

1983 February 24

[MALACHTOS, J.]

ERMIOKAL SHIPPING CO. LTD, OWNERS OF THE SHIP  
"KAROLA",

*Plaintiffs.*

v.

THE SHIP "RADINO" EX "PIONEER" (C4QQ) AND HER  
CARGO AND FREIGHT,

*Defendants*

(Admiralty Action No 149/76)

*Admiralty—Salvage—Assessment of salvage reward—Principles applicable—Ship and her cargo and crew facing serious danger—Rendered salvage services and towed to safe port to a distance of about 80 miles from place of danger—Reward of £9,700*

*Admiralty—Practice—Salvage—Apportionment amongst salvors of remuneration awarded—Procedure for obtaining* 5

On or about the 16th September, 1976 whilst the ship "Carola", a cargo vessel of 2580 tons D.W, was sailing towards Limassol port in order to load, received an S.O.S call from the ship "Radino", a cargo vessel of 500 tons D.W. of a value of about U S dollars 150,000 loaded with a cargo of a value of about U S dollars 160,000, including freight. "Carola" rushed to the position where "Radino" was, which was about 80 miles from Larnaca, and found that "Radino" was not under control and the ship, her cargo, and crew were facing serious danger. Thereupon the master of "Radino" requested the master of "Carola" to render salvage services to "Radino" and undertook to pay salvage and/or towage fees and any other expenses and damages which might have been incurred. The Master and the crew of "Carola" used their utmost endeavour and having worked under very difficult circumstances succeeded eventually in making fast with "Radino" and towed her to the port of Larnaca where they arrived on the next day the 17th September, 1976. Due to the fact that "Radino" was still in danger and upon the further request of the Master of "Radino" "Carola" had to stay along her until the 19th September, 1976, when "Radino" was finally moved to a safe place.

In an action by the owners of "Carola" against the ship "Radino" claiming the equivalent of 50,000 dollars in Cyprus pounds agreed and/or reasonable remuneration for salvage services and/or towage and for damages directly resulting from salvage operations:

*Held, (after stating the general principles governing assessment of a reward for salvage services—vide pp. 88–89 post) that the amount of salvage reward in this case is assessed to the global sum of £9,700 including the amount of £2,700 agreed damages caused to the plaintiffs as a result of the salvage operations.*

*Held, further, with regard to the application for apportionment of the salvage reward amongst owners, master and crew of the the salving vessel: That power to apportion amongst salvors remuneration awarded in salvage actions has always been incident to the jurisdiction of the Admiralty Court and in England is provided for by Statute (see section 556 of the Merchant Shipping Act, 1894); that apportionment in a salvage action may be obtained by means of a proper application by the parties interested made in the statement of claim or promptly after the total amount of salvage has been ascertained (see Kennedy Civil Salvage, 4th ed. Chapter 7, p. 231); that in the present case it cannot be said that a proper application for apportionment has been made and, therefore, the application for apportionment cannot be entertained.*

*After deducting the amount of £2,500.— paid before judgment, judgment was given in favour of plaintiff for the sum of £7,200.—*

Cases referred to:

*Attorney-General of the Republic v. M/T Keisserswaard and Another* (1965) 1 C.L.R. 433;

*Branco Salvage Ltd. v. The Ship Demetrios* (1968) 1 C.L.R. 252 at p. 262.

#### **Admiralty action.**

Admiralty action for 50,000 U.S.A. dollars remuneration for salvage services rendered to the ship "RADINO".

A. *Panayiotou*, for the plaintiffs.

L. *Demetriades*, for the defendants.

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. In this case the plaintiffs as owners of the ship "CAROLA" on the 18th September, 1976, instituted the present proceedings, before this court, in its Admiralty jurisdiction, against the defendant ship "RADINO" ex "PIONEER" claiming the equivalent sum of 50,000 dollars in Cyprus pounds agreed and/or reasonable remuneration for salvage services and/or towage and for damages directly resulting from salvage operations. At the same time, upon an ex parte application, the defendant ship, which was anchored at the port of Larnaca, was arrested by the Marshal. The following was one of the conditions of the warrant of arrest issued by the Court:-

"The Marshal shall release the ship upon directions from the Registrar of this Court on the filing of a security bond by or on behalf of the ship in the sum of £10,000.- for the satisfaction of any order or judgment for the payment of money made against the ship or her owners in this action".

