

1988 December 15

(DEMETRIADES, J.)

1. ABDUL RAHMAN MOHAMED KADDOURA,
2. THE SHIP AHSSAN I, OF THE PORT OF LATTAKIA,
HER MASTER AND CREW,

Plaintiffs,

AND

1. THE SHIP SEA HORSE OF THE PORT OF BEIRUT
AND NOW LYING IN THE PORT OF LIMASSOL,
2. THE CARGO ON BOARD THE SHIP «SEA HORSE»,
NOW LYING IN THE PORT OF LIMASSOL,

Defendants.

(Admiralty Action No. 134/83).

Admiralty — Salvage — When services rendered to ship are considered as salvage services — Factors that should be taken into consideration.

5 *Admiralty — Salvage — Reward for salvage services — The Wrecks Law, Cap. 298, section 34 — Discretion of Court — Factors that should be taken into consideration.*

10 The plaintiffs in this action are the owner and the crew of the ship AHSSAN I, and claim remuneration for salvage services rendered to the ship SEA HORSE and the cargo loaded on her, that is the first and the second defendants respectively.

As the action between the plaintiffs and the first defendants was settled, the trial concerned only the claim against the cargo.

In the light of the evidence adduced the Court made the following findings:

15 (a) That at the material time the steering gear of the SEA HORSE could not operative as it had broken down and that because of a hole near her keel, water was entering into one of her holds and this made the ship to roll and lose her stability./

20 (b) The services to the SEA HORSE by the plaintiffs were rendered when there was danger to herself, the crew manning her and the cargo loaded on her.

(c) The value of the cargo, which was loaded on the SEA HORSE, was 400,000 U.S. Dollars. However, the parties had agreed to release the cargo from arrest, upon furnishing by the defendants of bank guarantees for a total sum of C£70,000.

Held: (1) An operation in order to be one of «salvage services» the following elements must exist: 5

(a) The services given must either save or contribute to the ultimate safety -

(i) of a ship, her apparel and cargo, or

(ii) of the lives of persons belonging to a ship when in danger; and 10

(b) The danger to the ship, cargo or life must be real and appreciable, for instance what has to be considered is the condition of the salvaged ship, the weather conditions existing at the time of the operation, as well as those existing whilst the ship is towed into a safe anchorage. 15

(2) In the light of the evidence adduced in this case and the aforesaid principles, the conclusion is that the plaintiffs had, in fact, rendered salvage service to the defendant cargo.

(3) The amount of the reward for salvage services is in the discretion of the Court. Relevant is section 34 of the Wrecks Law, Cap. 298. 20

(4) In deciding the actual amount of reward the following factors should be taken into consideration, i.e.

(a) the value of the salvaged property;

(b) the risk to the salvor ship and her crew; 25

(c) the weather conditions existing at the time of the operation till the ship was brought to safety;

(d) the condition of the salvaged ship;

(e) the expenses incurred by the ship (including any damage to her) in order to save the salvaged property; 30

(f) the time spent for the operation.

In the present case the operation for the salvage of the SEA HORSE and the cargo loaded on her was highly dangerous in view of the size of AHSSAN I, the weather conditions existing during the operation and the condition of the SEA HORSE (broken steering 35

gear and water entering one of her holds as a result of which the ship was made unstable).

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Judgment for the owners of AHSSAN I for 100,000 U.S. Dollars and for her Master and Crew for 25,000 U.S. Dollars.

Cases referred to:

Brasal Offshore Services Ltd. v. The ship «JUNE» and Another (1980) 1 C.L.R. 231;

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Branco Salvage Limited v. The ship «DIMITRIOS» and her cargo and freight (1968) 1 C.L.R. 252;

Attorney-General v. Motor Tanker «KEISSERWAARD» and Another (1965) 1 C.L.R. 433;

Yusra Shipping Co. Ltd. v. The ship «YAMAMA» (1985) 1 C.L.R. 328.

15 **Admiralty action.**

Admiralty action for remuneration and salvage services rendered to the the ship Sea Horse and the Cargo loaded on her.

