

1978 September 15

[HADJIANASTASSIOU, J ]

M COLODETZ LTD ,

*Plaintiffs,*

v.

1. KATARINA SHIPPING INC ,
- 2 THE SHIP "POLY" (OWNED BY DEFENDANTS 1 AND NOW LYING IN THE PORT OF LIMASSOL),
- 3 SEA TRANSPORT SERVICE CO, M V ,

*Defendants.*

*(Admiralty Action No 235/77)*

---

*Admiralty— Arrest of ship— Release on bail— Discretion of the Court— Considerations applicable— Trading vessel— Defendants deprived of its use for trading and earnings therefrom— Ship remained under arrest and idle too long— Likelihood of deterioration— A lot of expenses incurred since the filing of the action— Order of release subject to the giving of security or bail for the amount of the appraised value of the ship*

5

This was an application by the defendants for the release of the defendant ship from arrest. The ship was arrested on August 26 1977 on the application of the plaintiffs in this action. Upon directions by the Court to this effect the ship was appraised by the Marshal who in a report\*, dated August 23, 1978, stated that the ship has been abandoned by the ship owning company and the crew has left the vessel because no one was paying their salaries and the only person who was looking after it was the guard. The Marshal further warned that with the change of the weather, which was approaching, one might be faced with the wreck of the ship in question and requested the Court to consider this matter very seriously and direct him accordingly.

10

15

20

*Held*, granting the application, that taking into consideration that the ship in question is a trading vessel and the defendants

---

\* See the whole text of the report at p 483 *post*

would be deprived of its use for trading and the earnings therefrom; that a lot of time has been wasted and the ship remained under arrest and idle too long; that there is a likelihood that the ship is deteriorating and that any further delay in releasing it from arrest would not be to anyone's interest; and that, particularly, because a lot of expenses have been incurred since the action was filed, this Court has reached the conclusion, exercising its discretionary powers, to release the ship from arrest on condition that the ship-owning company should furnish security or bail for the amount of its appraised value.

*Application granted.*

Cases referred to:

*The Gay Tucan* [1968] 3 All E.R. 819 at p. 820.

*The Golden Trader*, [1975] Q.B. 349 at pp. 353-354;

*The "Cap Bon"* [1967] 1 Lloyd's Rep. 543 at pp. 546-547.

**Application.**

Application by the defendants for an order for the release of the defendant ship "Poly" from arrest.

*P. Ioannides*, for the applicants-defendants.

*C. Erotokritou*, for the respondents-plaintiffs.

*Cur. adv. vult.*

HADJIANASTASSIOU J. read the following judgment. The question which arises in this case is whether the applicants are entitled to an order for the release of the ship Poly from arrest.

On February 2, 1978, the applicants made an application seeking an order for the release of the defendant ship from arrest upon such terms as to security or otherwise as the Court may deem fit. This application was supported by an affidavit sworn by Mr. Michael Vasiliou of Nicosia, an advocate, who claimed that unless the ship in question would be released, the ship owning company, because of the time she has remained under arrest, are losing a lot of money every day, and had incurred a huge amount of losses because the ship has remained idle. The said application was based on the Cyprus Admiralty Jurisdiction Order 1893, rules 60-64, 203, 212 and 237, which gives jurisdiction to the Court to deal with this matter, and on the inherent power of the Court.

On the contrary, the respondents-plaintiffs, opposed the application and in the affidavit dated February 3, 1978, of Mr. Ioannis P. Erotokritou, an advocate, he said that the Court, before releasing the ship in question, should bear in mind that the claims of the plaintiffs and caveators exceed the full value of the ship and that bail or other security should *prima facie* be given up to an amount equal to the value of the ship. 5

Finally, he concluded his affidavit in these terms:- "I honestly believe that having regard to the above, the bail or other security to be given for the release of the Poly should be the amount of C£ 1,300,000.000 mils out of which about C£ 200,000.000 mils will go to actual expenses for the trans-shipment of the cargo when released, and provided it is still in good condition, as the danger of deterioration is great." 10

The notice of intention to oppose the application was based on the Cyprus Admiralty Jurisdiction Order, rules 50, 51, 52, 54, 55, 56, 57, 58, 60-64, 65-75, 203-212, and 237, and on the General Practice of the Admiralty Division of the High Court of Justice in England, and the Practice and Inherent Powers of the Supreme Court of Cyprus in its Admiralty Jurisdiction. 15 20

