

1978 February 18

[MALACHTOŚ, J.]

THE CHARTERED BANK OF U.K.

Plaintiffs,

v.

THE SHIP OR BARGE OR VESSEL GULFSPAN 101
OTHERWISE KNOWN OR MARKED GS 101,

Defendants.

(Admiralty action No. 309/77).

5 *Admiralty—Practice—Judgment against ship together with order for sale and appraisal—Direction for furnishing the Registrar with a statement showing value of property appraised before sale—Under rule 75 of the Cyprus Admiralty Jurisdiction Order, 1893—Not necessary when order for sale and appraisal were made at the same time—And need not be included in the drawn up order even though it was included in the judgment of the Court—And whether included in the drawn up order or not compliance with it by Marshal not necessary.*

10 *Admiralty—Practice—Sale of ship—Setting aside or annulment of—Cannot be ordered under section 32 of the Courts of Justice Law, 1960 or rules 74, 75 and 203–206 of the Cyprus Admiralty Jurisdiction Order, 1893—Whether it can be ordered under rule 211.*

15 *Admiralty—Practice—Judgment—Drawing up—Can be applied for orally.*

20 On December 27, judgment* in default of appearance, in the sum of C£502,109 was given in favour of the plaintiff bank and against the defendant ship together with an order for its appraisal and sale. The ship had already been under arrest in another action and a second warrant of arrest was issued in this case for the purposes of execution. On January 7, 1978 the Registrar of this Court, upon an oral application by plaintiff's counsel, issued the drawn up judgment** and order for the

* See this judgment at pp. 167–68 *post*.

** See pp. 168–69 *post*.

appraisalment and sale of the defendant ship and forwarded it to the Marshal for execution. In drawing up the order the Registrar did not include therein the direction of the Judge, under rule 75 of the Cyprus Admiralty Jurisdiction Order, to the effect that the Marshal "immediately after the carrying out of such appraisalment furnish forthwith to the Registrar of this Court a statement in writing showing the value of the appraised ship". The Marshal appraised the ship for the sum of C£27,000 and fixed the sale for the 23rd January, 1978 when the ship was sold to the highest bidder for C£27,000. By letter dated the 23rd January, 1978 the Marshal informed the Registrar of the Court about the sale and enclosed a photo copy of the minutes of sale, a statement in writing dated 12th January, 1978, signed by the Marshal and the two assessors appointed by him showing the appraised value of the ship and the cheque paid for her value. The bill of sale was signed by the Marshal on the 25th January, 1978, and before the filing of the present application.

By an application, filed on the 25th January, 1978 the plaintiff-judgment creditor prayed for an order directing the Marshal not to sign the bill of sale of the defendant ship and/or to discontinue the sale or any process thereof until further order of this Court and/or until after the hearing and final determination of this application and for an order setting aside or annulling the sale of the ship.

Counsel for the applicant contended (a) that rules 74, 75 and 76* of the Supreme Court of Cyprus in its Admiralty Jurisdiction, which deal with the appraisalment and sale of property under the arrest of the Court, as well as rule 157**, which regulates drawing up of judgments by the Registrar, were not followed and (b) that the Registrar issued the order of appraisalment and sale of the property without an application to this effect contrary to rule 74.

Held, (1) the allegation that the drawn up judgment and order for the appraisalment and sale of the defendant ship was issued by the Registrar without an application cannot stand, since it is an admitted fact that an oral application was made

* Quoted at pp. 170-71 *post*.

** See p 171 *post*.

on behalf of the applicant to this effect. This oral application must have been considered by the Registrar, according to the existing practice of this Court, as an application by the plaintiff setting in motion the machinery for appraisalment and sale of the ship, and upon drawing up the judgment and order for appraisalment and sale forwarded it to the Marshal for execution. (Order 75 rule 23 (1) of the Supreme Court Practice in England has never been followed in Cyprus).