On the 20th September, 1976, the defendant ship was bailed out for the agreed sum of £8,300.- without prejudice to the rights and liabilities of the parties and she was allowed to sail for her destination.

In the petition, which was filed on the 26th October, 1976, and, particularly in paragraphs 3, to 8, inclusive, the following is stated:

"3. At all material times CAROLA was a cargo vessel of 2580 tons D.W. registered under the Cyprus flag and at the time of the services was fully and properly manned.

4. At all material times RADINO was a cargo vessel of 500 tons D.W. registered under the Cyprus flag, and at the time of the services was fully loaded. The value of the RADINO was about U.S. \$ 150,000 and the value of her cargo including freight about U.S. \$ 160,000.

5. On or about the 16th September 1976 while the ship CAROLA was sailing towards Limassol port in order to load, at about 2 a.m. received an S.O.S. call from the ship RADINO which was on position 34o 35' N. Lat and 34o 39' E. Long to Larnaca, about eighty miles

5 from Larnaca, Cyprus. CAROLA rushed to the above position where RADINO was, where she found that RADINO was not under control and the ship, her cargo, freight and crew were facing serious danger. The winds at the time were very strong, the sea was rough and the weather very bad and unclear.

10 6. In view of the above the Master of the ship RADINO requested and/or instructed the Master of the ship CAROLA to render salvage services and/or any other services for the safe salvage and/or towage of the ship RADINO, her cargo, freight and crew and he undertook to pay to the plaintiffs salvage and/or towage fees and any other expenses and damages which the plaintiffs might have incurred.

15 7. The Master and the crew of the ship CAROLA used their utmost endeavour and having worked under very difficult circumstances succeeded eventually in making fast with the ship RADINO and towed her to the port of Larnaca where they arrived next day the 17th September 1976. Due to the fact that RADINO was still in danger and upon the further request of the Master of RADINO. CAROLA had to stay along her until the 19th September. 1976, when RADINO was finally moved to a safe place.

25 8. During the rendering of the aforesaid services and as a result of same the ship CAROLA suffered the following damage and the plaintiffs sustained damages, losses and expenses.

*PARTICULARS OF DAMAGES, LOSSES AND/OR EXPENSES*

30 (a) A hole in the side plating of 5cm diameter and in a position 175 cms down from the tonnage deck in way of hatches 3 and 4, and 16 cms above the bottom rivett line of the sheer strake plate. The area in way is dented (40x40 cms).

35 (b) One 120 fathom 2 1/2" dia hawser was lost overboard and a second was cut.

(c) One engine room electric fan was displaced in its

housing above the deck, causing the burn-out of the driving motor.

(d) Damage to the engine electrics for engaging reverse.		
(e) Shearing off of the base plate of the port stern fairlead.		
(f) Star board engine two gudgeon pine knocking.		5
(g) Port engine one gudgeon pick knocking. The repairs of the above damages were estimated and/or cost the sum of		
	C£3,000.-	
(h) Three full days delay for the abovesaid rendered services and two full days further delay required for the above repairs of U.S. \$ 1,715 per day		10
	3,575.-	
(i) Surveyor fees and reports	186.-	
(j) Fees and other expenses incurred at the port of Larnaca	200.	15
(k) Sundry expenses incurred due and as a result of the above services	300.-	
Total	<u>C£7,261.-"</u>	

On the other hand, the defendants in their answer, which was filed on the 27th May, 1977, allege that the ship RADINO was at all material times a good and seaworthy cargo vessel of 500 tons D.W. valued at 80,000 dollars, registered under the Cyprus flag and loaded with cargo of flour valued at 33,000 dollars and that only towing services were rendered to her by the ship CAROLA to Larnaca Port where she arrived safely on the 17th September, 1976.