As I have said in a number of other applications, on August 26, 1977, the plaintiffs filed an action against the defendants claiming damages for breach of contract and/or breach of duty and/or negligence of the defendants, their servants or agents, for the failure to deliver and/or carry the plaintiffs' goods shipped on board the defendants' 1 vessel (Poly), under a bill of lading for carriage from Antwerp to Lagos-Apapa. 25

On the same date, the plaintiffs applied for the issue of a warrant for the arrest of the ship Poly. The said application was supported by an affidavit sworn by Mr. Ioannis P. Erotokritou, an advocate, and the Court, in spite of the opposition being filed, directed the issue of a warrant. There is no doubt that the application for the release of the ship arrested, was filed after a long delay, and after the incurring of a lot of expenses relating to the unloading and discharge of the cargo in question. 30 35

Rule 60, on which counsel relies, says that:-

"Any party may apply to the Court for the release of any property arrested and the Court or Judge may, by order,

direct the release of such property upon such terms as to security or as to payment of any costs of appraisal or removal or inspection or otherwise as the Court or Judge shall seem fit."

5 Rule 61 is in these terms:-

"Any order of release may be issued on the application of any party without notice to any other party if there is no caveat entered against the release of the property—and

- 10 (a) Upon proof of payment into Court of the amount claimed, or of the appraised value of the property arrested, or, where cargo is arrested for freight only, of the amount of the freight verified by affidavit;
- (b) On the application of the party at whose instance the property has been arrested;
- 15 (c) On a consent in writing being filed signed by the party at whose instance the property has been arrested;
- (d) On discontinuance or dismissal of the action in which the property has been arrested."

20 There is no doubt that the power to grant an order for the release of any property arrested is discretionary, and it is exercised having regard to all the circumstances of the case. But with regard to the rights of the caveators, once caveats have been filed with the Registrar, rule 65 provides:-

25 "Any person desiring to prevent the arrest of any property or the release of any property under arrest or the payment of any moneys out of Court may cause a caveat against the issue of any warrant of arrest or of any order of release or for the payment of moneys out of Court to be entered by the Registrar in a book to be kept by him for that purpose and hereinafter called the Caveat Book."

30

and rule 70 states:-

35 "No order of the Court or Judge affecting the property or moneys referred to or specified in any caveat, duly entered in accordance with these Rules, shall ordinarily be made on the application of any party or person, except notice of such application shall have been given to the party or person at whose instance the caveat has been entered, but

the Court or Judge may, upon proof or any special circumstances, which render it desirable or necessary, and upon such terms as may seem fit, make any such order without notice to the person by whom the caveat has been entered.”

5

I think it is necessary to state, that, when an action in rem is brought, the security thereby obtained is security in respect of any judgment which may be given by the Court after hearing and determining the claim. The security so obtained also covers the payment of any sum which may become due under an agreement whereby the action is settled, but the security, so obtained is not, in my view, available for the purposes of ensuring payment of the judgment of some other Court.

10

It seems to me that this is a necessary inference from the terms of the Administration of Justice Act, 1956, which is applicable in Cyprus and gives the Court power to entertain proceedings in rem. Section 1(1) of that Act provides: “The Admiralty Jurisdiction of the High Court shall be as follows:—that is to say, jurisdiction to hear and determine any of the following questions or claims—(a) any claim to the possession or ownership of a ship or to the ownership of any share therein”; and under sub-paragraph (g) “Any claim for loss of or damage of goods carried in a ship”.

15

20

I would reiterate that it is to be inferred from that that the object of the process in rem is to provide security for a plaintiff in respect of any judgment which he may obtain as the result of the hearing and determination of a claim. That is the purpose of proceedings in rem, and that it covers also payment of a sum due under a settlement in an action; and it is the sole purpose of such process. In my view, the Admiralty Court has jurisdiction to arrest ships or to keep ships under arrest for the purpose of providing security for a judgment of the Court. Bail in an Admiralty action in rem represents the res, and it follows, in my view, that the Admiralty Court has jurisdiction to require bail as a condition of release or to maintain that bail for that purpose only.

