

1987 December 19

[SAVIDES J]

SOCOMAR LTD ,

*Plaintiffs*

v

- 1 THE SHIP «ARIBEL»
- 2 THE SHIP «LUCKY TRADER»,
- 3 OREOSA NAVIGATION COMPANY LTD ,
- 4 ANDREAS STOYIANNOS,
- 5 STAMATIOS STOYIANNOS,

*Defendants*

*(Admiralty Action No 164/80)*

*Admiralty — Transportation of goods — Breach of contract relating to such transportation — Conversion of such goods — Denial of plaintiffs' ownership of goods — Burden of proving such ownership rests on plaintiffs' shoulders — In this case it was discharged by the production of the Bill of Lading*

The plaintiffs' goods, a cargo of 4,979 cartons of cigarettes, were loaded at the port of Lisbon on the ship «LUCKY TRADER» for transportation from Lisbon to Bulgana. The said goods were unloaded from the ship «Lucky Trader» which was arrested in Piraeus and loaded on defendant 1 ship at Piraeus by defendants 3 for transhipment to Bulgana. Defendant 1 ship instead of taking the said goods to Bulgana, sailed within the territorial waters of Cyprus where she started unloading unlawfully part of the cargo. She was arrested by the authorities for smuggling. After steps taken by defendants 3 the cargo was delivered to them and sold by them to third parties.

As a result the plaintiffs brought this action claiming damages for breach of contract and/or conversion. The action as against Defendants 2, 4 and 5 was withdrawn. Defendants 1 and 3 denied by their defence that the plaintiffs were the owners of the goods in question.

Held, (1) The burden of proving ownership of the aforesaid cargo rests on plaintiffs' shoulders. The plaintiffs discharged it by producing the Bill of Lading issued by the defendants.

(2) The facts establish the claim of the plaintiffs for breach of contract for the

transportation of goods and unloading of same at Bourgas, Bulgaria and, also for wrongful conversion of the goods

*Judgment for the plaintiffs  
with costs*

5 **Admiralty action.**

Admiralty action for U.S. \$600,000 as damages for breach of contract and/or for conversion.

*St. Mc Bride. for plaintiffs*

No appearance for defendants 1 and 3.

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*Cur. adv. vult.*

SAVIDES J. read the following judgment. This action is one in rem against the ship «ARIBEL», defendant 1, and in personam against defendants 3 as owners of defendant 1 ship and the claim is, according to the petition, for U.S. \$600,000, as damages for breach of contract and/or for conversion. Three other defendants were joined in these proceedings and in particular, the ship «LUCKY TRADER» as defendant 2 Andreas Stoyiannos and Stamatios Stoyiannos as defendants 4 and 5 respectively as shareholders and/or Directors of defendants 3. In the course of the proceedings however, the action was withdrawn against defendants 2, 4 and 5 who could not be served and against whom the writ in the meantime expired. Defendant 1 ship was arrested in the course of the proceedings and subsequently sold by the Marshal under an order of the Court and the proceeds of the sale amounting to U.S. \$9,000 less Marshal's expenses were deposited into Court.

The facts of the case as alleged in the petition are briefly as follows:

Plaintiffs are a corporation registered in the U.K. On or about the 29th December, 1978, a cargo of 4,979 cartons of cigarettes was loaded by plaintiffs at the port of Lisbon on board the vessel «LUCKY TRADER», property of defendants 3, for carriage from Lisbon to Bourgas, Bulgaria. A Bill of Lading covering the cargo was issued by the master of the vessel «LUCKY TRADER» on the 26th January, 1979 and was delivered to the plaintiffs' agents at Lisbon. In breach of the contract of carriage of the cargo the vessel

