

[VASSILIADES, J.]
BRANCO SALVAGE, LTD.,

Plaintiffs,

v.
PHOTOS PHOTIADES & CO.,

Defendants.

(Adm. Action No. 2/62).

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BRANCO
SALVAGE LTD.
v.
PHOTOS
PHOTIADES & CO.

Contract—Salvage—Services rendered to stranded vessel—Work done for transporting goods from ship to Customs—Whether entitled to remuneration—Whether master of the ship may contract to save ship and cargo—Salvors lien.

On the 12th February, 1962, the master of the motor vessel "Ayla Fotini" undertook to carry on his ship from Beyrouth to Famagusta harbour 47 tons of bananas consigned to the defendants. The freight was arranged through the shipowner's local agents at Beyrouth. The vessel sailed off from Beyrouth bound for Cyprus on the night of 12th February, 1962, and when it was about 30 miles from Famagusta she had engine-trouble and later the main mast was blown off into the sea and the anchor chains broke off due to the rough sea and the force of the wind. Eventually the vessel was tugged to the shore.

The master of the vessel agreed with the plaintiffs that they should carry out salvage work for the vessel engine, cargo and whatever else could be saved. This oral agreement was later confirmed in writing by signing the Lloyd's Standard Form of Salvage Agreement.

After Salvage work had started, the defendants instructed their Clearing Agents in Famagusta to collect the goods and forward them to Nicosia purporting to act as agents of the shipowner appointed by the shipper. At this stage defendants Clearing Agents suggested taking charge of the unloading of the goods but the plaintiffs objected as they already had made arrangements for the unloading and the master confirmed the instruction to the plaintiffs. The goods being perishable it was agreed that they should be transported to Nicosia to the defendants stores. On the question whether the plaintiffs were entitled to salvage reward and to what amount, the Admiralty Court gave an affirmative answer.

Held : (1) The defendants had no authority from the ship-owner or the ship's master to act as their agents in connection with the voyage, or the cargo, in question.

(2) The unloading of the cargo, in the circumstances, was closely connected with, and inseparable from the safety of the ship and its equipment ; and that both ship and cargo were at the material time *i.e.*, prior to unloading, under the control of the ship's master, who requested and authorized the plaintiffs to render salvage service in respect of both ship and cargo, for "whom it may concern".

(3) Such services were in fact being rendered for the benefit of both ship and cargo, for over an hour, before the arrival of a person who had authority to act for the defendants as consignees of the goods ; but no authority to act for the ship-owners.

(4) The result of the discussion was that the representatives of the defendants eventually agreed that the unloading be done by the plaintiffs, who in their turn agreed to place the goods on defendant's lorries for transport to the Customs.

(5) The unloading of the goods was done as efficiently as it could be done, in the circumstances. Plaintiffs and their men had every reason to do that, and had the ability to do it; while Customs guards and defendants employee were watching.

(6) The goods were released on the defendants' undertaking to pay to the plaintiffs such remuneration, for the services, as the plaintiffs might be entitled to.

(7) Both ship and cargo were still in danger of damage or destruction, when the plaintiffs offered salvage services, (indivisible at that time as between ship and cargo) on the clear understanding that they (the services) would be treated and rewarded accordingly. Such services were offered by professional salvors to the master of the ship who, in my opinion, was at the material time, in charge of both ship and cargo ; and who accepted the services offered, and agreed that they would be rewarded as salvage.

(8) Such services could not be interrupted or discontinued by the consignees of the cargo at the time when the defendants' agent "A" attempted to do so. And I think that "A"

took the right course when he allowed the plaintiffs to unload the goods in the course of their work as salvors of ship and cargo, and put them on defendants' lorries for transport to the Customs.

(9) At the Customs, the plaintiffs claimed their lien on the goods, which were eventually released by the Authority concerned, only when "A" agreed that the consignees would pay whatever the plaintiffs might be entitled to. Even as put in exhibit 2 (the letter of the 16th February) the effect of this undertaking was that, failing a compromise, his principals would pay whatever might be awarded to plaintiffs by the Court. Defendants cannot now deny liability.

(10) On the question of the amount, I find that the plaintiffs are entitled to salvage reward including expenses to the sum of £259.

(11) I have divided the salvage reward (which I assess at £150) as well as other services affecting ship and cargo, as both were equally benefited, in my opinion, from the services so divided. The other half may form part of the claim against the ship.

*Judgment for plaintiffs for £259
with costs to be taxed on the
amount recovered.*

Admiralty Action.

