

1986 January 24

[DEMETRIADES, J.]

SCHEEPSWERF BODEWES-GRUNO.

*Plaintiffs-Applicants.*

v.

THE SHIP "ALGAZERA" NOW LYING AT THE PORT  
OF LIMASSOL,

*Defendants-Respondents.*

*(Application in Admiralty Action No. 271/79).*

*Admiralty—Bank guarantee put up by plaintiffs upon ship's arrest in accordance with a condition in the order for arrest—Ship sold pendente lite—Application for the release of said guarantee—As ship did not lose any money by her arrest, the application would be granted.*

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The defendant ship was arrested upon application by the plaintiffs, who had to put up a bank guarantee of £10,000 to be answerable in damages for the defendant ship, her owners and the owners of the cargo. The ship was eventually sold pendente lite.

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After the conclusion of the hearing of the action the plaintiffs filed the present application, praying for the return to them of the said Bank guarantee. The defendants opposed the application.

*Held*, granting the application, that, as on the totality of the material before the Court the conclusion is that at the time of her arrest the ship could not, nor was she intended to, be engaged in trade and thus she has not lost any money by her arrest, the Bank guarantee should be released.

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*Application granted. Costs in favour of the plaintiffs-applicants.*

**Application.**

Application by plaintiffs-applicants for an order of the Court directing the Registrar of the Supreme Court of Cyprus to return to them, or their advocates, the letter of  
5 guarantee issued by the Hellenic Bank Ltd. on the 12th October, 1979 which was given as a security when the warrant of arrest for the defendant ship was issued.

*L. Papaphilippou*, for the plaintiffs-applicants.

*E. Montanios*, for the defendants-respondents.

*Cur. adv. vult.*

DEMETRIADES J. read the following decision. By their application the plaintiffs-applicants pray for an order of the Court directing the Registrar of the Supreme Court of  
10 Cyprus to return to them, or their advocates, the letter of guarantee issued by the Hellenic Bank Ltd., on the 12th October, 1979, which was given by them as security when the warrant of arrest for the defendant ship was issued.

15 The application was opposed by the defendants-respondents, and/or by Cerise Maritime Co. S.A., the alleged new owners of the defendant ship.

This application was filed after the hearing of the action was concluded and the plaintiffs-applicants base it on the  
20 evidence adduced at the hearing of the action. The defendants-respondents partly relied on the record proof of the proceedings of the hearing and partly on the affidavit that accompanies their opposition. In the said affidavit, which is sworn by Ms. P. Panayi, an advocate employed by the  
25 firm of counsel appearing on behalf of the alleged owners of the ship, nothing more is added to the evidence adduced at the hearing of the action.

The facts that led to these proceedings are, in brief, the following: On the 10th October, 1979, the defendant ship  
30 was arrested whilst lying in the port of Limassol, after an application to that effect was made by the plaintiffs, the applicants in these proceedings. By the said order the applicants had to put up a Bank guarantee for £10,000.-

to be answerable in damages for the defendant ship and her owners and the owners of the cargo, if any. A further term of that order provided that the Marshal could release the ship on the filing of a security bond by or on behalf of the ship in the sum of £120,000.-.

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A few days later, counsel appearing on behalf of the alleged owners of the ship, stated in Court that their clients were unable to have the ship released because of lack of funds. In the meantime, actions were filed by members of the crew of the ship who claimed arrears of wages and on the 11th March, 1980, another order was issued by the Admiralty Court for the arrest of the ship on an application filed by the Master of the ship. The actions filed on behalf of the members of the crew were eventually settled and judgment was given in their favour for the wages due to them.

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It is to be noted that the ship was sold *pendente lite* after an order of the Court dated 23rd September, 1980.

Counsel for the defendants in his address in these proceedings submitted that because the ship was arrested and was lying in the Limassol port, she was neither able to trade, nor earn money with which to pay the crew and that this resulted in the claims of the crew. This, however, does not appear to be correct when one goes through the record of the hearing of the action. From the evidence given before me by Mr. Abuzeid, the alleged owner of the Cerise company, at the hearing of the action, it appears that when the ship was arrested, she was on her way to Holland where she was going to be lengthened as, because of her size, it was difficult for her to find freight.

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Counsel for the respondents submitted that a statement regarding the financial condition of the defendants is in no way an admission of liability and that that statement was not binding on them. He further submitted that until judgment is given and the facts are decided by the Court, the question of that admission could not be considered in these proceedings.

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I feel that that admission, coupled with the proved inability of the defendants to meet the claims of the crew,

plus the evidence given by Mr. Abuzeid that the intention behind the trip of the ship from the Persian Gulf was her lengthening in the shipyard of the plaintiffs, suffice for me to reach the conclusion that the ship could not, at  
5 that time, nor was she intended to, be engaged in trade and thus she has not lost any money by her arrest.

In the circumstances, I find that the plaintiffs' Bank guarantee filed in this action should be released and it should be returned to them or their counsel.

10 There will be an order accordingly, with costs in favour of the plaintiffs-applicants.

*Application granted. Costs in favour of plaintiffs-applicants.*