

1986 December 3

[A. LOIZOU, J.]

UNISPEED MARITIME CO. LTD.,

Plaintiffs,

M/V "FAIR JENNIFER" NOW LYING AT THE PORT
OF LIMASSOL

Defendant.

(Admiralty Action No. 81/86).

Admiralty—Auction of ship pursuant to an order for her sale and appraisal—Conditions of auction—Constitute a contractual relationship—Interest of other bidders in its terms—Extention of time within which to pay the balance of price, application for by highest bidder— 5
Objection by next highest bidder—Application dismissed.

The ship in question was sold at an auction pursuant to an order for her appraisal and sale. One of the conditions of the auction provided that "if the last bid is equal or higher than the appraised value, the bidder 10 is bound to pay immediately the whole sum or 20 per cent of it, and the balance within three working days".

The appraised value of the ship was U. S. \$52,000. The auction finished by a bid of U. S. \$60,000 by the applicant. The next highest bid was U. S. \$58,000 made 15 by one George Savvides.

The applicant paid the said percentage and filed this application praying for an extention of time, within which to pay the balance, on the ground that by reason 20 of a bank strike, it was not possible to have the money remitted in Cyprus in time. George Savvides opposed the application.

Held, dismissing the application: (1) The holding of an auction as a result of an order of appraisal and sale

is carried out on certain terms, which constitute a contractual relationship. It, also, gives an interest in it, on the terms it is made, to every other bidder.

5 (2) Once there is an objection and as it is reasonable to assume that the next highest bidder and all the rest have acted on the basis of the conditions they would have to honour, if successful, this Court is unable to grant the extension as this may lead to a situation, where-
10 by the other bidders are placed at an unfair and disadvantageous position.

*Application dismissed.
No order as to costs.*

Cases referred to:

15 *Photiades v. The Director of Ports and Others* (1982)
1 C.L.R. 244.

Application.

Application by Billal Halak who was the highest bidder and the ship was knocked down to him for an order allowing him to pay the balance of the purchase price
20 within fifteen days from the date of the auction instead of three days fixed by the Marshal.

M. Evangelou for *A. Theophilou*, for the applicant.

L. Papaphilippou, for the second bidder, who is present in Court.

25 *Marshal* present.

A. LOIZOU J. gave the following decision. This is an application on behalf of Billal Halak who was the highest bidder and to whom the ship was knocked down upon his bidding U.S. \$60,000 for the defendant ship which was sold
30 by the Marshal upon an order of this Court for appraisalment and sale, for "an order allowing him to pay the baance of the purchase price within fifteen days from the date of the auction" instead of three days as fixed by the Marshal.

35 The report of the Marshal has been filed and it appears therefrom that there were two bidders, one George

Savvides, who appeared today through his counsel and opposed the application, and the applicant. The conditions of the auction are set out in the Marshal's report and the material term is term No. 4 which provides:

“If the last bid is equal or higher than the appraised value, the bidder is bound to pay immediately the whole sum or 20 percent of it, and the balance within three working days.” 5

The auction opened with a bid of U.S. \$25,000 on behalf of the said Mr. Savvides and finished at 10:35 a.m. with a bidding of U.S. \$60,000 or C£30,816.14 on behalf of the applicant. The appraised value of the ship was U.S. \$52,000 and the bid of Savvides before the last one was U.S. \$58,000. 10

The applicant in the affidavit sworn and filed in support of the application deposed that he is a Lebanese married with a Cypriot lady and resident of Cyprus, and having paid the twenty percent of the price of the ship immediately, expected the balance to be remitted to him by his collaborators from abroad, but as he was informed, on account of a bank strike which started on the 1st December, 1986, it was not possible to have the money here in time. 15 20

The holding of an auction as a result of an order of appraisal and sale made by this Court is carried out on certain terms that do not only constitute as submitted by counsel on the authority of *Takis Photiades v. The Director of Ports and Others*, (1982) 1 C.L.R. p. 244, a contractual relationship, but also it gives an interest in it, on the terms it is made, to every other bidder. To say the least, once there is objection, on behalf of the next highest bidder as it is the case here, I find myself unable to grant the extension of time applied for by the present applicant as this may lead to a situation whereby the other bidders are placed at an unfair and disadvantageous position as it is only reasonable to assume that he—as well as the other bidders—acted on the basis of the conditions they had to honour, if successful, and on the basis of the principle of the right of equality of treatment to which bidders are entitled to. 25 30 35

This application should therefore fail.

5 In the course of the hearing, however, I was asked on
the basis of relief B sought by this application, namely
“any other relief the Court might think proper”, to direct
that a new auction be held. I need not enter at length into
10 the legal effect of relief B, in general as it is sufficient for
the purposes of this application to point out that this new
remedy sought under the ambit of relief B, is not borne
out by the facts set out in the affidavit filed or the material
15 as a whole that exists before me and I feel that I should
not dictate to the Marshal how he should discharge his
duties in case the successful bidder does not pay the ba-
lance of the purchase price in due compliance with the
terms of the auction which he has accepted to honour. In
fact there is still time for the successful bidder to honour
the obligation undertaken in what rightly counsel said,
is between him and the Marshal a contractual relationship.

For all the above reasons, this application is d’smissed
with no order as to costs.

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Application dismissed.
No order as to costs.