In support of their claim the plaintiffs called three witnesses namely, Leonidas Papaspyrou, Managing Director and shareholder of the plaintiff company, Kokos Zavros, the Managing Director and shareholder of Cosmar Co. Ltd. of Limassol, ship repairers, and the Greek master of CAROLA Nicolaos Karageorghis.

Leonidas Papaspyrou in giving evidence as P.W.1, stated that at about noon of the 16th September, 1976, he got a message through Cyprus radio from the master of their ship, Captain

Karageorghis, at their offices in Crete, asking for permission to go to the help of the defendant ship. He then came into contact with a certain Myriantous, who was at the time in Crete. Managing Director of the owning company of the defendant ship, who told him to proceed with the operation. As to the amount to be paid to the plaintiff company this was left to be agreed between the two masters. Immediately after, this witness gave instructions to the master of the CAROLA to proceed with the operations and keep him informed of the developments. Upon receiving information from the master that he arrived at the spot and found the defendant ship, he told him to claim for towing of the defendant ship the sum of 15,000 dollars, on the understanding that any other expenses would be over and above that sum. He was later informed by the master that the nearest port was Larnaca and he was towing the defendant ship to Larnaca. He further stated that during the operations the defendant ship knocked on the CAROLA and damaged her and so he came to Cyprus and contacted the authorities and he engaged an assessor to assess the damage caused to their ship. In view of the fact that the destination of the CAROLA was the port of Limassol he proceeded to Limassol in order to engage technicians for her repairs. There he found out that the ship sustained also mechanical damage. The repairs of the ship cost £1,690.-.

On the 16th September, 1976, their ship sailed from Tartous empty with destination Limassol, where she was going to load cement on the 17th September in the morning. Due to this operation the ship arrived in Limassol on the 19th September in the evening and started loading on the 22nd September at 9 a.m. because she lost her turn. The delay to the ship cost 1715 dollars per day. This witness further stated that the crew of their ship has a claim for the assistance they gave to the defendant ship and for extraordinary work they offered them. In fact, they paid to them the amount of £400.- extra.

Kokos Zavros, in giving evidence as P.W.2, stated that the repairs of the CAROLA by his company cost £1690.- and he produced the relevant invoice.

The master of the ship CAROLA, Nicolaos Karageorghis, in giving evidence as P.W.3, stated that at the time, he was

the master of the ship CAROLA which in September, 1976, was carrying cement from Limassol to Tartous, in Syria. On the 16th September, 1976 at about 10.15 a.m. they left Tartous for Limassol and at about noon the weather became very rough. The direction of the wind was north west and was 6 beaufort. 5  
At about 12.15 p.m. through Cyprus radio they received a distress signal from the defendant ship that she was half sunk and that a person on board was calling for help and her exact position was given. The position of the defendant ship was about 50 miles outside his course to his south and since he did not hear on the wireless anybody else he gathered that he was the first to receive the signal and that he was also nearest to the distressed ship. He put his ship on the alert and ordered to change course and proceed full speed in her direction. He notified through the Cyprus radio P.W.1 Mr. Papaspyrou and obtained his consent for the salvage operation. At about 15.10 hours he reached the defendant ship. The weather conditions at the time were very bad and due to the fact that the CAROLA was unloaded he had a problem how to get near the ship in danger. The strength of the wind was 7 beaufort. 10  
The defendant ship was leaning to the one side and it was out of control. The waves were overcovering the deck and hatch. After getting into touch with the master of the defendant ship he found out that her main engine was out of order and that water was entering the engine room. The master of the defendant ship told him that he was in need of immediate help. 15  
Also the port authorities of Larnaca instructed the witness to proceed immediately to the help of the said ship. In answer to a question as to whether he made any negotiations as to the remuneration the witness said: "It was impossible to make a personal contact with him due to the very bad weather conditions. I was told by him to render my services and help them and leave the matter to go through the normal channels". 20  
He further stated that the master of the defendant ship told him that the person interested about his ship was a certain Myrianthous and he gave his name to Mr. Papaspyrou. This witness also stated that when he was approaching the defendant ship he was running the danger of knocking on her as the engines of his ship were running dead slow. Because of the rough weather he attempted four times to approach the said ship on either side but he failed. Every time they were passing by her they were trying to throw the heaving line. He tried for 25  
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another two times and they managed at the last time to give to the defendant ship the heaving line but due to the fact that he proceeded very close to her a collision occurred and as a result a big hole was opened on his ship. He then started  
5 towing the defendant ship to Larnaca port and he was continuously in touch with her master. At about 2 a.m., while towing her the heaving line broke. He had to stop, start replacing it under bad weather conditions and due to his crew being tired due to lack of sleep, his difficulties increased. He attempted  
10 may times from 2 a.m. till 5 a.m. to replace the heaving line. Finally, they gave two heaving lines so as to be more strong and at about 9 a.m. on the 17th September, 1976, they arrived at Larnaca port where they anchored at 11 a.m. The defendant ship was tied next to his ship for its safety. On the 19th  
15 September, 1976, a tug came and towed the defendant ship into Larnaca port at 18.40 hours after many difficulties due to the weather conditions. He then proceeded to Limassol port where he arrived at about midnight of the 19th September. This witness also stated that the distance from the spot they  
20 towed the defendant ship up to Larnaca port is 80 miles, and that if he did not render his help to the defendant ship there was great danger to sink due to the weather conditions and the fact that the water was entering her engine room. Finally, he stated that he assessed his remuneration at 10,000 dollars  
25 and the remuneration of his crew, which consisted of 17 persons, to another 10,000 dollars over and above the 15,000 dollars claimed by the owning company of his ship.

