

1985 July 18

[LORIS, J.]

SOTIRIOS PAPADOPOULOS AND OTHERS,

Plaintiffs,

v.

BLUE EMBLEM SHIPPING CO. LTD.,

Defendant.

(Admiralty Action No. 255/85).

Admiralty—Declaratory judgment as to status of a ship registered in the name of a Cyprus Company under Cyprus flag and under arrest in another country—Jurisdiction to make such declaratory judgment—Whether the notions of “Beneficial” or “Equitable” ownership of a ship known to the Law of Cyprus—Courts of Justice Law 14/1960, sections 29(2), 41—The English Administration of Justice Act 1956, Sections 1(1)(a), 3(4)—The Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 45/1963, Sections 71, 72.

Words and Phrases: “Ownership” in section 1(1)(a) of the English Administration of Justice Act, 1956.

In 1979 the plaintiffs formed and registered in Liberia a Company called HELMIN INC. All 500 bearer shares which the company was authorised by its Articles of Incorporation to issue without par value, were issued to the plaintiffs. By a contract dated 17.3.1981 “Sudoimport” Moscow U.S.S.R. agreed to sell to HELMIN INC. a vessel to be built described as hull No. 2033 of 14,900 dwt. The price agreed was 11,000,000 U.S. Dollars. 5% of the price, i.e. 550,000 U.S. Dollars, had to be paid as down payment. The funds for the down payment were provided by the plaintiffs.

At some stage the plaintiffs decided to register the ship under Cyprus flag. In order to achieve this end they

gave instructions through their lawyer in Greece for the formation and registration of a company in Cyprus. Thus the defendant company was formed and registered on 7.11.1981 pursuant to the provisions of the Companies Law, Cap. 113. Subscribers were a certain A.P. for 99 shares and a certain V.I. for 1 share. A.P. and V.I., both Cypriot citizens residing at Nicosia Cyprus, after applying and obtaining a permit from the Central Bank of Cyprus under section 11 of the Exchange Control Law, Cap. 199 transferred the shares as follows: a) A.P. 99 shares to HELMIN INC. b) V. I. 1 share to one M. K. of Piraeus Greece.

By a tripartite agreement dated 22.12.1981 between HELMIN INC., the defendants and "Sudoimport" HELMIN INC. assigned all its rights and obligations that ensued from its contract with "Sudoimport" dated 17.3.1981 to the defendant company.

The ship hereinabove described was completed in April 1982 and was registered under Cyprus flag in the name of the defendant company as "ATHENIAN ANNA". She was later renamed "ATHENIAN ZOE". The balance of the price of the ship was paid through finances secured by mortgaging the same.

The management of the ship was originally placed by HELMIN INC. with ATHENIAN TANKERS MANAGEMENT S. A. Same terms and conditions for the management of the ship (exhibit 2) were agreed to continue when the defendant company became the registered owner of the ship.

The ship was arrested in Hong Kong in an action in rem instituted by "ALEENA SHIPPING INC.". This arrest was substantially the cause for which the present proceedings, whereby the plaintiffs claim a declaratory judgment that they are the Beneficial and/or Equitable owners of 99 shares of the Cyprus ship "ATHENIAN ZOE", were instituted.

Held, giving declaratory judgment in favour of the plaintiffs as per prayer (1) That the evidence adduced (both oral and documentary) leads to the unequivocal conclu-

sion that the 4 plaintiffs are the beneficial and/or equitable owners of 99 shares of the ship "ATHENIAN ZOE"; and that A. P. was acting as their nominee in subscribing for the 99 shares.

5 (2) That the concept of "ownership" in section 1(1)(a) of the English Administration of Justice Act, 1956 is not limited to legal ownership but it extends to "beneficial" or "equitable" ownership as well. The said English Act is applicable in Cyprus by virtue of the provisions of section 10 29(2) of the Courts of Justice Law 14/1960. The notion of "beneficial" ownership is recognised by section 3(4) of the said English Act of 1956 and by the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 15 45/1963 (Sections 71 and 72). It follows that the question whether the notions of "beneficial" or "equitable" ownership are known to the Law of Cyprus should be answered in the affirmative.

(3) That in view of the fact that the defendant company has its registered office in Cyprus and of the fact that the vessel in question is registered under the flag of Cyprus, 20 the Court has power to issue a declaratory judgment in respect of the status of the said ship, notwithstanding that the same is under arrest in another country.

(4) That in view of the provisions of section 41 of the Courts of Justice Law 14/1960 the Court has power to 25 make binding declarations of right whether any consequential relief is or is not claimed.

