

1979 December 31

[A. LOIZOU, J.]

SCHEEPSYPTHEEKBANK NEDERLANC N.V.
AND ANOTHER,

Plaintiffs,

v.

THE SHIP "ZEBRAS STAR" AND ANOTHER,

Defendants.

(Admiralty Action No. 216/78).

Admiralty—Ship—Creditors' priorities—Mortgagees—And creditor who defrayed expenses for repatriation of seamen, whose services were terminated at a port outside the Republic, at the request of ship-owners—His claim not coming within the meaning of "by any other person" in section 65(2)(b) of the Merchant Shipping (Masters and Seamen) Law, 1963 (46/73)—And cannot take priority over that of mortgagee. 5

Merchant Shipping (Masters and Seamen) Law, 1963 (46/63)—Applicability of section 65(2)(b) of the Law.

At the request or on the instructions of the registered owners of the defendant ship "ZEBRAS STAR" or at the request of the master of the said ship the plaintiffs in Action No. 298/78 issued five tickets to five persons, who were at the material time seamen of the said ship and citizens of the Republic of Greece, whose services were terminated outside Cyprus and were returning to their country of origin. 10 15

In proceedings for the determination of the priorities of claims against the aforesaid ship, between the plaintiffs in Action No. 216/78, as mortgagees under a registered mortgage, and the plaintiffs in Action No. 298/78, the sole issue for consideration was whether the latter came within the meaning of the term "by any other person" to be found in paragraph (b) of section 65(2)* of the Merchant Shipping (Masters and Seamen) Law, 1963 (46/63). 20

* Section 65 is quoted in full at pp. 746-7 *post*.

5 *Held*, that sub-section (2) applies where the master of a ship fails, without reasonable cause, to comply with the section, namely, to do all that is required of him under sub-section (1) thereof, and in cases where the repatriation of the seaman comes into play, he fails to make adequate provision for his return to the proper port, that is, either to the port at which the seaman was shipped or a port to which he belongs or to a port agreed to, at the time of the discharge; that in the instant case, these tickets were provided by the claimants in Action No. 298/78, in the ordinary course of their dealings with the then owners, and can only be treated as a discharge of the duty of the master to make, under sub-section (1) of section 65, adequate provision for the return of those seamen to the proper port, and not as having been defrayed by any other person after the master failed, without reasonable cause, to perform his obligation thereunder; and that, therefore, it is hereby ordered and directed that payment out be made to the plaintiffs in Action No. 216/78 in priority to the claimants, plaintiffs in Action No. 298/78, who cannot claim the benefit of sub-section (2) of section 65 of Law 46 of 1963, as above stated.

Order accordingly.

Cases referred to:

Karamailis (No. 1) v. *Pasparo Shipping Co.* (1972) 1 C.L.R. 1 and on appeal (1972) 1 C.L.R. 72.

25 **Application.**

Application by plaintiffs for the determination of the priorities of claims against the defendant ship which had been sold by virtue of an order of the Court.

E. Odysseos with *S. Karydis*, for the applicants.

30 *E. Lemonaris*, for the respondents.

Cur. adv. vult.

35 A. LOIZOU, J. read the following judgment. This is an application for the determination of the priorities of claims against the defendant ship. It was filed on behalf of the plaintiffs who had obtained judgment against the defendant ship for the equivalent in Cyprus pounds of the sum of 731,800.96 Dutch Guilders, being the amount outstanding under the plaintiffs' registered mortgage, dated 11th September, 1971, with interest thereon at the rate of 9.75% from 7th July 1978, till

payment, and also for the equivalent in Cyprus pounds of the sum of 17,904.50 Dutch Guilders, with interest thereon at 9.75% from the date on which they were incurred by the plaintiffs under the said mortgage until payment, and also the costs of the action.

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The ship in question was sold by virtue of an order of the Court and the proceeds were paid into Court. The question then of the order of priorities arose, hence this application which was served on all claimants known to this Court. On the 13th December, 1978, after examination of the various claims, in the light also of statements made by all counsel the Court ruled as follows:

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“ Having examined the nature of the claims in the light of the statement of counsel, I direct that the order for priorities be as stated by Mr. Karydis and agreed upon by counsel for the other claims and that payment out be made to them and to the applicants for their mortgage, less the equivalent in Cyprus money of the claim in Action No. 298/78, i.e. Greek Drachmas 216.375, as well as an amount to cover possible legal interest and costs to remain deposited with the registry until the determination of this case, which remains open.”

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In action No. 298/78, judgment was given in default of appearance, the writ having been duly served and the petition filed. When the present application came up for hearing and whilst evidence was being adduced, the parties had the opportunity of examining the Provisional Ship's Articles of 1978 (photocopy produced as *exhibit No. 1*), which came to the possession of the applicants after applicant 1, the new owner of the ship had bought same at a public auction on the 7th September, 1978. Thereupon no further evidence was called and a statement regarding admitted facts was made as follows:

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“ *Mr. Odysseos*: On our side, having gone through the evidence so far adduced and to the Provisional Ships Articles, which are in the possession of Mr. Karydis, we admit that Messrs. Amphitriton Travel and Tourist Agencies Ltd., (the plaintiffs in Action No. 298/78), at the request or on the instructions of Elliroutzo Company Limited, who were at the material time the registered owners of “ ZEBRA STAR ” and or at the request of the master