25

30

35

With this in mind, I agree with counsel for the defendant ship, that the Court should take into consideration and into account that the vessel in question is a trading vessel, and the defendants would be deprived of the use of the vessel for trading,

40

and the earnings therefrom. This was the stand of the Court also, but no-one took that stand seriously into consideration, and a lot of time was wasted, and the ship remained under arrest and idle too long. It is my opinion, therefore, that the ship should be released because by remaining idle, there is a likelihood that it is deteriorating. That view, apparently, is also shared by the Marshal of the Court in a recent report dated August 24, 1978. I should have added that in the meantime, caveats have been filed against the issue of the warrant of arrest and against the release of the ship under arrest by various caveators, but I do not think it is necessary to add anything more on the question of caveats.

Speaking of the purpose of giving security in an action in rem, Mr. Justice Brandon in *The Golden Trader*, [1975] Q.B. 348 at pp. 353-354 reiterated what he had said in the "*Cap Bon*" [1967] 1 Lloyd's Rep. 543 at pp. 546-547:

"In my view, when an action in rem is brought, the security thereby obtained is security in respect of any judgment which may be given by the Court after hearing and determining the claim. The security so obtained, also covers the payment of any sum which may become due under an agreement whereby the action is settled. But the security so obtained is not in my view available for the purpose of ensuring payment of the judgment of some other Court or for the purpose of ensuring payment of the award of an arbitration tribunal.

It seems to me that this is a necessary inference from the terms of the Administration of Justice Act, 1956, which gives the Court power to entertain proceedings in rem".

He then referred to the provisions of sections 1(1) and 3(4) of the Act of 1956 and continued, at p. 547:-

"It is to be inferred from that that the object of the process in rem is to provide security for a plaintiff in respect of any judgment which he may obtain as a result of the hearing and determination of a claim. That is the purpose of proceeding in rem and, subject to the point I made, that it covers also payment of a sum due under a settlement in an action, it is the sole purpose of such process. It seems to me that in the present case the plaintiffs have sought to

invoke the Admiralty jurisdiction of the Court in rem for a wholly different purpose. That different purpose is not security for the payment of a judgment of the Court or security for the payment of a sum due under the settlement of an action in the Court, but security for the payment of an award in an arbitration conducted pursuant to clause 33 of the charterparty. In my view the Admiralty Court has no jurisdiction to arrest ships or to keep ships under arrest for that purpose; it only has jurisdiction to arrest ships and keep ships under arrest for the purpose of providing security for a judgment of the Court. Bail in an Admiralty action in rem represents the res, and it follows, in my view, that the Admiralty Court has no jurisdiction to require bail as a condition of release or to maintain that bail, for the collateral purpose to which I have referred.”

I turn now to the arguments in the present case, and counsel for the defendant advanced three propositions:- (a) that the Court had jurisdiction to order the release of the vessel provided that a reasonable amount of bail should be given by the owners of the ship in question; (2) that the Court under the provisions of Order 70, is bound only to give notice of the application for the release of the ship in question to the caveators, who are entitled to take steps for the issue of a warrant of arrest of the res if they bring a separate action; but they are not entitled to prevent the Court from releasing the ship. Counsel relies on the British Shipping Laws, 1 Admiralty Practice, (1964) edn. at pp. 122 and 123, paras. 278 and 279; (3) that assuming that the proposition appearing in the British Shipping Laws is correctly stated, then, the statement made in the two affidavits in support of the opposition of the plaintiffs with regard to the claims of the caveators was entirely irrelevant in dealing with the application of the defendants.

It is in evidence that at least 54 or 55 subsequent actions were filed in the registry against the ship Poly, which is already under the arrest of the Court. But for reasons not stated, no-one has proceeded to obtain either a judgment or actually arrested the property for the second or subsequent time. Of course, it is equally true to say that all that is necessary in order to prevent property from being released is the entry of a caveat against such release. This no doubt, has the effect, as I have shown earlier in quoting rule 65 and rule 70, of preventing

release of the res, without due notice being given to the caveator or caveators. In the present case, although no notice was given to the caveators, nevertheless, one at least had notice and appeared in Court.