30 *Declaratory judgment in favour of the plaintiffs as per prayer with costs against defendant company.*

Cases referred to:

- The "Aventicum"* [1978] 1 Lloyd's Rep. 184;
The "I Congresso Del Partito" [1977] 1 Lloyd's Rep. 536;
35 *The "Saudi Prince"* [1982] 2 Lloyd's Rep. 255.

Admiralty Action.

Admiralty action for a declaratory judgment of the Court to the effect that the plaintiffs are the beneficial owners and/or equitable owners of 99 shares of the Cyprus Ship "Athenian Zoe" ex "Athenian Anna".

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A. Haviaras, for the plaintiffs.

L. Papaphilippou, for the defendant.

Cur. adv. vult.

LORIS J. read the following judgment. All four plaintiffs in the present admiralty action in personam, pray for a declaratory judgment of this Court to the effect that all plaintiffs are the beneficial owners and/or the equitable owners of 99 shares of the Cyprus Ship "ATHENIAN ZOE" ex "ATHENIAN ANNA." Before proceeding with the facts of this case I consider it pertinent at this stage, in view of what transpired during the hearing, to state at the outset that this Court has power to make binding declarations of right whether any consequential relief is or is not claimed in view of the provisions of s.41 of the Courts of Justice Law 1960 (Law 14/60) which provides as follows:

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"41. Every Court in the exercise of its civil jurisdiction shall have power to make binding declarations of right whether any consequential relief is or could be claimed or not."

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The plaintiffs in this action are:

Sotirios Papadopoulos, Plaintiff No. 1, a 42 year old Marine Engineer of the Greek Merchant Navy, who has stated, inter alia, that he is in shipping business ever since 1963 and that he is the secretary of HELMIN INC., a company to which we shall make reference later on in the present judgment.

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Georghios Hiliadas, Plaintiff No. 2, a 70 year old retired ship commander of the Greek Merchant Navy, who has ever since his retirement been living on the earnings of his investments in ships. He has stated, inter alia, that

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he is the President of the aforesaid HELMIN INC.

5 Zoe Plagiarinou, Plaintiff No. 3, (Mrs.), a wealthy lady 39 years of age living on income from investments in ships, real estate etc.; she has mentioned, inter alia, in cross-examination that the ship "ATHENIAN ZOE" was named after her Christian name, notably Zoe.

Frantzeskos Revidis, Plaintiff No. 4, 67 years old, ex-
naval officer of the Greek Navy who has ever since 1972
been acting as consultant Marine Engineer.

10 In 1979 the Plaintiffs formed and registered in Liberia
a company called HELMIN INC.; the relevant Articles of
Incorporation which have been produced before me in
these proceedings provide that the aggregate number of
15 500 bearer shares without par value. According to the
evidence before me all five hundred bearer shares were
issued to the plaintiffs at the following proportion.

	Plaintiff No. 1	70 shares.
	Plaintiff No. 2	125 shares.
20	Plaintiff No. 3	245 shares.
	Plaintiff No. 4	60 shares.
	TOTAL	<hr/> 500 shares.

25 It may be mentioned here that the originals of the share
certificates were produced by the Plaintiffs themselves;
they were seen by the Court and returned to them in view
of the application of learned counsel on behalf of the plain-
tiffs to this effect, based on the evidence of the expert on
30 Liberian Law, who testified to the effect that under the
Liberian Law titles of ownership are transferable by deli-
very of the original certificates; nevertheless photo copies
of the aforesaid original certificates were kept as exhibits
in the file of this case.

35 The purpose of the incorporation was to engage in any
lawful act or activity including exploitation of ships; finally,
according to the evidence before me, HELMIN INC. de-

cided to acquire a ship to be built which was negotiated with the "Sudoimport" Moscow, USSR; in fact HELMIN INC. entered into a contract dated 17.3.81 with the said Russian enterprise, a copy of which was produced before me, by virtue of which the said Russian enterprise agreed to sell to HELMIN INC. a vessel to be built, described as hull No. 2023 of 14,900 dwt. 5

Under Article XII of the terms of payment of the contract in question a down payment of \$550,000 representing 5% of the vessel's price, which was eleven million U.S.A. dollars, is provided. All the plaintiffs in giving evidence before me testified to the effect that this down payment was paid through HELMIN INC. from funds provided by them. 10

At some stage the plaintiffs decided to register the ship under Cyprus flag. In order to achieve this end, they had to establish a Cyprus company; in this connection they gave instructions through their lawyer in Greece for the formation and registration of a company in Cyprus. 15