Admiralty action instituted by plaintiffs against defendants claiming (a) £250.— remuneration for salvage services rendered by plaintiffs to a stranded vessel carrying goods consigned to the defendants and (b) £329.250 mils for work done in connection with the discharge and transport of the goods from the stranded ship to the lorries which carried the goods to the customs, and thereafter to defendants' stores.

G. Michaelides for the plaintiffs.

D. Liveras for the defendants.

VASSILIADIS, J.: This is a claim by a Famagusta company operating inter alia as sea salvors, made against a firm of importers in Nicosia; it arises from services rendered by the plaintiffs to a stranded motor-vessel carrying goods consigned to

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the defendants. The cargo consisted of 47 tons of bananas in bunches, shipped at Beyrouth for Famagusta.

The claim consists of two items :

- (a) £250.-- remuneration for salvage services rendered to the cargo in question ; and
- (b) £329.250 mils for work done in connection with the discharge and transport of the goods from the stranded ship to the lorries which carried the goods to the Customs, and thereafter to defendants' stores.

The claim is contested on the ground that the plaintiffs did not render salvage services to the cargo ; but merely unloaded the goods from the damaged ship, and put them on defendants' lorries, acting on the master's request, who had no authority to bind the defendants. And moreover, that the plaintiffs acted arbitrarily, against the wishes of the defendants who were ready to unload their goods from the stranded ship, by their own servants.

Furthermore, the defendants contest the amounts claimed, both for salvage services, if any, and for the unloading of the goods, which (amounts) the defendants find grossly exaggerated.

Four witnesses were called in support of the claim ; and three for the defence. The facts of the case present no difficulty. On the evidence before me, I find them as follows :—

About the 12th February, 1962, witness Petimezakis. (P.W.3) the master of motor-vessel Ayia Fotini, undertook to carry on his ship from Beyrouth to Famagusta harbour, a cargo of about 47 tons of bananas in bunches, consigned to the defendants. The freight was arranged through the shipowner's local agents at Beyrouth as usual.

Ayia Fotini is a Greek motor-vessel of wooden construction, of a gross tonnage of about 180 tons, equipped with a 150 horse-power marine diesel engine, and auxiliary sails. She belongs to the master's father who lives at Kavalla, in Greek Macedonia ; and who bought the ship in 1947, and put her in the charge of his son (P.W.3) ever since.

In February 1962, the crew on this vessel consisted of the said master, a 46-year old seaman with about 25 years' experience, (P.W.3) ; his wife and his daughter, both of

whom had been with him at sea as crew on this vessel for considerable time ; and an Arab professional sailor in the ship's service for about 18 months.

For the last two and a half years prior to the voyage in question, this ship was running freight-trips between the mainland and Cyprus, usually Famagusta, where the ship's local agent was one Mustafa Kirikli. This was the first time the ship carried cargo for the defendants.

When he left Beyrouth, the evening of the 12th February, the ship's master was carrying with him in an envelope the shipping documents destined for the consignee of the goods. There is no direct evidence as to whether the master knew the contents of these documents ; and as the matter is in dispute, I accept the master's evidence in this connection, and I find accordingly.

The morning of the 13th February, when the ship was about 30 miles away from Famagusta, she had engine-trouble. As the weather was calm, the master attempted a repair, to discover in the end, that one of the pistons cracked, and so the engine could no longer serve the vessel. With the help of some breeze, which came up during the night the ship was making her way with her sails towards Cyprus.

At dawn of the 14th February, land was visible, about 15 miles away ; but as the wind was growing dangerously strong, with a north-easterly direction, the master decided to send off the Arab sailor in a boat with a small sail to get to the coast for help. This was about 6 a.m., when the ship was about 10 miles from the coast, between cape Greco and Famagusta.

About a couple of hours later, the top part of the main mast broke under the force of the wind, falling into the sea with the main sail. "The best I could do, the master said in evidence, was to drop my two anchors and wait for help. In the meantime the wind was carrying us towards the coast.

It was clear that unless a tug-boat arrived in time, the wind and rough seas would throw us out on to the rocks".

When the sun went down, the ship was at a point about three miles from cape Greco. When darkness came a big

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kerosene lamp was hoisted to make the ship visible to the expected help while she was being carried towards the rocky coast. It was hoped that eventually her anchors would make her fast, pending the arrival of assistance.

For the purpose of this judgment, I find it unnecessary to go further with the story of the ship's misfortune the night of the 14th February. The chains of her anchors breaking, one after the other, under the force of the wind, the vessel was thrown by the rough seas, against a rocky shore, at about 20.15 hours, some eleven miles from Famagusta harbour, after an unsuccessful attempt by the Harbour Services to help her. Her injured crew were landed with the help of a Police party, and were taken first to hospital for attendance, and later that night, to an hotel in Famagusta.

