

1989 August 11

(SAVVIDES, J.).

1. MONTEGRILLO DI NAVIGAZIONE S.N.C.,
2. M. V. «ALIMA» OF THE PORT OF NAPLES,

Plaintiffs,

v.

RO/RO «IVA» OF THE PORT OF RIGEKA, YUGOSLAVIA NOW
LYING AT THE PORT OF LIMASSOL.

Defendant.

(Admiralty Action No. 47/87).

5 *Admiralty — Arrest of ship — The 1952 Brussels Convention Relating to the Arrest of Seagoing Ships — Ship arrested or bailed out in one of the Contracting States cannot be arrested for the second time for the same maritime lien in another Contracting State — The Convention is applicable in Cyprus in virtue of section 19 of the Courts of Justice Law — It does not apply when the State, where the first arrest had been effected, is not a Contracting State.*

10 *Words and phrases: «Arrest» in Articles 1(2) and 3(3) of the 1952 Brussels Convention Relating to the Arrest of Seagoing Ships — It means detention by judicial process.*

This is an application for the discharge of the arrest of the defendant ship, who had been earlier arrested upon an ex parte application by the plaintiffs.

15 The relevant to the application facts are briefly as follows:- The plaintiff 2 ship collided with the defendant ship at the port of Tripoli in Libya. The defendant ship was arrested, but not as a result of a judicial process. She was later bailed out on the strength of a guarantee.

20 The arrest in Libya and the subsequent bailing out of the defendant ship were the facts relied upon in support of the application for the discharge of the arrest. The defendant ship invoked in this respect the provisions of the 1952 Brussels Convention Relating to the Arrest of Seagoing Ships.

Held, *dismissing the application*: (1) The provisions of the said Convention apply in Cyprus in virtue of section 19 of the Courts of Justice Law, 1960 (Law 14/60).

(2) «Arrest» in the sense of the Convention (Article 1(2)) is a detention by judicial process. In this case there was no arrest in Libya in that sense, but Article 3(3) of the Convention is still applicable, because it applies not only in cases of «arrest» in the said sense, but also, of bail or other security given. 5

(3) However, Libya is not a Contracting State. Article 3(3) of the Convention applies only when the first arrest or bail had been given «in any one of the jurisdictions of the Contracting States» It is not therefore, applicable to the facts of this case. 10

(4) Nor can the defendant rely on «The Golaa», 17 Asp. Mar. Law Cas. 35 as the facts of that case are clearly distinguishable from the facts of this case.

Application dismissed with costs. 15

Cases referred to:

The Golaa, 17 Asp. Mar. Law Cas. 35.

Application.

Application by Counsel for the defendant ship for a) setting aside and/or discharging order for the arrest of the ship «IVA» b) cancelling and returning to the owners of the defendant ship the bank guarantee filed to secure her arrest and c) setting aside the writ of summons and application by plaintiffs for an order striking out para (c) of the above application. 20

St. McBride, for the applicant-defendant.

C. Erotocritou with K. Stamatiou (Mrs.), for the respondents-plaintiffs. 25

Cur. adv. vult.

SAVVIDES J. read the following judgment. By an *ex parte* application in this action, filed by the plaintiffs, a warrant was issued on 13th February, 1987, for the arrest of the defendant ship until further order of the Court as security for the plaintiffs' claim for damages sustained by plaintiff 2 ship «ALIMA» by reason of a collision in Libya with the defendant ship «IVA» allegedly as a result of the negligence of the defendant ship. 30

The warrant of arrest was subject to the condition that the defendant ship should be released upon the filing of a security 35

bond by or on behalf of the ship in the sum of £30,000. A bank guarantee for the release of the defendant ship was filed and the defendant ship was released from arrest.

5 Subsequently, counsel for the defendant ship moved the Court by the present application to:

(a) Set aside and/or discharge the order of the Court made on 13.2.87 authorizing the arrest of the defendant ship «IVA».

(b) Cancel and return to the owners of the defendant ship the bank guarantee filed to secure her release.

10 (c) Set aside the writ of summons issued in this action.

The plaintiffs opposed the application and at the same time they filed an application for an order of the Court that the relief under paragraph (c) hereinabove be struck out.

15 As the application of the plaintiffs was touching an issue already before the Court as a result of the opposition of the plaintiffs to the application of the defendant, such application has been dealt with together with the application of the defendant.

20 With the exception of the collision between the two vessels, which occurred whilst they were at the port of Tripoli in the Republic of Libya in April, 1985, which is admitted by both sides, there are two conflicting versions particularly concerning the alleged by counsel for the defendant arrest of the defendant ship as a result of steps taken on behalf of the owners of plaintiff 2 ship.

25 According to the version of the Defendant as emanating from the affidavit filed on her behalf and the evidence which was given by Mr. Dujmovic Marijan, who at all times material to the action was the local representative at Tripoli of Losinjska Plovidha, a Maritime Shipping State owned Company of Yugoslavia which owned the defendant ship, and also from the various documents 30 which have been produced in this case, as a result of a collision which occurred on 17.4.85, in which both «ALIMA» and «IVA» ships were involved, the defendant ship was arrested and remained under arrest till a guarantee was given on its behalf for its release, in the following circumstances:

35 Both the plaintiff and defendant ships were being handled in Libya by a State organ known as «Germa Shipping and Stevedoring Company» which had been established by two previous companies called «Sabrata Shipping and Stevedoring»

and «Lebda Shipping and Stevedoring». After the collision at the request of plaintiff 2 ship «ALIMA», Germa Shipping Company by their claims department sent to Germa Shipping Co. Ro/Ro Department a telex asking them to prevent her from sailing and arrest her. In the meantime a telex was sent on the same day by the solicitors of the plaintiffs to the State Agency operating the defendant ship, the contents of which read as follows: 5