«LUCKY TRADER» was ordered by defendants 3 to call at Katakolon, Ilias, Greece, instead of proceeding to Bourgas. The vessel sailed in the port of Katakolon and when it arrived there it was arrested by her crew for wages due. Negotiations between the plaintiffs and defendants 3 for settlement of the claims against «LUCKY TRADER» to enable it to proceed to Bourgas failed, as a result of which litigation started in Greece. Whilst such litigation was pending, defendants 3 applied through their agents in Greece to the Customs Authority of Piraeus, for leave to tranship the cargo on defendant 1 ship for the purpose of completing the voyage to Bourgas. The cargo with the leave of the Greek authorities was transhipped on defendant 1 ship and on 30.7.1980 defendant 1 sailed from Piraeus with destination Bourgas. Defendant 1 in breach of the implied contract of carriage which had arisen after transhipment on board of the cargo instead of proceeding to Bourgas disappeared and on or about 17.8.1980 was apprehended by the Cyprus Police near the coast of Cyprus, disposing of the plaintiffs' cargo secretly. The owners of defendant 1 ship after representations to the Cyprus authorities that the cargo belonged to them and after payment of the fine imposed by the Cyprus Customs as penalty for the offence of smuggling, succeeded in having the cargo delivered to them which they subsequently sold to a third party who transported same away from Cyprus. The value of the cargo, according to the petition, was U.S.\$600,000.

By their defence, defendants 1 and 3 denied generally the allegation contained in the petition and alleged that the cargo did not belong to the plaintiffs and therefore the plaintiffs had no right on the cargo and also that the present action was unfounded, groundless, frivolous and vexatious.

After a number of adjournments of the hearing at the request of counsel appearing for both parties, in view of negotiations for settlement, the action was finally fixed for hearing on the 14th May, 1987 when counsel for the defendants applied for leave to withdraw from the case on the ground that though he repeatedly informed the defendants about the hearing, they failed to communicate with him. The hearing was adjourned to the 14th September when counsel for plaintiffs applied for leave of the Court to prove the claim by affidavit evidence. The application

was granted and the action was fixed for hearing on the 7th December with directions that defendants 3 should be notified by the plaintiffs of the new date of hearing. Such notice was served on defendants 3 on 21st September, 1987 but nevertheless  
5 defendants 3 failed to appear.

To prove their claim plaintiffs filed an affidavit sworn by Mr. S.G. McBride, advocate for plaintiffs, attached to which there was a number of exhibits including the original Bill of Lading, the official certificate of the Customs of Piraeus that the cargo described on  
10 the Bill of Lading was transhipped from the ship «LUCKY TRADER» on defendant 1 ship, and copies of newspapers in Cyprus as to the arrest of the ship «ARIBEL» by the Cyprus Police for smuggling. Furthermore, the value of the goods was reduced to U.S. Dollars \$550,000, which according to the affiant was the  
15 insured value of the goods.

Before embarking on plaintiffs' claim, I shall deal briefly with the defence filed on behalf of the defendants. The only material allegation advanced is that the goods in question did not belong to the plaintiffs. By virtue of such allegation the ownership of the  
20 goods is an issue posing before me placing the burden upon the plaintiffs to prove such ownership. Plaintiffs by the production of the Bill of Lading issued by the defendants have proved the ownership of the goods. The defendants have not adduced any evidence to contradict such fact.

25 Having been satisfied that the plaintiffs have proved ownership of the goods I shall proceed to examine whether their claim for damages for non-delivery and/or conversion of the goods has been substantiated.

On the evidence before me I am satisfied that the goods in  
30 question were shipped on the ship «LUCKY TRADER», the property of defendants 3 for transportation from Lisbon to Bulgaria. The said goods were unloaded from the ship «LUCKY TRADER» which was arrested in Piraeus and loaded on defendant 1 ship at Piraeus by defendants 3 for transhipment to Bulgaria.  
35 Defendant 1 ship instead of taking the said goods to Bulgaria, sailed within the territorial waters of Cyprus where she started unloading unlawfully part of the cargo. She was arrested by the authorities for smuggling. After steps taken by defendants 3 the cargo was delivered to them and sold by them to third parties. The  
40 above facts establish the claim of the plaintiffs for breach of

contract for the transportation of goods and unloading of same at Bourgas, Bulgaria and also for wrongful conversion of the goods. According to the affidavit filed the value of the said goods was U.S. Dollars \$550,000.

In the result I give judgment for plaintiffs against defendants 1 and 3 for U.S. Dollars \$550,000 or its equivalent in Cyprus Pounds, with costs. Costs to be assessed by the Registrar. 5

The action against defendants 2, 4 and 5 stands as already dismissed.

*Judgment against defendants 1 and 3 for U.S. \$550,000 with costs. Action against defendants 2, 4 and 5 dismissed* 10