

15<sup>th</sup> November 23

(STYLIANIDES J)

THE CYPRUS DEVELOPMENT BANK LIMITED

*Plaintiffs*

v

THE SHIP «SOL. PHRYNE»

*Defendant*

*(Admiralty Action No 85/87)*

*Admiralty — Arrest of ship — Application for a second warrant of arrest of a ship under arrest in another action — Whether permissible to issue such a warrant*

5 *Question answered in the affirmative provided that there are exceptional circumstances justifying a second warrant — In this case there are exceptional circumstances*

*Admiralty — Appraisal and sale of ship pendente lite in action in rem — Such a course is not possible, unless the ship is arrested in such an action*

10 Notwithstanding that the defendant ship has already been arrested in another action, brought by a member of the crew the plaintiffs in this action, who are claiming C£256,229 27 plus interest as mortgagees, applied to have her arrested for a second time

15 The estimated value of the ship is 500,000 U S Dollars approximately. She was abandoned by her owners. Seventy-five members of her crew instituted several other actions against her and entered caveat against her release from arrest. The claim of the crew totalled as on 4 12 87 to C£100,000. This claim increases by C£1,100 daily.

20 Held, granting the application (1) In the present case the reason that compels the plaintiffs to apply for the issue of a second warrant of arrest in their own case is that they intend immediately after the issue of this warrant to apply for the appraisal and sale of the ship pendente lite, in view of the mounting expenses necessitated by the arrest of the ship in the first place and the abandonment of the ship by the owners at the port of Limassol.

2) The aforesaid facts amount to exceptional circumstances, justifying the issue of the second warrant of arrest, more so for a creditor who has advanced

so much money and runs the risk of sustaining considerable loss it not to  
loss of the money advanced on the security of the ship's mortgage

*Order accordingly*  
*Question of costs reserved*

*Cases referred to* 5

*Greyhound Shipping Corporation v. The Ship «MIGHTY BREEL» (1983)*  
1 C I R 862

**Application.**

Application for the issue of a warrant of the arrest of the ship  
«Sol Phryne» 10

*E Montamos* for the plaintiffs applicants

*Cur adv vult*

STYLIANIDES J read the following decision The plaintiffs by  
this action claim -

«1 The sum of C£256,229 27 together with interest at 9% 15  
per annum from 1/1/87 to the date of payment being the  
amount due and owing to them as mortgagees under a  
registered mortgage on the ship «SOL PHRYNE» dated 15/3/  
1985

2 All and any other sum or sums that may become due and 20  
owing under the above mentioned mortgage

3 Any further or other relief

4 Costs »

By an ex parte application filed on the 19th of December, 1987,  
they apply for the issue of a warrant of the arrest of the ship «SOL 25  
PHRYNE» now lying at the port of Limassol

The said ship is already under arrest by virtue of a warrant issued  
by another Judge of this Court in Admiralty Action No 230/87 in  
which the plaintiff is an electrician, member of the crew His claim 30  
is for 454,000 00 (four hundred and fifty-four thousand) Greek  
drachmas, or their equivalent in Cyprus pounds, for wages and  
other benefits due to him

In the affidavit filed in support of the present application, sworn  
by the Manager of the Equity and Venture Capital Division of the

**1 C.L.R. Cyprus Dev. Bank v. Ship Sol Phryne Stylianides J.**

plaintiff bank and as elaborated by the counsel in the course of the hearing, the defendant ship is registered in Cyprus and flies the Cyprus flag

5 Seventy - five members of the crew on 9/12/87 instituted  
Actions Nos 232 - 306/87 against the vessel and her owners and  
had caveats entered against the release of the vessel from arrest  
The said members of the crew claim wages and other emoluments  
up to 4/12/87 which total about C£100,000 - (one hundred  
10 thousand Cyprus pounds) They further claim wages and other  
emoluments for continued service on the vessel from 4th  
December, 1987, until the date of judgment Also, they claim  
repatnation expenses totalling C£10,000 - (ten thousand Cyprus  
pounds) and damages for termination of the contract of  
15 employment The claim of the crew increases by C£1,100 - (one  
thousand and one hundred Cyprus pounds) about daily

Messrs C W Kellock & Co , London Shipbrokers who are the  
appraisers of the English Admiralty Marshal, advised the plaintiffs,  
that from the records the value of the vessel is approximately in  
the region of U S \$500 000 - (five hundred thousand U S  
20 dollars)