Such a company was ultimately formed and registered in Cyprus pursuant to the provisions of our Companies Law, Cap. 113; it is the defendant company namely BLUE EMBLEM SHIPPING COMPANY LIMITED, which was registered on 7.11.1981. 20

According to the Memorandum and Articles of Association of defendant company, which is an exhibit before me, the nominal share capital thereof is C£1,000.- divided into 100 shares of C£10.- each. Subscribers are a certain Alkistis Ptochopoulou for 99 shares and a certain Vassoulla Ioannou for 1 share. 25 30

The aforesaid two shareholders both Cypriot citizens, residing at Nicosia, Cyprus, after applying and obtaining a permit from the Central Bank of Cyprus under s. 11 of the Exchange Control Law, Cap. 199 (vide exh. 8 before me) transferred their respective shares on 7.11.1981 as follows: 35

- (a) Alkistis Ptochopoulou 99 shares to HELMIN INC. 80, Board Street - MONROVIA LIBERIA,

(b) Vassoulla Ioannou 1 share to Minas Kyriakou,
Akti Miaouli 33 - PIRAEUS - GREECE.

5 The aforesaid transferees remained so registered ever since the 7.11.1981 till the present day (vide exhibit 7 before me).

10 On 22.12.1981 a tripartite agreement was entered into between HELMIN INC., the defendant company and the "Sudoimport" enterprise USSR; by virtue of this agreement, a copy of which was produced before me, HELMIN INC. assigned all its rights and obligations that ensued from the contract for the building of the ship, dated 17.3.1981, to the defendant company. Apparently as there were obligations under the contract of 17.3.81, which the defendant company was undertaking under the assignment agreement, 15 "Sudoimport" signed the assignment as well, signifying thus its agreement to it.

20 The building of the aforesaid described ship was completed some time in April 1982, and she was registered under Cyprus flag in the name of the defendant company as "ATHENIAN ANNA"; according to the transcript of register which is an exhibit before me the permanent registration thereof was effected on 28.8.82. The balance of the price of the ship was paid through finance secured by mortgaging same. The ship was renamed in November 1983 25 "ATHENIAN ZOE".

30 The management of the ship was originally placed by HELMIN INC. with ATHENIAN TANKERS MANAGEMENT S. A., having their offices in Piraeus, Greece. The terms and conditions for the management of the ship are shown in the relevant agreement dated 16.7.1981 which is exhibit 2 before me; the remuneration of ATHENIAN TANKERS MANAGEMENT S. A. under clauses 9 and 10 of the said agreement was \$6,000 monthly plus 2.5% commission over all freights and demurrages collected. 35 Same terms and conditions for the management of the ship were agreed to continue when the defendant company became the registered owner of the ship.

In order to complete the picture it may be stated here that "ATHENIAN ZOE" ex "ATHENIAN ANNA" was

arrested in Hong Kong in a action in rem instituted by "ALEENA SHIPPING INC." (A copy of the relevant writ of summons was produced and it is exh. 12 before me). I intend to examine later on in the present judgment whether I have jurisdiction in the circumstances to issue the declaratory Judgment prayed for in the present action; at this stage I shall confine myself in noting the fact that the arrest of the vessel as aforesaid was substantially the cause for which the present proceedings in this Court were instituted.

The evidence before me is both oral and documentary. It was adduced by the plaintiffs; the defendant company did not adduce any evidence.

The evidence adduced is comprised of (a) the evidence of a practising lawyer from Athens (P.W.1) with considerable standing at the Bar specialising in shipping matters, a consultant of more than 150 Liberian companies, an expert of Liberian Law (b) the evidence of all four plaintiffs in the present action given viva-voce (c) the documentary evidence produced - 19 documents which appear in the file.

P.W. 1, gave evidence on substantial issues of this case, produced some of the exhibits and has greatly assisted this Court as an expert in Liberian Law. I have no hesitation in saying that he impressed me favourably and I accept his evidence in toto. With regard to his expert evidence on Liberian Law and in particular his evidence on the 3 specific points in connection with the Liberian "Business Corporation Act" (power to issue shares § 5.1, Consideration for shares § 5.4 and Registered or bearer shares § 5.8 sub-para 2) I feel that I should express my gratitude for the valuable assistance he has offered to this Court.

I had the opportunity of hearing the evidence of all four plaintiffs and watching their demeanour in the witness box. Each one impressed me as a truthful witness, and I feel that it is quite safe to accept and act upon their evidence.

It was the version of the plaintiffs throughout, that Alkistis Ptochopoullou was acting as their nominee in subscribing for the 99 shares. I have no hesitation on the totality of the evidence before me to accept this version. The evidence as I have accepted it coupled with the documentary evidence can lead to one and unequivocal conclusion: the four plaintiffs are the beneficial and/or equitable owners of 99 shares of the ship "ATHENIAN ZOE", in their own right.