I find the facts in this connection in the evidence of the master (P.W.3) and of witness Kantounas (P.W.1) the Harbour Master and Senior Pilot, Famagusta, who came out in a tug-boat for help. I found them both, truthful and reliable witnesses, each within the limits of his ability of description and recollection. Where their evidence does not tally, I accept that of the Harbour Master, who was able to give a more accurate description of what happened.

On returning to Famagusta at about 11 p.m., witness Kantounas (P.W.1) contacted the Police, and then went to see the ship's master at the hotel. From there he went to the Marine Club where he happened to see Mr. Branco, of the plaintiff-company. They discussed the event, and on Branco's suggestion, they both went together with the Inspector of the Customs Preventive Services, Mr. T. Christou, in Branco's car, to see the stranded vessel. She was guarded by police, but was otherwise unattended. They climbed on the pounding vessel, where Branco put out the swinging kerosene lamp lest it caused a fire.

I do not propose going further into what happened on this occasion, as I take the view that, in the circumstances of this case, whatever Branco did that night on the ship, was not intended to be claimed as a salvage service for reward; nor would I be inclined to reward it as such. It was, I think, aptly described by witness Kantounas as a friendly gesture from one seaman to another.

Early next morning, the 15th February, at about 6 a.m.

the ship's master (P.W.3) went to the harbour to arrange for salvage. There he found the Harbour Master (P.W.1); and soon after Mr. Branco (P.W.4) arrived. "I discussed the matter with him, the ship's master stated in evidence — and I requested him to carry out salvage work for the vessel, engine, cargo, and whatever else could be saved".

Branco agreed to do so. They went to plaintiff's office where arrangements were made for six of plaintiff's regular personnel with suitable equipment to proceed to the spot where the stranded ship was found. Police and Customs guards were guarding her from ashore, while the ship was still being pounded against the rocks by the continuing rough weather. On the way, arrangements were made for the engagement of labourers from a neighbouring village.

Before commencing work, Branco requested the ship's master to confirm in writing their agreement for salvage by signing exh.1 (Lloyd's Standard Form of Salvage Agreement) and another document in Greek to the same effect.

The ship was then first made fast with ropes; decks were cleared; oil drums and other equipment removed; a hole letting water into the vessel was plugged; the starboard side was lightened to minimize rolling; and generally salvage work was proceeding for over an hour, when defendants' agent, Mr. Anatolitis (D.W.1) arrived there, together with the Collector of Customs, Famagusta, Mr. Lewis (P.W.2) and others who came in connection with the cargo.

The defendants, as consignees of the goods, instructed their Clearing Agents in Famagusta, Messrs. Francoudi and Stephanou Ltd., the employers of witness Anatolitis (D.W.1) to collect the goods and forward them to Nicosia. They purported to do so as agents of the shipowner, appointed by the shipper.

On this point, I accept the evidence of the ship's master, and I find that the defendants had no authority from the shipowner or the ship's master to act as their agents in connection with the voyage, or the cargo, in question.

After inspecting the cargo, witness Anatolitis suggested taking charge of the unloading of the goods for the defendants. Branco objected, on the ground that he had already arranged matters with the ship's master, whom he considered responsible for ship and cargo, at that stage.

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This discussion took place in the presence of the ship's master (P.W.3) who confirmed his instructions to the plaintiffs, and in the presence of the Collector of Customs, witness Lewis (P.W.2) on whose evidence, coming from an independent source, I make my findings in this connection, wherever the parties' evidence does not agree.

I take the view that the unloading of the cargo, in the circumstances, was closely connected with, and inseparable from the safety of the ship and its equipment ; and that both ship and cargo were at the material time i.e. prior to unloading, under the control of the ship's master, who requested and authorized the plaintiffs to render salvage service in respect of both ship and cargo, for "whom it may concern".

Such services were in fact being rendered for the benefit of both ship and cargo, for over an hour, before the arrival of wit. Anatolitis (D.W.1.) who had authority to act for the defendants as consignees of the goods ; but no authority to act for the shipowners.

The result of the discussion was that the representatives of the defendants eventually agreed that the unloading be done by the plaintiffs, who in their turn agreed to place the goods on defendants' lorries for transport to the Customs. On this point, I accept the evidence of witness Branco (P.W.4) and I find accordingly.

In fact the unloading of the goods from the stranded ship, and their loading on defendants' lorries more than a hundred yards away, over ground too rough for the lorries to approach, was done by the plaintiffs. The goods were to be transported to the Customs, under the Collector's control as they were still to be cleared on payment of duty, and as they came from a wreck. Defendants' representative, witness Anastassiou (D.W.2) remained there to watch the unloading for his employers, all that day.