The company - owners of the ship ceased in effect to operate  
and moved their offices from Limassol to the address of the office  
of their advocate at Nicosia Their assets are of negligible value

25 As the member of the crew who has arrested the vessel may not  
decide to apply for the sale of her until after he obtains judgment  
in his action which is fixed for appearance before Court on 12/1/  
1988, and thus the crew's wages will increase and nothing will be  
left from the proceeds of sale towards satisfaction of the claim of  
the plaintiff bank, the plaintiffs for the protection of their own  
30 interests would apply to obtain as soon as possible an order for the  
sale of the vessel by public auction pendete lite Such course  
would, also, be in the interest of the guarantors This course is not  
open to the plaintiffs, unless the ship is arrested by a warrant of the  
Court in this action

35 Furthermore, the master of the vessel, Mr Kleanthis  
Vlahopoulos, by a telex, dated 18/12/87, attached to the affidavit,  
informed the plaintiffs that the vessel has been abandoned by the  
owners

40 The application is based on the Rules of the Supreme Court in  
its Admiralty Jurisdiction, Rules 50, 51, 54.

This is an application for a second warrant of arrest of the same ship.

In *Greyhound Shipping Corporation v. The Ship «MIGHTY BREEZE»* (1983) 1 C.L.R. 862, A. Loizou J. refused the issue of a second warrant, as no special circumstances were disclosed by the applicants. He, however, cited with approval the relevant passage from the British Shipping Laws, Admiralty Practice, 1964, para. 278, which reads as follows:-

«Where it is proposed to begin a second or subsequent action against property which is already under the arrest of the court, a second or subsequent writ in rem must be taken out. But it is only if the second or subsequent plaintiff wishes to proceed to judgment before the first plaintiff is ready to do so that the second or subsequent plaintiff need take out a warrant of arrest and actually arrest the property for the second or subsequent time. Save in such exceptional circumstances, all that is necessary to prevent property being released without the second or subsequent plaintiff, potential or actual, having the opportunity of arresting it in his own action, is the entry of a caveat against release and payment under Order 75, rule 14, to which reference will be made later.»

In the present case the reason that compels the plaintiffs to apply for the issue of a second warrant of arrest in their own case is that they intend immediately after the issue of this warrant to apply for the appraisal and sale of the ship pendete lite, in view of the mounting expenses necessitated by the arrest of the ship in the first place and the abandonment of the ship by the owners at the port of Limassol.

The aforesaid amount to exceptional circumstances, justifying the issue of the second warrant of arrest, more so for a creditor who has advanced so much money and he runs the risk of sustaining considerable loss, if not total loss of the money advanced on the security of the ship's mortgage.

For all the above reasons the application for the warrant of arrest of the ship «SOL PHRYNE» now lying at the port of Limassol, is granted.

Notice of such arrest to be served on the said ship.

The Marshal shall release the ship upon directions of the Registrar of this Court on the filing of a security bond by or on

behalf of the ship in the sum of C£280,000. - (two hundred and eighty thousand Cyprus pounds) for the satisfaction of any order or judgment for the payment of money made against the ship or her owners in this action.

- 5 As the first warrant of arrest was issued on the motion of a member of the crew for wages due, no order for payment of Marshal's expenses for the arrest and incidental thereto and no security was, also, ordered, the applicants - plaintiffs to lodge in Court the sum of C£200. - (two hundred Cyprus pounds) deposit  
10 for any expenses which may be incurred by the Marshal in connection with the custody of the ship while under arrest, subject to this sum being increased later on.

- Lodge in Court any further amount that the Registrar of this Court will ask the plaintiffs to do with regard to the expenses of the  
15 arrest and failing to comply within three days from such demand, the order of arrest to be discharged.

Applicants - Plaintiffs to give security in the sum of C£5,000. - (five thousand Cyprus pounds) in the form of a security bound to the satisfaction of the Registrar or a bank guarantee.

- 20 The Marshal is required to report to the Court by the latest 10.00 a.m. on the 29th of December, 1987, with regard to the arrest of the ship and probable costs to be incurred in connection with such arrest.

- This case is fixed for the 29th of December, 1987, at 10.00 a.m. -  
25 for anyone to appear and if he so decides to move the Court against the continuance in force of the order of the Court made today ex-parte.

Question of costs reserved.

Order accordingly.

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*Application granted.*