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of the said ship to the said agency, the latter has issued five tickets to the following five persons who were at the material time seamen of the said 'ZEBRA STAR' and citizens of the Republic of Greece, whose services were terminated outside the Republic and were returning to their country of origin. The said persons are Kavouras Michael, dated 15th November, 1977, ticket No. 54364, one air ticket Lagos-Rome-Athens, drachmas 13,421; Mylonas Nicolaos, second-engineer, ticket dated 31st January, 1978, No. 59023, one air ticket Lagos-Rome-Athens, 13,420 drachmas; Koukouravas Georghios 18th August, 1977, 48116, one air ticket Brussels-Athens, 7,522 drachmas; Plytas Efstratios-15th April, 1977; Panayopoulos Dionysios, two air-tickets Amsterdam-Athens 17,804 drachmas.

Concerning Tournis Constantinos-24th October, 1977, Lagos-Rome-Athens, ticket No. 53124 and Flatsousis Isidoros, ticket dated 12th April, 1977, 40422, Amsterdam-Athens, 8,889 drachmas, both these persons were masters of the ship and therefore cannot be considered as seamen and therefore they are not entitled to their expenses.

Karydas was never in the employment of the Eliroutzo Company and/or on the said ship 'ZEBRA STAR'. What we have done is full compliance with section 65 subsection 1 of Law 46/63, as amended."

Counsel appearing for the respondents, claimants in Action No. 298/78, accepted as satisfactory the said statement and considered unnecessary to call further evidence. He further conceded that the two masters were not entitled to priority for their repatriation expenses, in view, as he said, of the provisions of section 2 of Law 46 of 1963 and the decision in the case of *Pantelis Karamailis* (No. 1) v. *Pasparo Shipping Co.*, (1972) 1 C.L.R. p. 1 (upheld on appeal under the title *Pantelis Karamailis* (No. 2) v. *Pasparo Shipping Co.*, (1972) 1 C.L.R. p. 72) where it was held that the word "seaman" does not include the master of the ship.

There was, however, some disagreement with regard to the position of a certain Karydas, but the name of this person does not appear in *exhibit 1*; there is no other evidence that he was a seaman on "ZEBRA STAR" and, therefore, I conclude that

he could not be considered with the other seamen who claim priority. The case, therefore, is limited, as stated by Mr. Odysseos, to five persons only.

It is the case for the respondents that once it is admitted that the said five tickets were issued for the repatriation of members of the crew at the request of the master, the whole case of priorities is governed by section 65(2) of the Merchant Shipping (Masters and Seamen) Law, 1963 (Law No. 46 of 1963). This section reads as follows:

- “65—(1) Where the service of a seaman belonging to a Cyprus ship is terminated at a port outside the Republic the master of the ship shall give to the seaman a certificate of discharge in the prescribed form and return to him his certificate of competence and where the discharge is made without the consent of the seaman during the currency of the agreement, the master shall besides paying the seaman the wages to which he is entitled, make adequate provision for his maintenance and for his return either to the port at which the seaman was shipped or a port in the country to which he belongs or to a port agreed to at the time of the discharge and the consular officer of the Republic shall endorse upon the agreement with the crew of the ship which the seaman is leaving the particulars of any provision so made.
- (2) If the master fails, without reasonable cause to comply with this section the expenses of the maintenance and repatriation—
- (a) if defrayed by the seaman shall be recoverable as wages due to him;
- (b) if defrayed by the consular officer of the Republic or by any other person be a charge on the ship to which the seaman belongs and be recovered from the person who is, or in case of her loss or transfer, was the owner of the ship.
- (3) The provisions of this section shall apply in case of any seaman belonging to a Cyprus ship discharged on the transfer or disposal of the ship at any port outside the Republic.

- (4) The provisions of this section shall apply to any alien seaman who is a Commonwealth citizen or citizen of the Kingdom of Greece or the Republic of Turkey."

5 It has been argued on behalf of the respondents that sub-section (2) applies to the case of the claimants, plaintiffs in Action No. 298/78, as these claimants come within the meaning of the term "by any other person" to be found in para. (b) of the said sub-section, inasmuch as these tickets were defrayed by them. In my view, sub-section (2) applies where the master
10 of a ship fails, without reasonable cause, to comply with the section, namely, to do all that is required of him under sub-section (1) thereof, and in cases where the repatriation of the seaman comes into play, he fails to make adequate provision for his return to the proper port, that is, either to the port at
15 which the seaman was shipped or a port to which he belongs or to a port agreed to, at the time of the discharge.

In the instant case, these tickets were provided by the claimants in the aforesaid action, in the ordinary course of their dealings with the then owners, and can only be treated as a discharge
20 of the duty of the master to make, under sub-section (1) of section 65, adequate provision for the return of those seamen to the proper port, and not as having been defrayed by any other person after the master failed, without reasonable cause, to perform his obligation thereunder.

25 For all the above reasons I do hereby order and direct that payment out be made to the plaintiffs in Action No. 216/78 in priority to the claimants, plaintiffs in Action No. 298/78, who cannot claim the benefit of sub-section (2) of section 65 of Law 46 of 1963, as above stated.

30 In the circumstances, however, there will be no order as to costs.

Order accordingly.