Rejecting this witness' evidence on the point, I find that the unloading of the goods was done as efficiently as it could be done, in the circumstances. Plaintiffs and their men had every reason to do that, and had the ability to do it ; while Customs guards and defendants' employee were watching.

In the afternoon of the same day, the 15th February, witness Branco (P.W.4) saw the Collector of Customs (P.W.2) to request that the cargo should be treated as subject to a

claim for salvage on his part ; and should not be delivered to the consignee unless he agreed to meet this claim. As the goods were of a perishable nature, the matter was referred to the Receiver of Wrecks, who discussed the matter with plaintiffs' and defendants' representative. Eventually an arrangement was reached under which the goods, still on the lorries, were released for delivery to the defendants at Nicosia.

In this connection I accept the evidence of witness Lewis (P.W.2) and Branco (P.W.4) ; and I find accordingly. I find that the goods were released on defendants' undertaking to pay to the plaintiffs such remuneration for their services, as the plaintiffs might be entitled to.

The unloading continued on the following day, the 16th February, when, on completion of the work, the plaintiffs submitted to defendants' agents their bill, exhibit 3, containing a claim for £329,250 expenses, made up of 6 different items, plus £250 for salvage of the cargo, the value of which is admittedly over £2,500.

The defendants rejected this claim as exaggerated ; hence this action.

The matters for decision, on these facts, are :—

- (a) are the plaintiffs entitled to salvage reward in connection with defendants' goods ?
- (b) if yes, what amount ?

Taking the law regarding the meaning of salvage and salvage services, from paragraphs 1109-1113 of Lord Simond's edition (3rd Ed.) of Halsbury's Laws of England, in Vol. 35, at p.731 *et seq.*, I have no difficulty or hesitation in answering the first question in the affirmative. Moreover, in this connection I was assisted by reference to Chapter 1 (p. 1-13 incl.) of the 4th Ed. (1958) of Lord Kennedy's Civil Salvage.

The nature of a salvage Service, the reasons which render its existence and maintenance desirable, where there is navigation, and why it stands on a separate footing as regards remuneration, are obvious matters and need no comment.

Both ship and cargo were still in danger of damage or destruction, when the plaintiffs offered salvage services, (indivisible at that time as between ship and cargo) on the clear understanding that they (the services would be treated

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and rewarded accordingly. Such services were offered by professional salvors to the master of the ship who, in my opinion, was at the material time, in charge of both ship and cargo ; and who accepted the services offered, and agreed that they would be rewarded as salvage.

I take the view that such services could not be interrupted or discontinued by the consignees of the cargo at the time when the defendants' agent attempted to do so. And I think that witness Anatolitis (D.W.1) took the right course when he allowed the plaintiffs to unload the goods in the course of their work as salvors of ship and cargo, and put them on defendants' lorries for transport to the Customs.

At the Customs, the plaintiffs claimed their lien on the goods, which were eventually released by the Authority concerned, only when witness Anatolitis agreed that the consignees would pay whatever the plaintiffs might be entitled to. Even as put in exhibit 2 (the letter of the 16th February) the effect of this undertaking was, that failing a compromise, his principals would pay whatever might be awarded to plaintiffs by the Court. Defendants cannot now deny liability.

Coming to the question of amount, I find that plaintiffs are entitled to salvage reward (including expenses) as follows: (taking the items from the particulars in paragraph 7 of the statement of claim)

1. (a) Payment of wages to 18 labourers locally employed for 2 days including overtime £135.—
- (b) One half of the wages of 6 regular personnel in plaintiffs' service, for 2 days at £2. p.d each. £ 12.—
- (c) Use of Landrover H.150 for transporting salvors' personnel and equipment for 2 days (one half of the charge) £ 5.—
- (d) Use of plaintiffs' motor car BN46 for 2 days (one half of the charge) £ 4.—
- (e) Supervision by salvage officers and examination — (This, I think, is covered by the salvage reward). Nothing allowed under this item.
- (f) Expenses in wages of Customs Guards,

Tally Clerks, Preventive Service Guards,
hire of lights and insurance for labourers
and personnel (Wholly concerning the
cargo) £ 28.—

£ 28.—

£184.—

2. One half of the salvage reward for the services
rendered on the two days in question (includ-
ing (e) above) £ 75.—

£ 75.—

Total £259.—

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I have divided the salvage reward (which I assess at £150)
as well as other services affecting ship and cargo, as both were
equally benefited, in my opinion, from the services so divided.
The other half may form part of the claim against the ship.

There will, therefore, be judgment for plaintiffs for £259.
With costs to be taxed on the amount recovered.

*Judgment for plaintiffs
for £259.*