C. Erotocritou, for the plaintiffs

Fr. Saveriades, for defendants No. 2.

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Cur. adv. vult.

DEMETRIADES J. read the following judgment. The plaintiffs in this action are the owner and the crew of the ship AHSSAN I, and claim remuneration for salvage services rendered to the ship SEA HORSE and the cargo loaded on her, that is the first and the second defendants respectively.

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On the 21st September, 1985, counsel who represented the first defendant made a statement in Court, as a result of which judgment was given in favour of the plaintiffs and against the first defendant for £6,000.-, with no order as to costs. The statement of counsel reads:

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«We are in the happy position to inform the Court that the claim for salvage against defendant No. 1, that is the ship SEA HORSE, has been settled on the basis of a calculation of the remuneration of the plaintiffs at 40% of the value of the ship

as ascertained by the sale at the public auction and judgment will be submitted in the sum of £6,000.- without any order as to costs.»

The second defendants, that is the cargo loaded on the ship SEA HORSE, contested the action against them, alleging that the first defendant was not salvaged but what the ship AHSSAN I did was to tow her into the port of Limassol. 5

As it appears from the evidence which was adduced before me, the facts that led to these proceedings and which do not allow a finding that the SEA HORSE was simply towed into Limassol Port, are, in brief, the following: 10

At about 08.00 hrs on the 20th April, 1983, Mr. Mohamed Kaddoura, the Captain of the ship AHSSAN I, who is P.W.4, received a message from his brother, who is the owner of the ship and the first plaintiff in these proceedings, by which he was instructed to fill the ship's tank with petrol and after engaging a Chief Engineer, to proceed to a spot about 50 miles away from the Limassol light house in the direction of Port Said in order to tow to the port of Limassol the ship SEA HORSE which was in distress. 15

AHSSAN I left the Limassol port at approximately 10.00 hrs after her Captain had contacted the Captain of the SEA HORSE through VHF channel 70 and was given by him her exact position and information about her problem. 20

According to the evidence of this witness for the plaintiffs, which is supported by the «Sea Protest» sworn by the Captain of the SEA HORSE and which I shall later in my judgment set out, the ship, the cargo and her crew were in immediate danger as her steering had broken and because of bad weather conditions assistance was urgently required for their safety. 25

AHSSAN I arrived at the spot where the SEA HORSE was lying at about 16.00 hrs. At the time there was a swell and the force of the winds was 4 beauforts. After three attempts were made to get the ropes that were thrown by the SEA HORSE, the crew of the AHSSAN I managed to get and secure them on both sides of their ship. The SEA HORSE was a much bigger ship than AHSSAN I and at the material time was loaded with timber. The operation to secure the ropes took about 90 (ninety) minutes and after that AHSSAN I safely, but with difficulty because of the wind force and the swell which was forcing SEA HORSE to roll from left to right, 30 35

towed her into Limassol port at about 06.00 hrs on the following day.

5 According to the Captain of AHSSAN I, whose evidence is supported by that of Mr. Yiannis Karidjis (P.W.2), the Marshal of this Court, who is an experienced and qualified master of the Merchant Navy, the whole operation, having regard to the weather conditions existing at the time and the size of his ship in comparison to that of the SEA HORSE, was highly dangerous for the salvor ship.

10 What is the legal position regarding salvage in Cyprus was considered in a number of cases dealt with by the Supreme Court of Cyprus and useful reference may be made to *Brasal Offshore Services Ltd. v. The Ship «JUNE» and another*, (1980) 1 C.L.R. 231, *Branco Salvage Limited v. The ship «DIMITRIOS» and her*
15 *cargo and freight*, (1968) 1 C.L.R. 252, and the *Attorney-General of the Republic v. Motor Tanker «Keisserwaard» and another*, (1965) 1 C.L.R. 433. Reference may, also, be made to section 34 of the Wrecks Law, Cap. 298, which reads:-

