

1986 December 11

[PIKIS, J.]

GREYHOUND SHIPPING CORPORATION,

Plaintiffs,

v.

THE SHIP "PLATON CH.", NOW LYING AT THE
PORT OF LIMASSOL,

Defendants.

(Admiralty Action No. 213/86).

Admiralty—Sale of ship—Order for, after appraisal—Discretion to authorise sale at a price lower than the appraised value—Factors that should be considered in exercising such discretion.

5 The auction of the ship "PLATON CH." did not attract an offer equal to the amount of its appraised value, namely U.S. \$550,000. The maximum bid was for U. S. \$477,000. As in the opinion of the Marshal that is the maximum price that could be fetched, he filed
10 the present application requesting authorisation to sell the ship to the bidder of the said amount. The owners of the ship withdrew the appearance they had originally entered and all persons with claims against the ship signified their approval to the course suggested by the Marshal.

15 *Held*, granting the application: (1) The approval of the creditors does not absolve the Court from inquiring into the justification of the course proposed.

20 (2) An order for the auction of a vessel subject to appraisal imports a limitation to the power of the Marshal or any other person to sell below the appraised value. There is no doubt that the Court has discretion to authorise the sale below the appraised value.

(3) In exercising such discretion the Court should consider the likelihood of the ship being sold at a price

equivalent or higher than the appraised value and, in this respect, the forecast depends on the efficiency with which the abortive auction has been conducted. Moreover, the Court should also consider the change in the demand for ships of the kind under sale, the risk of losing an existing offer and the expenses in re-auctioning the vessel 5

(4) In the circumstances of this case the application is justified

Application granted.

Cases referred to: 10

Commercial Bank v. "PEGASOS III" (1978) 1 C.L.R. 1;

Gruno v. Ship "ALKAZERA" (1981) 1 C.L.R. 182;

Paris and Others v. Ship "ALKAZERA" (1981) 2 J.S.C. 163

Application. 15

Application by the Marshal for the sale of the Ship "Platon Ch." below the appraised value.

E. Montanos, for judgment-creditors.

E. Lemonaris, for plaintiffs in Action No. 214/86.

E. Flourentzou, for the plaintiffs in Action No. 308/86. 20

PIKIS J. gave the following ruling: This is a Marshal's application for the sale of a ship below the appraised value. The auction of the ship "PLATON CH." did not attract an offer for an amount equal to its appraised value, namely, U.S. \$550,000.- The maximum bid was for U. S. \$477,000. representing 86.7% of the appraised value of the vessel. In the opinion of the Marshal this is the maximum price that could be fetched and the Court is asked to authorize the sale of the ship to the bidder for the aforementioned amount. On the directions of the Court the Marshal's application was brought to the notice of all interested parties with a view to affording them an opportunity to be heard in the matter. The owners with- 25 30

drew an appearance originally entered signifying their intention not to defend the action. It must be noted that judgment has already been given in favour of the mortgagees for an amount far exceeding the appraised value of the ship, notably for an amount of about U. S. \$2,500.-
5 000.-

Counsel for the mortgagees (judgment-creditors) and the other parties with claims against the ship, indicated before the Court their approval to the course suggested
10 by the Marshal. That does not absolve the Court from inquiring into the justification of the course proposed. The vessel is in the hands of an officer of the Court and the Court must be satisfied that sale below the appraised value is duly warranted by the exigencies of the case.

15 An order for the auction of a vessel subject to appraisal imports a limitation to the power of the Marshal or any other person authorised to hold an auction to sell below the appraised value. This limitation was acknowledged by A. Loizou, J., in *Commercial Bank v. "PEGA-SOS III"*(¹). In the words of the learned Judge (page 8):
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25 "When an appraisalment has been ordered the Marshal has no power to sell the vessel at a lesser price than that at which the res has been appraised, unless the Court, on his application, allows it to be sold for less."

Earlier he indicated that a sale subject to appraisalment is made "... to prevent the sale of a res at too low a price". The same approach was followed by Demetriades, J., in two other cases—*Gruno v. Ship "ALKAZERA"* (2)
30 and *Paris and Others v. "ALKAZERA" Ship* (3). The Court has undoubtedly discretion to authorize the sale below the appraised value. The pertinent question concerns the principles to which the Court should have regard in exercising its discretion. The foremost consideration is the
35 likelihood of the ship being sold at a price equivalent or

(1) (1978) 1 C.L.R. 1.

(2) (1981) 1 C.L.R. 182.

(3) (1981) 2 J.S.C. 163.

higher to its appraised value in the event of a new auction. Forecast of this likelihood after an abortive auction will very much depend on the efficiency with which it was conducted particularly the extent to which the sale was publicised. Where the first auction was widely advertised, as in the present case (the sale was advertised, inter alia, in Lloyd's list), the likelihood of a higher bid being secured at a re-auction of the property is correspondingly remote. Another consideration to which the Court may appropriately have regard is the change, if any, in the demand for ships of the kind under sale. There is no suggestion in this case of any noticeable changes having taken place in the market for second-hand vessels. The risk of losing an existing offer is certainly an important consideration to be born in mind as well as the expense that will necessarily have to be incurred in re-auctioning the property.

Balancing all these considerations in the light of the facts before me, I find the application of the Marshal justified and the sale of the ship is authorized at U. S. \$477,000.-

Application granted.