

1983 November 18

[A. LOZOU. J.]

GREYHOUND SHIPPING CORPORATION,

Plaintiffs.

v.

THE SHIP "MIGHTY BREEZE" NOW LYING AT THE
PORT OF LIMASSOL.

Defendant

(Admiralty Action No. 330/83).

Admiralty—Arrest of ship—Cannot be ordered when the ship is already under arrest although plaintiffs have issued a second writ in rem—Plaintiffs can safeguard their interests by entering a caveat—Rule 70 of the Cyprus Admiralty Jurisdiction Order, 1893.

After filing an action against the defendant ship claiming the sum of U.S. dollars 1,645,986.72 under a first preferred mortgage of the ship, the plaintiff applied ex-parte for the issue of a warrant of arrest of the defendant ship. The ship was, however, under arrest by virtue of a warrant which was issued by the Court on the 12th November, 1983, in another admiralty Action.

Held, that the issue of second warrant in respect of a ship which is already under arrest cannot be ordered although the plaintiffs have issued a second writ in rem; that the plaintiff can safeguard his interests by entering a caveat (see rule 70 of the Cyprus Admiralty Jurisdiction Order, 1893 and British Shipping Laws, Admiralty Practice, 1964 para. 278).

Application dismissed.

Application.

Ex parte application by plaintiffs for the issue of a warrant of arrest of the defendant ship "MIGHTY BREEZE".

M. Montanios, for the plaintiff/applicant.

A. LOZOU, J. gave the following judgment. This is an ex-parte application for the issue of a warrant for the arrest of

the ship "MIGHTY BREEZE" lying at the port of Limassol, against which an action in rem has been filed by the plaintiff Company, claiming:

- 5 "1. The sum of US \$1,645,986.72 together with interest and default interest thereon from 16.11.1983 to payment, payable to the Plaintiff under a first preferred Mortgage of the said vessel executed on 20th October 1982. (The Plaintiff reserving his rights against other persons, firms, companies and/or guarantors).
- 10 2. An order for the appraisalment and sale of the above-mentioned ship.
3. Any further or other relief.
4. Costs".

15 Counsel for the applicant has informed me, however, that the defendant ship is already under arrest by virtue of a warrant issued by this Court on the 12th November 1983, in Admiralty action No. 320/83, by which a far lesser sum is claimed.

20 I am afraid that on the well settled principles of Law, as borne out by the authorities I cannot order the issue of a second warrant in respect of a ship which is already under arrest although the plaintiffs have issued a second writ in rem. As stated in the British Shipping Laws, Admiralty Practice, 1964 paragraph 278:

25 "...if the second or subsequent plaintiff wishes to proceed to judgment before the first plaintiff is ready to do so that the second or subsequent plaintiff need take out a warrant of arrest and actually arrest the property for the second or subsequent time. Save in such exceptional circumstances, all that is necessary to prevent property being released without the second or subsequent plaintiff, 30 potential or actual, having the opportunity of arresting it in his own action, is the entry of a caveat against release and payment".

Under the Cyprus Admiralty Jurisdiction Order 1893, rule 70:

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 of 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

In this way the interests of a plaintiff who has entered a caveat, as the plaintiff in this admiralty action can do, are duly safeguarded, as no order of release of property or payment of money out of Court, can be made without notice to the party by whom a caveat affecting such property has been entered, in which case the plaintiff will have sufficient time to proceed for the arrest of the ship on behalf of the present plaintiffs. In fact a release cannot be issued by the Registry until the caveator withdraws his caveat either on his own will or pursuant to an order of the Court. 10 15

For all the above reasons this application for the issue of a warrant for the arrest of the ship "MIGHTY BREEZE" lying within the jurisdiction, is refused, with no order as to costs. 20

Application dismissed with no order as to costs.