Having considered the factual substratum of this case and having made my findings of fact I intend now to examine whether the notions of "beneficial" or "equitable" ownership are known to the Law of this Country.

Section 29(2) of our Court of Justice Law 1960 (Law No. 14/60) provides:

"s. 29(2) The High Court (now Supreme Court) in exercise of the jurisdiction -

(a) conferred by paragraph (a) of section 19 (i.e. as a Court of Admiralty) shall apply subject to paragraphs (c) and (d) of sub section (1) the law which was applied by the High Court of Justice in England in the exercise of its admiralty jurisdiction on the day preceding Independence Day. (Independence Day = 16.8.1960) as may be modified by any law of the Republic;"

In view of the provisions of s. 29(2) of our Law 14/60 the English Administration of Justice Act, 1956 is applicable to Cyprus. Section 1(I)(a) of the Act of 1956 confers jurisdiction to determine "any claim to the possession or ownership of a ship or to the ownership of any share therein". I hold the view that "ownership" in the sense of s. 1(I)(a) of the Act of 1956 is not limited to legal ownership but it is extended to "equitable" or "beneficial" ownership as well.

The "beneficial" ownership is a notion recognised by s. 3(4) of the English Act of 1956, as well as by our Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law No. 45/63).

Sections 71 and 72 of our Law 45/63 read as follows:

“71. The expression ‘beneficial interest,’ where used in this Law, includes interests arising under contract and other equitable interests; and the intention of this Law is, that without prejudice to the provisions of this Law for preventing notice of trusts from being entered in the Register or received by the Registrar, and without prejudice to the powers of disposition and of giving receipts conferred by this Law on registered owners and mortgagees, and without prejudice to the provisions of this Law relating to the exclusion of unqualified persons from the ownership of Cyprus ships, interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of ships in respect of their interest therein in the same manner as in respect of any other personal property. 5 10 15

72. Where any person is beneficially interested otherwise than by way of mortgage, in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this or any other Law on the owners of ships or shares therein, so nevertheless that proceedings may be taken for the enforcement of any such penalties against both or either of the aforesaid parties, with or without joining the other of them.” 20 25

It should be noted that inspite of the fact that s. 72 of Law 45/63 refers to “pecuniary penalties”, it equates persons beneficially interested in a ship with the registered owner thereof. 30

In connection with s. 3(4) of the Administration of Justice Act, 1956 useful reference can be made to the following cases bearing always in mind that the cases to be referred were dealing with actions in rem; 35

Thus in the “*AVENTICUM*” [1978] 1 Lloyd’s Rep. 184 Mr. Justice SLYNN stated the following:

“.... it is plain that s. 3(4) of the Act intends that the Court shall not be limited to a consideration of who is the registered owner or who is the person having legal ownership of the shares in the ship; the directions are to look on the beneficial ownership...” (vide p. 187 of the report).

In the case of “*I CONGRESO DEL PARTIDO*” [1977] 1 Lloyd’s Rep. 536 at p. 560 Robert Goff J. stated the following:

“... I have reached the conclusion that the words ‘beneficially owned as respects all the shares therein’ refer only to cases of equitable ownership, whether or not accompanied by legal ownership...”

Finally in the “*SAUDI PRINCE*” [1982] 2 Lloyd’s Rep. 255, at p. 260 Mr. Justice Sheen after citing with approval “*The Aventicum*” (supra) concludes as follows:

“I unreservedly agree with this statement. On the evidence on this motion an investigation into the true beneficial ownership of Saudi Prince can lead to only one answer. Mr. Orri was at the material time the true beneficial owner of that ship...”

Before concluding I feel that I should examine another issue which is interwoven with the jurisdiction of this Court; the question that falls for determination may thus be posed: Can this Court make a declaratory judgment in respect of the status of a ship which is under arrest in another Country?

Having given the matter my best consideration I feel that the answer should be in the affirmative, in view of the fact that (a) the defendant company has, as already stated earlier on in the present judgment, its registered office here in Cyprus, and (b) the vessel in question is registered under the flag of the Republic of Cyprus.

Having found earlier on, that all four plaintiffs are the “equitable” and or “beneficial” owners of 99 out 100 shares in the ship “*ATHENIAN ZOE*” in their own right, and

having resolved the question of jurisdiction of this Court as above, declaratory judgment is hereby entered in favour of the plaintiffs as per prayer with costs against defendant company to be assessed by the Registrar.

Declaratory judgment as per prayer with costs. 5