20 «34. In determining any dispute as to the amount of salvage to be paid to any salvor, the Court or Judge determining it shall award such sum as appears just and reasonable in the circumstances of the case, having regard to -

(a) the enterprise and promptitude of the salvors in rendering assistance;

25 (b) the degree of damage and distress from which the property is rescued;

(c) the degree of labour and skill displayed and the danger incurred by the salvors;

(d) the value of the property salvaged;

30 (e) the time employed in rendering the services;

(f) the success of the effort to save the property:

35 Provided that no salvage shall be awarded unless the property in respect of which salvage is claimed shall have been exposed to actual peril threatening its destruction save for the assistance rendered by the salvor.»

In Halsbury's Laws of England, 4th ed., vol 43, paras 1027, 1036, 1037, 1038, and 1040, the following are to be found with regard to salvage:

«1027. *Meaning of 'salvage' and 'salvage services'*. 'Salvage' may signify either the service rendered by a salvor or the reward payable to him for his service. 5

'Salvage service' in the present sense means that service which saves or contributes to the ultimate safety of a vessel, her apparel, cargo or wreck, or to the lives of persons belonging to a vessel when in danger at sea, or in tidal waters, or on the shore of the sea or tidal waters, provided that the service is rendered voluntarily and not in the performance of any legal or official duty or merely in the interests of self-preservation. The person who tenders the service, that is the salvor, becomes entitled to remuneration known as a 'salvage reward'. 15

1036. *Danger requisite*. The essence of a salvage service is that it is a service rendered to property or life in danger. The requisite degree of danger is a real and appreciable danger. It must not be merely fanciful, but it need not be immediate or absolute. It is sufficient if at the time of the service the situation of the subject of the service is such as to cause reasonable apprehension on the part of the person in charge of it. The danger may arise from the condition of the salvaged vessel, or of her crew, from her position, or from the master's want of skill or his ignorance of the locality or of local conditions. A service which begins as salvage is not necessarily transformed into towage because on the voyage the ship is towed past, or into, ports at which she could be in safety. 20

1037. *Evidence of danger*. The burden of proving the presence of danger rests upon those who claim as salvors. The conduct of those on board the salvaged ship in giving signals of distress or in accepting help may be evidence of the presence of danger. Where signals of distress are wrongfully used, compensation is recoverable for any labour undertaken, or risk or loss incurred, by reason of persons accepting and acting on the signals, and persons who are induced by ambiguous signals to proceed to the assistance of a vessel which is, in fact, damaged or in danger are entitled to claim as salvors. 30 35 40

1038. *Requirement of personal services.* The general rule is that all those, and only those, who render personal services in the performance of a salvage service are entitled to a salvage reward. To this rule, however, there are certain exceptions.

1040. *Voluntariness.* Subject to certain exceptions the salvor's service must be voluntary as between the salvors and the owners of the salvaged vessel, but it may be the subject of special agreement.»

10 From the above, it is clear that an operation in order to be one of «salvage services» the following elements must exist:

(a) The services given must either save or contribute to the ultimate safety -

(i) of a ship, her apparel and cargo; or
15 (ii) of the lives of persons belonging to a ship when in danger; and

(b) The danger to the ship; cargo or life must be real and appreciable, for instance what has to be considered is the condition of the salvaged ship, the weather conditions existing at the time of the operation, as well as those existing whilst the ship is towed into a safe anchorage.

In the present case there is evidence before me coming from Mr. Stavros Karamontanis, who is a B.Sc. Engineer, Chartered Engineer registered with the Engineering Council of the United Kingdom, a member of the Institution of Electrical Engineers of the United Kingdom, a fellow of the Institute of Marine Engineers of the United Kingdom, a fellow of the Royal Institute of Naval Architecture and a member of the Society of Naval Architecture and Marine Engineers of the United States of America, an approved and exclusive surveyor for a number of ship classification societies in Cyprus, and who inspected the SEA HORSE, that at the material time the steering gear of the SEA HORSE could not operate as it had broken down and that because of a hole near her keel, water was entering into one of her holds and this made the ship to roll and lose her stability.