(2) Though the drawn up order did not contain the afore-said direction of the Judge under rule 75 this was not necessary in the present case where both the order for appraisalment and the order for sale were applied for together and were made by the Court at one and the same time. The directive of rule 75 is imperative only when an application for appraisalment of property alone is made without an order for sale. Accordingly in cases where the appraisalment and sale of property under arrest is ordered at the same time and irrespective of whether the said directive of rule 75 is contained in the drawn up order or not, the filing with the Registrar of the written statement showing the value of the property appraised, before sale, is not necessary.

(3) Section 32 of the Courts of Justice Law, 1960 and rules 74, 75 and 203-206 of the Cyprus Admiralty Jurisdiction Order on which this application is based do not contain any provision empowering the Court to set aside or annul the sale.

Per curiam: The only relevant rule is r. 211; but even assuming that the present application was based on this rule the Court would not have exercised its discretion in favour of the applicant and set aside the order for appraisalment and sale after the completion of the sale as a result of which new rights and liabilities have been created, since a sale by order of the Court in proceedings in rem gives to the interested party a clean title against all the world.

Application dismissed.

35 Application.

Application by plaintiffs for an order directing the Marshal of the Admiralty Court not to sign the bill of sale of the defendant ship and/or to discontinue the sale or any process thereof

of the said ship until further Order of this Court and/or until after the hearing and final determination of this application, and for an order setting aside and/or annulling the sale of the defendant ship effected on January 23, 1978.

A. Skordis, for applicants (plaintiffs). 5

E. Psillakis (Mrs.), for the interested party Eastern Mediterranean Shipyards Ltd.

Cur. adv. vult.

MALACHTOS, J. read the following judgment. On the 25th day of January, 1978, the plaintiff Bank, a judgment creditor of the defendant ship in this action, filed the present application claiming as stated therein:— 10

(a) an Order directing the Marshal of the Admiralty Court and his agents and/or servants, not to sign the bill of sale of the defendant ship and/or to discontinue the sale or any process thereof of the defendant ship GS 101 until further Order of this Court and/or until after the hearing and final determination of this application, and 15

(b) an Order for the setting aside and/or annulment of the sale of the said ship made on 23rd January, 1978. 20

In view of the urgency of the matter the application was fixed for hearing on the 28th January, 1978, with directions of the Court that copy of the application and the affidavit in support thereof to be served on the Marshal and the highest bidder, namely, Eastern Mediterranean Shipyards Ltd. of Limassol, the purchaser of the defendant ship. As service was not effected on 28th January, 1978, the hearing of the application was further adjourned to 3rd February, 1978. 25

The facts relevant to this application, which appear in the file, and which are not disputed, are the following: 30

On the 1st October, 1977, the above action was filed by the plaintiff bank claiming against the defendant ship various sums of money amounting to C£502,109.— as mortgagee of the New Saragosa Shipping Co. S.A. of Panama, owners of the defendant ship, Gulfspan 101, otherwise known as GS 101, which is 35

in reality a flat-top Ocean-Going Barge, and was lying at the time in the port of Limassol, under arrest in another action.

On the 29th October, 1977, the time named in the writ for appearance, no one appeared for the defendant ship, although
5 duly served, and so the case was adjourned for proof to the 8th November, 1977. On the 8th November, 1977 by an *ex parte* application the plaintiff obtained an Order for the arrest of the defendant ship for a second time, following the principle
10 that the res must be under arrest in the action in which the order for appraisalment and sale is asked for. The warrant of arrest, after being served and since no appearance was entered on behalf of the defendant ship on the 16th December, 1977, the appointed day to show cause on behalf of the defendant ship why the Order of arrest should not remain in force, the
15 action was fixed for the 27th December, 1977, for proof.

On the 19th December, 1977, the petition was filed by the plaintiff together with an application to obtain judgment in default of appearance. In the prayer in the petition the plaintiff bank was claiming, besides judgment for the amount due, an
20 Order for the appraisalment and sale of the defendant ship.