5 Having considered carefully the submissions of counsel, one thing clearly emerges, that any further delay in releasing the ship from arrest would not be to anyone's interest. With that in mind, and irrespective of the various points argued by both sides, I have reached the conclusion that it is necessary that the  
10 ship should be released. Having regard to the urgent circumstances of this case, I have given directions to appoint the Marshal of the Court, under the provisions of r. 74, to appraise the ship under arrest. It is clear that from the report of the Marshal, the Court is fully justified in reaching the conclusion  
15 that any further delay would be to everybody's detriment. That report, dated 23rd August, 1978, reads as follows:-

20 "I refer to your letter dated 4th August, 1978, and wish to inform you that after having appointed Messrs. Andreas Kounounis and Christos Assimenos, both Port Officers and Pilots at Limassol, as appraisers of s/s "POLY" they appraised the present day value of the vessel at U.S.S 300,000.- (Three hundred thousand U.S. Dollars).

25 2. If the vessel is to be sold by public auction I doubt very much if we will be able to raise more than half of her value due to her age and the fact that she is a turbine vessel and also that her engines are immobilized for a long time.

30 3. I would like to point out a very serious matter arising from the arrest of this vessel. Since no one was paying the crew it all left the vessel and now the only one looking after her is the guard.

4. If the weather will change and the time for such change is approaching, we might end with a wreck in our hands for which the Cyprus Government will be responsible.

35 5. I therefore request the Court to consider this matter as very urgent and direct me accordingly."

It is evident that the ship has been abandoned by the ship owning company and the crew has left the vessel because no-one



was paying their salaries, and the only person who is looking after it now is the guard, paid apparently out of public funds by the Marshal. But in this report there is a further warning, that with the change of the weather one might be faced with a wreck of the ship in question, and it is for all interested parties to consider this point seriously. 5

Faced with the same problem of releasing on bail the ship from arrest, Cairns J., in dealing with the case of "The Gay Tucan", [1968] 3 All E.R. 819, had this to say at p. 820:-

"It is said on behalf of the plaintiff here that this vessel has already at some earlier date been grounded while in possession of the first defendant and it is feared that the vessel might be grounded again or suffer some other casualty while in his possession and might suffer considerable damage which having regard to the nature of the vessel— it is made of fibre glass—would be difficult to detect and expensive to repair. On the other hand it is said on behalf of the first defendant that while the vessel remains under arrest she is liable to suffer damage not so much from forces of nature, but from possibly being broken into and equipment taken from her. I am told that it has already been noticed while she was under arrest that unauthorised persons have been on board. 10 15 20

On the whole I do not think it can be said that the risk of deterioration is substantially greater if the vessel is released than if she remains under arrest and I think there is substance in what is said by counsel for the first defendant that if the plaintiff gets bail (at the amount representing the present value of the vessel) he will be in at least as good a position, probably in a better position, than if his security consisted of the vessel itself remaining under arrest. For these reasons I think the vessel should be released on bail. It should clearly not be released until it has been satisfactorily insured. Counsel for the first defendant has indicated that his client would not wish to obtain possession of the vessel until it is properly insured and I think that the value of the vessel should be assessed in whatever may be the most expeditious and convenient way and bail be given for the value so found." 25 30 35

In Action No. 235/77, counsel for the respondent-plaintiffs 40

5 filed a new application for an order, *inter alia*, to appoint the Marshal to sell the said ship Poly either by private treaty or by public auction. I must confess that in view of the report of the Marshal in the present application, the position becomes even more complicated, because there is another application before me with which I will be dealing soon.

10 In the latter application, the members of the crew of the ship Poly are also applying, as I understand it, to appoint the Marshal to appraise and to sell the ship Poly in order to secure their salaries and/or wages. Indeed, this is a classic case in which a lot of people have found themselves in this awkward situation.

15 Having regard, therefore, to all the circumstances, and particularly because a lot of expenses had been incurred since the action was filed, I have reached the conclusion, exercising my discretionary powers, to release the ship from arrest on condition that the shipowning company should furnish security or bail for the amount stated in the report of the Marshal or its equivalent in Cyprus pounds representing the value of the es.

20 In reaching this conclusion, however, I have no doubt that the ship-owning company would be facing a lot of difficulties to secure such an amount, particularly so, because of the claims of the crew of the ship, and of the applications for the sale of the ship with which I would be dealing very soon.

25 But there is another difficulty in this case because according to the report of the Marshal, even if the vessel is to be sold by public auction, then again there is a possibility that the figure of the sale will not reach more than half of her value.

30 Having voice these difficulties, it would be advisable to all concerned to try and find ways and means, without further delay, to protect their interests. Order accordingly; but in the circumstances, I am not making an order for costs.

*Application granted. No order as to costs.*