The evidence of the Captain of the AHSSAN I as to the immediate danger existing for the SEA HORSE, her cargo and crew, is not only corroborated by that of P.W. 2 Karidjis and P.W. 3

Karamontanis, but, also, by the contents of the Sea Protest sworn by the Captain of the SEA HORSE and filed in the Registry of the District Court of Limassol. This document is exhibit No. 1 before me and it reads:

«IN THE DISTRICT COURT OF LIMASSOL 5

Marine Application No. 33/83.

IN THE MATTER OF M/V «SEA HORSE» of the port of Beirut

The Registrar,
District Court of Limassol,
Limassol. 10

Please cause the attached Sea Protest to be filed with the Registry of the District Court of Limassol.

Yours faithfully,
Ahmad Kaddourah,
The Master 15

Limassol this 4th day of May, 1983.

Presented to me at the District Court of Limassol on the 4th day of May, 1983.

Limassol the 4th May, 1983.

m.v. «SEA HORSE» of the port of Beirut 20

S E A P R O T E S T

I, the undersigned KADDOURAH AHMAD, Master of the ship SEA HORSE of the port of Beirut make oath and say as follows:-

On the 19th April, 1983 at 14.20 L.T. my ship left the port of 25
Limassol, proceeding to her destination the port of Jeddah,
Saudi Arabia.

The weather condition was as follows:-

Wind 4-5
Sea swell was high and large due to bad weather (gale force) 30
on the 17th to 18th of April, 1983.

At 18.15 hours on the 19th April, 1983 my ship's steering gear came out of order and was not working.

I and the crew on board did out best to repair the steering gear, even to operate it by hand but we did not succeed.

The ship was rolling violently up to 18° each side. She was drifting 2.5 miles per hour to the shore side.

5 As the capsizing angle of the ship was 26° due to cargo deck it was clear to me that the ship could not stay for long time in safety. I required assistance urgently for the safety of my crew, ship and cargo.

10 Being in distress I contacted my owners and asked for immediate help to rescue the ship, cargo and crew.

At 16.30 hours on 20th April, 1983 the ship AHSSAN I reached my ship and started manoeuvring. I gave my ropes to the said ship tied the SEA HORSE and started sailing towing us to Limassol port where we arrived safely at 6.00 hours on the 21st April, 1983.

During the stoppage of the SEA HORSE and her towing to Limassol port she was very badly subjected to high and abrest swell.

20 Had it not been for the help of the ship AHSSAN I there was immediate danger of my ship to sink, the cargo to be lost and our lives and the crew to lose their lives.

In view of the above I make this sea protest and reserve all my owners rights against all concerned.

THE AFFIANT

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KADDOURAH AHMAD
Master of the ship SEA HORSE

Sworn and signed before me
this 4th day of May, 1983
at the D.C. of Limassol,

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R E G I S T R A R *

From the totality of the evidence before me, it is clear to me that salvage services were rendered to the SEA HORSE when there was danger to herself, the crew manning her and the cargo loaded on her. The owner and the crew of AHSSAN I are, therefore, entitled to be rewarded for the services rendered for the salvage of the SEA HORSE.

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Having reached my above finding, the next questions that pose for decision are what is the amount of reward to which the owner and the crew of AHSSANI are entitled and who fixes it.

In Halsbury's Laws of England, supra, para. 1056, under the heading «Amount fixed by the Court», it is stated:

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«General principles. The amount of the salvage reward is limited to the value of the property or the interest in property salvaged. Subject to that limitation, the amount of the reward, unless it is fixed by agreement, is in the discretion of the court, and except in cases of absolute necessity the court which tries the case should also assess the remuneration. As a general rule, where the owner of the salvaged property appears, the court will not award the salvor more than one-half of the value of the salvaged property, whether the property is derelict or not. A variation in the exchange rate of a currency is not a relevant factor to take into account in fixing the award for salvage services. The court has power to award interest on a salvage award whether the salvage services were or were not performed under a special contract.»