On the 11th January, 1979, after the conclusion of the evidence of the first two witnesses for the plaintiffs, an agreement was  
30 reached between the parties as regards items (a), (b), (c), (d), (e), (f) (g) and (i) of paragraph 8 of the Petition as follows:

The damage caused to the ship CAROLA was assessed at £945.- instead of £1,690.- without taking into consideration the value of the two hawsers and the fees of the surveyor which  
35 were assessed at £1,139.- and £186.- respectively. So, there remained for determination by this Court only items (h), (j) and (k) of paragraph 8 of the Petition.

On the 25th October, 1979, when the case was fixed for continuation of hearing, after the evidence for the plaintiffs



had been concluded, by an agreement of counsel for the parties an Order of the Court was made for the release of the amount of £2,500.- out of the amount which was lodged on the 20th September, 1976, as security for the bailing out of the defendant ship and was paid to the plaintiffs as against their claim. The case was then adjourned for further hearing to 2nd February, 1980. On the above date counsel for the defence closed his case, and left it to be decided on the evidence already adduced, as the master of the defendant ship, who was intended to be called as a witness, could not be traced.

Although in the evidence adduced on behalf of the plaintiffs there is a tendency of exaggeration, I must say that with this qualification I accept the evidence of P.W.1 Papaspyrou and P.W.3 Karageorghis, as true and correct. There is no doubt that in the present case we are concerned with salvage services rendered by the ship CAROLA to the ship RADINO and not mere towing as alleged in the answer filed on behalf of the defendants. So, the main task of the court in the present case, is, on the evidence adduced, to assess the "salvage reward".

The governing considerations in these matters are expounded in Carver Carriage by Sea, 12th edition, volume 2, paras. 830 to 832 and in Kennedy Civil Salvage, 4th edition, Chapter 6, under the heading "Assessment of Salvage Reward". These principles were followed by this Court in the case of *The Attorney-General of the Republic v. M/T Keisserswaard and another* (1965) 1 C.L.R. 433 and they were summarised in *Branco Salvage Ltd. v. The Ship "DEMETRIOS" and her cargo and freight* (1968) 1 C.L.R. 252 where at page 262 it is stated:

"The general principles are that the amount of the reward, unless it is fixed by agreement, is in the discretion of the Court. The Court, in assessing the reward, endeavours to combine liberality to the salvor with justice to the owner of the salvaged property. It regards not merely the work done in the performance of the salvage service, but the general interests of navigation and commerce. Thus it looks with favour on salvage services rendered by steamships built and maintained for salvage services (35 Halsbury's Laws of England, 3rd edition, page 749, paragraph 1139). In assessing the reward the Court takes

into account the danger to life, whether on board the salving or the salvaged vessel, and the danger to property. The value of the salvaged property is an important consideration in the assessment of reward; but it will not raise the reward out of due proportion to the services rendered. If the value is large the amount of the reward is usually a smaller proportion to the value than if the value is small (*ibid.*, at page 750, paragraph 1142). Likewise, the value of the property employed is also an important element in the assessment of the reward. It is not, however, the measure or limit of the reward. The risk to which the salvaged property is exposed by the performance of the salvage service is also an important consideration. The length of the salvage operation is not in general a very important element for consideration, unless the services are dangerous or invoke protracted exertion; though the additional loss or expense incurred by salvors by reason of the duration of their services is taken into consideration in the assessment of the reward. The labour involved in the salvage service is an important element only so far as it is accompanied by the exercise of skill, or by danger, or responsibility (*ibid.*, at pages 751-2, paragraphs 1146-8). See also section 34 of our Cap. 298.

In assessing the amount of the salvage reward the expense and losses properly incurred by the salvor in the performance of the salvage services are taken into account (section 24 of our Cap. 298; and 35 Halsbury's Laws, page 752, paragraph 1149). Those losses and expenses may be given in the form of a separate award, but the common practice is to include it in the general award. The losses and expenses which are dealt with in bringing the salvaged property into a place of safety; and expenses, such as the cost of repairing damage, and depreciation in value of the salving vessel, caused by the performance of the salvage service (*ibid.*, at page 752, paragraph 1149)".

The many and diverse ingredients of a salvage service have been classified in Kennedy Civil Salvage, 4th edition, at page 174 as follows:

"A. As regards the salvaged property:

(1) The degree of danger, if any, to human life.

- (2) The degree of danger to the property.
- (3) The value of the property as salvaged.

B. As regards the salvors:

- (1) The degree of danger, if any, to human life.
- (2) The salvors' (a) classification, (b) skill and (c) conduct. 5
- (3) The degree of danger, if any, to property employed in the salvage service and its value.
- (4) The (a) time occupied and (b) work done in the performance of the salvage service.
- (5) Responsibilities incurred in the performance of the salvage service, such, e.g., as risk to the insurance, and liability to passengers or freighters through deviation or delay. 10
- (6) Loss or expense incurred in the performance of the salvage service, such, e.g., as detention, loss of profitable trade, repair of damage caused to ship, boats, or gear, fuel consumed, etc. 15

Where all or many of these elements are found to exist, or some of them are found to exist in a high degree, a large reward is given; where few of them are found, or they are present only in a low degree, the salvage remuneration awarded is comparatively small". 20

Applying the above principles to the facts and circumstances of the present case I assess the amount of salvage reward to the global sum of £9,700.- including the amount of £2,700.- agreed damages caused to the plaintiffs as a result of the salvage operations. Out of this sum the amount of £2,500.- paid by the defendants to the plaintiffs, as a result of the Order of the Court of the 25th October, 1979, should be deducted. 25

Before concluding my judgment, I must deal briefly with the application for apportionment of the salvage reward amongst owners, master and crew of the salving vessel submitted for the first time by counsel for the plaintiffs in his final address to the Court. 30

Power to apportion amongst salvors remuneration awarded in salvage actions has always been incident to the jurisdiction 35

of the Admiralty Court and in England is provided for by statute. (The Merchant Shipping Act 1894, section 556).

5 Apportionment in a salvage action may be obtained by means of a proper application by the parties interested made in the statement of claim or promptly after the total amount of salvage has been ascertained. (Kennedy Civil Salvage, 4th edition, Chapter 7 p. 231).

10 In the present case it cannot be said that a proper application for apportionment has been made and, therefore, the application of counsel for the plaintiffs cannot be entertained.

In the result, judgment is given in favour of plaintiffs against the defendant ship for the sum of £7,200.- with legal interest thereon as from today to final payment, with costs to be assessed by the Registrar.

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*Judgment for plaintiffs for £7,200.-  
with costs.*