On 27th December, 1977, the plaintiff bank proved its case and judgment and order was issued by this Court as follows:

“ *COURT*: There will be judgment and order in favour of plaintiffs against the defendant ship as follows:

- 25 (a) Judgment for C£502,109.- being the equivalent in U.S. Dollars of 1,224,341.67 together with interest thereon at 9% per annum as from 29th September, 1977, to final payment with costs to be assessed by the Registrar.
- 30 (b) Order that the defendant ship ‘GULFSPAN 101’ which is under arrest in the port of Limassol be appraised and sold.
- 35 (c) Order that the Marshal himself or any one or more experienced person or persons he may choose appraise the said ship according to the true value thereof and immediately after carrying out such appraisalment furnish forthwith to the Re-

gistrar of this Court a statement in writing showing the value of the appraised ship and also the amount of the fees, costs, charges and expenses incurred.

- (d) Order that the ship in question be sold by the Marshal by public auction or private treaty for the highest price that can be obtained for it but for not less than the appraised value unless the Court, on the application of the Marshal, allows it to be sold for a lesser amount. 5
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- (e) Immediately upon completion of the sale the gross proceeds thereof should be paid into Court and a statement signed by the Marshal showing the amount so paid, as well as all fees, costs, charges or expenses incurred in carrying out the sale, should be furnished to the Registrar of the Court. Such statement shall be accompanied by any vouchers necessary to show the amount of the monies expended." 15

On the 7th January, 1978, the Registrar of the Court upon an oral application by plaintiffs' counsel, issued the drawn up judgment and order for the appraisal and sale of the defendant ship. This drawn up judgment and order reads as follows: 20

"To the Marshal of the Admiralty Court of Cyprus,

Whereas on the 27th day of December, 1977, it was adjudged that the plaintiffs in this action should recover from the above-named defendants: 25

- (a) the sum of C£502,109.- (five hundred and two thousand, one hundred nine pounds) being the equivalent in U.S. Dollars of 1,224,341.67 with interest thereon at the rate of 9% per annum, from 29th September, 1977 to date of payment. 30
- (b) the costs of this action.

AND WHEREAS default has been made in payment according to the said order of the sum of C£502,109.- (five hundred and two thousand, one hundred and nine pounds) and costs, and the Court has ordered the property 35

to which this action relates to be taken and sold in execution, and has allowed to the plaintiffs the costs of obtaining such order and costs of execution.

5 These are therefore to require you forthwith to seize and take in execution the said ship named "GULFSPAN 101" now lying in the port of Limassol and to reduce into writing an inventory of the said ship "GULFSPAN 101".

10 And having chosen one or more experienced person or persons to cause him or them to appraise the same according to the true value thereof, and upon a certificate of such value having been reduced into writing, to cause the said ship "GULFSPAN 101" to be sold by public auction or private treaty for the highest price, not under the appraised value, that can be obtained for the same.

15 And you are further required, immediately upon the sale being completed, to bring the proceeds arising therefrom into Court and to return this warrant endorsed with a statement of what has been done thereunder together with an account of the sale and of the fees thereon, and of the costs of execution and of appraisal, signed by you, together with the certificate of appraisal signed by the appraiser.

Dated this the 7th day of January, 1978".

25 On the 9th January, 1978, a copy of this Order was forwarded by the Chief Registrar to the Director of the Department of Ports, the Marshal of the Admiralty Court of Cyprus, with a copy to the Harbour Master of Limassol. The Marshal upon receiving the Order and the accompanying letter of the Chief Registrar, dated 9th January, 1978, appointed two assessors who appraised on the 12th January, 1978, the said ship for the sum of £27,000.-

The date of the sale of the ship was fixed for the 23rd January, 1978, at 10 a.m. as it appears from the notification published in the newspaper "Agon" of the 18th January, 1978.

35 On the 23rd January, 1978, the auction took place and the ship was sold to the highest bidder for £27,000.- which was the appraised value.