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In the case of *Brano Salvage Ltd.*, supra, Josephides J., in deciding the questions in issue, held the following (at pp. 262-264):-

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«The general principles are that the amount of the reward, unless it is fixed by agreement, is in the discretion of the Court. The Court, in assessing the reward, endeavours to combine liberality to the salvor with justice to the owner of the salvaged property. It regards not merely the work done in the performance of the salvage service, but the general interests of navigation and commerce. Thus it looks with favour on salvage services rendered by steamships built and maintained for salvage services (35 Halsbury's Laws of England, 3rd edition, page 749, paragraph 1139). In assessing the reward the Court takes into account the danger to life, whether on board the salvaging or the salvaged vessel, and the danger to property. The value of the salvaged property is an important consideration in the assessment of reward; but it will not raise the reward out of due proportion to the services rendered. If the value is large the amount of the reward is usually a smaller proportion to the value than if the value is small (ibid., at page

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750, paragraph 1142). Likewise, the value of the property employed is also an important element in the assessment of the reward. It is not, however, the measure or limit of the reward. The risk to which the salvaging property is exposed by the performance of the salvage service is also an important consideration. The length of the salvage operations is not in general a very important element for consideration, unless the services are dangerous or invoke protracted exertion; though the additional loss or expense incurred by salvors by reason of the duration of their services is taken into consideration in the assessment of the reward. The labour involved in the salvage service is an important element only so far as it is accompanied by the exercise of skill, or by danger, or responsibility (*ibid.*, at pages 751-2, paragraphs 1146-8). See also section 34 of our Cap. 298.

In assessing the amount of the salvage reward the expenses and losses properly incurred by the salvor in the performance of the salvage services are taken into account (section 24 of our Cap. 298; and 35 Halsbury's Laws, page 752, paragraph 1149). Those losses and expenses may be given in the form of a separate award, but the common practice is to include it in the general award. The losses and expenses which are dealt with in this manner include expenses reasonably incurred in bringing the salvaged property into a place of safety; and expenses, such as the cost of repairing damage, and depreciation in value of the salvaging vessel, caused by the performance of the salvage service (*ibid.*, at page 752, paragraph 1149).

These principles are also to be found summarized in Kennedy's Civil Salvage (1958), 4th edition, at pages 210 to 218, where it is stated (at page 211) that 'if the Court gives the amount of the damage, loss or expense specifically, it will take care not to give the amount twice over by again considering them when it comes to fix the amount due for salvage remuneration proper, that is, the remuneration for risk, etc., in the service'.

It may be taken that, at the present time, the Court will be careful to award a sufficient sum to salvors to cover the expenses they have 'properly incurred' (section 24 of our Cap. 298) and to give them a reasonable additional amount as

compensation for their services. As stated by Kennedy, at pages 217-8: 'The only expenses for which the Court of Admiralty may compensate the salvor in the award are:

(1) expenses properly incurred by the salvor in the furtherance of the salvage service, and before the vessel assisted has been placed in a position of safety, and 5

(2) expenses directly occasioned by the performance of the salvage service, as, e.g. the cost of repairing damage which, without any fault on the part of her officers or crew, has been caused to the salving vessel (including, of course, her boats, furniture and tackle) or of replacing damaged clothing' (see cases quoted in footnotes 10 and 11, at pages 217-8). 10

Finally, as stated in Kennedy, 'claims under the first head of expense are closely scrutinized by the court, and must be strictly proved' (page 218).» 15

As it appears from the authorities I have quoted above, the provisions of section 34 of Cap. 298, as well as my judgment in the case of *Yusra Shipping Co. Ltd. v. The ship Yamama*, (1985) 1 C.L.R. 328, the duty to fix the amount of reward to which the salvor ship and her crew are entitled, is cast upon the Court. 20

The next questions I have to decide is what the value of the salvaged property is and the amount of reward the salvors are entitled to receive.

