c) "The Artiste and Artiste's Personnel will conform to all of the rules and regulations of the ship as required by the Master, Staff Captain, and Cruise Director for proper maintenance of discipline on board the Queen []."

(d) "Cunard shall identify where on board the Vessel, and at what times(s), the Services is to be performed, provided however that any changes to location or scheduling reasonably deemed necessary by the Cruise Director once a voyage has begun shall be made in the Cruise Director's sole discretion."

(e) The Artist is required to act in a professional manner at all times and to conform to the Vessel's dress code. There is a prohibition on participating in Bingo, and casino gaming is permitted so long as no passenger is waiting to play.

(7) Holland America Line Inc

(a) "Artist will be advised of exact performance times/show length by Ship's Cruise Director shortly after arrival on Ship. Company has the sole right to determine performance schedule."

(b) "... not to include in his/her/its performance of any material, language or text that a reasonable person would find objectionable on grounds such as obscenity...."

(c) "...not make any statements that a reasonable person would construe as being disparaging or damaging to the reputation of Holland America Line, Windstar Cruises, the Ship, any officer crewmember of employee of the Ship or any passenger on the Ship."

(d) There is a prohibition on gambling except in the Ship's casino, and a requirement to dress and act in a professional manner at all times.

(e) The Artist agrees to "obey all lawful commands of any officer of the Ship, all rules, regulations, policies, procedures and guidelines established from time to time by Company's Entertainment Department and all regulations of the Ship's registry."

(f) "In no event shall Contractor or Artist be considered or treated as employees of Company for tax purposes or for any other purpose with respect to the Services."

(8) Princess Cruise Lines Limited

(a) The person acknowledges that he is not an employee or agent of Princess.

(b) "The Contractor shall be a party to, and sign, the ship's Crew agreement and shall comply with all applicable laws, regulations and orders, including those of the ship's Captain in respect of, but not limited to, any matters concerning discipline and safety."

(9) Royal Caribbean Cruises Limited

(a) "During the Engagement, Artist shall be required to perform the number of performances per week as may be scheduled by the Cruise Director of the applicable vessel.

(b) "While of board any of the vessels, Artist and each member of Artist's Company shall be subject to, and shall govern himself/herself in accordance with, the rules and regulations of the vessel and its Captain."

(c) The parties acknowledge that the Artist is an independent contractor and not an employee.