By letter dated 23rd January, 1978, the Marshal informed the Registrar of this Court that the said barge was sold by public auction on the same day at his office to the Eastern Mediterranean Shipyards Ltd. the interested party in this application, for the sum of £27,000.- which sum was paid by cheque issued by Grindlays Bank Ltd., Limassol Branch. In the said letter there were enclosed a photo copy of the minutes of the sale, a statement in writing dated 12th January, 1978, signed by the Marshal and the two Assessors appointed by him, showing the appraised value of the ship and the cheque paid for her value. The bill of sale was signed by the Marshal on the 25th January, 1978, before the filing of the present application.

Counsel for applicant argued that in this case the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction dealing with the appraisalment and sale of property under the arrest of the Court, as well as the rule that regulates the drawing up of judgments by the Registrar, were not followed. The rules dealing with the appraisalment and sale of property under arrest are Rules 74, 75 and 76 and read as follows:

“ 74. It shall be lawful for the Court or Judge, either before or after final judgment, on the application of any party and either with or without notice to any other party, by its order to appoint the marshal of the Court or any other person or persons to appraise any property under the arrest of the Court, or to sell any such property either with or without appraisalment, or to remove or inspect and report on any such property or to discharge any cargo under arrest on board ship.

75. Every order appointing any person to appraise or to remove or to discharge any such property, shall direct the person or persons appointed immediately after the carrying out of the said order forthwith to furnish to the Registrar a statement in writing, signed by such person or persons, showing the value of the property appraised or what has been done under such order, and, in the case of any order to inspect and report, the condition of the property inspected, and showing also the amount of the fees, costs, charges, and expenses payable to or incurred by such person or persons in carrying out the order of the Court.

Every such statement so furnished shall be filed.

76. Every order appointing any person or persons to sell any such property, either with or without appraisalment, shall direct the person or persons so appointed immediately upon the completion of the sale to pay into Court the gross proceeds of the sale and to furnish to the Registrar a statement signed by such person or persons showing the amount of the moneys so paid into Court and the amount of the fees, costs, charges, or expenses payable to or incurred by such person or persons in carrying out the order of the Court; and such statement shall be accompanied by any vouchers necessary to show the amount of the moneys expended by such person or persons.

Every such statement and voucher shall be filed.”

15 The rule that regulates the drawing up of judgments by the Registrar is rule 157 and provides that “any party desiring a judgment to be drawn up shall make an application for that purpose to the Registrar by whom the judgment shall be drawn up and entered in a book to be kept for that purpose.”

20 Counsel for applicant further argued that in the present case the Registrar issued the Order of appraisalment and sale of the property without an application to this effect contrary to rule 74. This rule, as he put it, reflects the practice of the High Court in England where it is necessary that a commission of appraisalment and sale is only issued by the Registry after production of the decree (or, in the case of an Interim Order Pendente lite, the production of the Order) and filing a praecipe in the Registry. The judgment and order of the Court for appraisalment and sale makes it clear that as soon as the appraisalment is made the Marshal should forthwith furnish to the Registrar of the Court a statement in writing showing the value of the property appraised. This was not done in the present case as the drawn up judgment and order did not contain such a direction contrary to the judgment of the Court and the wording of rule 75. The relevant statement was filed after the sale had taken place. Had a statement showing the appraised value been filed prior to the sale, the applicant would have notice of what was going on with his legal rights. What was done in this case is contrary to the natural justice. He further argued that in the case in hand we had the Order of the Court

for the appraisalment and sale but there was no application on the part of the plaintiff to move the Registrar and, in fact, the judgment and order should be considered as never drawn up and this is contrary to rule 157. He finally submitted that the failure of the Registrar in drawing up the order in accordance with the judgment of the Court and the failure of the Marshal to furnish forthwith to the Registrar a statement in writing showing the value of the property, contrary to rule 75, go to the root of the matter and the whole proceedings of the sale should be declared *null* and *void*.