In the present case, as regards the value of the cargo I am not concerned with the reward that the plaintiffs are entitled to receive with regard to the salvage of the SEA HORSE, nor do I believe that I am bound, in respect of the value of the cargo, by the statement of her counsel that the judgment submitted to on her behalf was based on 40% of the price it fetched at the public auction carried out in virtue of a Court Order. To quote from the judgment in the *Branco* case, *supra*, «the value of the salvaged property is an important consideration in the assessment of the reward; but it will not raise the reward out of due proportions to the service rendered. If the value is large the amount of the reward is usually a smaller proportion to the value than if the value is small.» 25 30 35

Before deciding what the reward the parties involved in the salvage service to the SEA HORSE are entitled to, I must first find what was the value of the cargo salvaged.

According to the contents of two affidavits which were sworn by a certain Mr. Tilemachos Kalyvas, in support of applications filed on behalf of the cargo for the discharge of the warrant of their arrest, its value according to two Bills of Lading was U.S. Dollars
5 555,987.87, but that when it was unloaded, it was found that timber of the value of more than U.S. Dollars 105,000.00 was short landed. That the quantity of timber unloaded at Limassol was short of that appearing in the Bills of Lading is supported by the evidence of Mr. Karidjis.

10 Mr. Kalyvas, in his affidavits stated that he was swearing the affidavits as the representative of the owners of the cargo, which was loaded on the SEA HORSE under the two Bills of Lading.

Having in mind the evidence of Mr. Kalyvas, I find that the value of the cargo which was loaded on the SEA HORSE during the
15 salvage operation was U.S. Dollars 400,000.00.

It is perhaps here pertinent to mention that on the 30th June, 1983, as a result of the application filed on behalf of the owners of the cargo for the discharge of the warrant of its arrest, it was agreed
between the plaintiffs and the defendants that the cargo was to be
20 released upon the defendants furnishing two bank guarantees in respect of (i) Bill of Lading No. 1 for C£36,462.- and (ii) Bill of Lading No. 2 for C£33,538.-, that is for a total sum of C£70,000.-. In fact such guarantees were given and are to be found in the file
25 of the action. This amount was, at the time the Bank guarantees were represented, a percentage in the region of 40% of the value of the cargo which was unloaded at Limassol.

In deciding the amount of reward to which the salvors, that is the ship and her crew are entitled to for the salvage services rendered, the following must be considered in addition to the
30 element of the value of the property salvaged -

- (a) the risk to the salvor ship and her crew;
- (b) the weather conditions existing at the time of the operation till the ship was brought to safety;
- (c) the condition of the salvaged ship;
- 35 (d) the expenses incurred by the ship (including any damage to her) in order to save the salvaged property;
- (e) the time spent for the operation.

In the present case, having considered the evidence adduced on behalf of the salvors, which is uncontradicted, I find that the operation for the salvage of the SEA HORSE and the cargo loaded on her was highly dangerous in view of the size of AHSSAN I, the weather conditions existing during the operation and the condition of the SEA HORSE (broken steering gear and water entering one of her holds as a result of which the ship was made unstable) and for this reason I have come to the conclusion that the owner of AHSSAN I is entitled to receive the sum of U.S. Dollars 100,000.00 as reward and the master and her crew the sum of U.S. Dollars 25,000.00, out of which U.S. Dollars 3,200.00 should be paid to the first plaintiff, that is the owner of AHSSAN I as he has satisfied me that he has in fact paid, on account of the services of the crew, the sum of U.S. Dollars 1,000.00 to the Captain, U.S. Dollars 700.00 to the Chief Engineer and U.S. Dollars 1,500.00 to the other members of the crew.

In the result, there will be judgment in favour of the first plaintiff for U.S. Dollars 100,000.00 and in favour of the second plaintiffs, that is the Master and the members of the crew of AHSSAN I, for U.S. Dollars 25,000.00.

It is further ordered that the defendant cargo, that is the second defendants, pay the costs of this action.

The costs shall be assessed by the Registrar and approved by the Court.

Judgment and order for costs as above.