On the other hand, counsel for the interested party besides arguing that the appraisalment and sale were carried out in accordance with the rules and the existing practice of the Supreme Court of the Republic in its Admiralty Jurisdiction, submitted that the present application is bad in law as it does not state any rule or the section of any law on which the application is based and by virtue of which the Court has power to set aside the sale. The application as stated therein is based on the Cyprus Admiralty Jurisdiction Order, 1893, rules 74, 75, 203, 204, 205, 206 and the Practice of the High Court in England and section 32 of the Courts of Justice Law, 1960, Law 14/60. None of these enactments empower the Court to set aside the sale. Therefore, the application should be dismissed.

Now as regards the allegation of counsel for applicant that the drawn up judgment and order by the Registrar for the appraisalment and sale of the defendant ship was issued without any application, it cannot stand, since it is an admitted fact that an oral application was made on behalf of the applicant to this effect. This application must have been made between the 27th of December, 1977, when the judgment of the Court was issued, and the 7th January, 1978, when the order was drawn up. This oral application must have been considered by the Registrar, according to the existing practice of this Court, as an application by the plaintiff setting in motion the machinery for appraisalment and sale of the ship, which was already under arrest in another action, having in mind that a second warrant of arrest was issued in the present case for the purpose of execution, and upon drawing up the judgment and order for appraisalment and sale forwarded it to the Marshal for execution. Order 75 rule 23 (1) of the Supreme Court Practice in England,

which provides that "a commission for appraisal and sale of any property under an Order of the Court, shall not be issued until the party applying for it has filed a praecipe in form No. 12 in Appendix B", has never been followed in Cyprus.

5 The Marshal upon receiving the drawn up Order proceeded to the execution thereof with all reasonable speed following the directions contained therein and I fail to see any error or omission on his part in doing so. It is quite true that the drawn up
10 Order did not contain the direction of the Judge of the Court under rule 75 that the Marshal "immediately after carrying out such appraisal furnish forthwith to the Registrar of this Court a statement in writing showing the value of the appraised
15 ship", but, I think, this was not necessary in the present case where both the Order for appraisal and the Order for sale were applied for together and were made by the Court at one and the same time. This directive of rule 75 is, in my view, imperative only when an application for appraisal of property alone is made without an order for sale. In the present
20 case this directive of rule 75 was contained in the judgment simply because the Court in issuing the Order for appraisal followed the wording of the said rule. So, in cases where the appraisal and sale of property under arrest is ordered at the same time by the Court and irrespective as to whether the said directive of rule 75 to the Marshal or to any other person
25 or persons, as the case may be, is contained in the drawn up Order or not, the filing with the Registrar of the written statement showing the value of the property appraised, before the sale, is not necessary.

30 Another reason for which the present application cannot succeed is that neither the specific section of the Law, section 32 of Law 14/60, nor rules 74, 75, 203, 204, 205 and 206, on which the application is based, contain any provision empowering the Court to set aside or annul the sale. Section 32 of Law 14/60 empowers every Court in the exercise of its civil
35 jurisdiction to issue injunctions (interlocutory, perpetual or mandatory) or appoint a receiver, in all cases in which it appears to the Court just or convenient so to do. Rules 203, 204, 205 and 206 provide for the making of applications either *ex parte* or by summons to the Supreme Court of Cyprus in its Admiralty
40 Jurisdiction by a party desiring to obtain an order from the Court or a Judge thereof.

The only relevant provision I was able to trace is rule 211 which provides that "the Court or Judge may, on due cause shown, vary or rescind any order previously made". Certainly, under this rule this Court has a discretionary power to vary or rescind the order for appraisalment and sale, which was made on 27.12.77, on good cause shown. However, even if we assume that the present application were based on this rule, I would have not exercised my discretion in favour of the applicant to set aside the order for appraisalment and sale of the ship in question after the completion of the sale as a result of which new rights and liabilities have been created. The sale in the present case, being a sale by Order of the Court in proceedings in rem, gives to the interested party a clean title against all the world.

For the reasons stated above, this application is dismissed with costs, in favour of the interested party, to be assessed by the Registrar.

Application dismissed with costs.