«We are the Solicitors of M/V ALIMA. Said vessel suffered damages in the above-mentioned collision, caused by a vessel which, we have been told, you are operating. Please, let us know who are the underwriters of the said vessel and whether same are open to issue a letter of guarantee in the usual terms. Furthermore, please be kind enough to ascertain damages sustained by vessel 'ALIMA' which is at present in Benghazi harbour. Your urgent reply would be appreciated». 10 15

The contents of the said telex were communicated by the owners of the defendant ship to their representative at Tripoli who attended upon Germa Shipping Company claims department to secure the release of «IVA» and on behalf of the owners put up a written undertaking to secure its release. 20

The contents of such undertaking, which is dated 19th April, 1985, and is certified by Germa Shipping Company, read as follows:

«After having received request by solicitors VINCENZINI OF M/V ALIMA and having been authorized by my HEAD OFFICE, I hereby certify and guarantee to cover the damage for which our liability would be ascertained, sustained by M/V ALIMA in collision with our vessel 'IVA' on 17.04.1985 morning, while both vessels anchored in the inner anchorage of the port of Tripoli. 25 30

This guarantee is issued in order to release the vessel from further retention in Tripoli».

As a result of such guarantee, the defendant ship was released from arrest.

The following indorsement appears on the statement of facts produced as exhibit 2 in which the movements of the defendant ship are stated with particulars of arrival, discharge and loading: 35

«The vessel has been arrested the 19th April, 1985, due to

the collision with M/V ALIMA and allowed to sail the same day at 17.00 hours after receiving a Guarantee letter from the representative of Messrs. Losinjska Plovidha».

5 This indorsement is testified by the Claims Department of the Germa Shipping Company.

10 The plaintiffs by an affidavit sworn on their behalf and the evidence given by Mr. Antonino Sacca, an Attorney at Law from Livorno, Italy, a member of the Legal Firm Studio Legale Vincenzini, denied that they ever took steps for the arrest of the defendant ship at Tripoli or that any security was given to them for the release of the defendant ship from arrest, and went further to state that the only instructions they had given for the arrest of the ship were when the ship called at Limassol port and never before.

15 The contention of learned counsel for the applicant-defendant was that once the defendant ship was arrested at Tripoli and/or its release was secured by putting up bail and/or guarantee, the plaintiffs are precluded from arresting the defendant ship again in Limassol. In support of his proposition he sought to rely on various Conventions and, in particular, on the 1952 Brussels Convention
20 Relating to the Arrest of Seagoing Ships to which the United Kingdom, Italy and Yugoslavia were amongst the signatories. He also sought to rely on the principles emanating from the English decision in *The Golaa*, a Maritime case of 1926. He concluded by submitting that in the light of the aforesaid authorities, it is clear
25 that if two actions are commenced against the same ship for the same cause of action and the ship is arrested in the first action and bail is put up to secure its release, the second arrest and the second bail cannot stand and will be discharged, making particular reference to Article 3(3) of the 1952 Brussels Convention Relating
30 to the Arrest of Seagoing Ships and the case of *The Golaa**.

35 Counsel for the respondents-plaintiffs contended that the defendant ship had never been arrested within the meaning of Article 1(2) of the Brussels Convention which defines «arrest» as detention by judicial process. No evidence, counsel submitted, has been adduced that the alleged arrest was an arrest by judicial process but, on the contrary, according to the evidence before the Court, no judicial proceedings had ever been instituted in Tripoli.

40 Finally, counsel contended that the provisions of Article 3(3) of the said Convention do not apply in the present case as Libya is not a party to the convention whereas under the said paragraph of

* 17 Asp. Mar. Law Cas. 35.

the Convention, for the provision to apply, a ship has to be arrested in any one of the jurisdictions

Both counsel made a statement to the Court that Libya is not a party to the 1952 Brussels Convention Relating to the Arrest of Seagoing Ships. In fact, this is clear from the list given in the British Shipping Laws, 2nd Edition, Vol 8 which deals with the International Conventions of Merchant Shipping and, in particular, at p 1438 onwards, which deals with the 1952 Brussels Convention Relating to the Arrest of Seagoing Ships

The questions which pose for consideration in this case are

(a) Whether the defendant ship was arrested in Tripoli and/or secured its release by giving up a guarantee

(b) Whether such arrest and/or guarantee precludes the plaintiffs from arresting the defendant ship in Limassol

(c) To what extent the Brussels Convention is applicable in the circumstances of the present case

Article 3(3) of the said Convention reads as follows

«A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant and, if a ship has been arrested in any one of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the same maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest»

Article 1(2) of the same Convention defines the word «arrest» as follows:

«'Arrest' means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment»

I shall proceed now to examine the various issues before me and I shall deal first with the first issue, concerning the arrest and/or

guarantee alleged as having been given for the release of the defendant ship at Tripoli.

On this issue I accept the evidence of Mr. Dujmovic Marijan, who was the local representative at Tripoli of the Yugoslavian State Agency which owned the defendant ship and who at all material times to the present action was on the spot at Tripoli, as disclosing the true facts of the case. His evidence, in fact, as to what happened at Tripoli stands uncontradicted.

Mr. Antonino Sacca, the solicitor acting on behalf of the plaintiffs who gave evidence before the Court, in cross-examination stated that he had not been to Tripoli, he was unaware of anything that was said by Mr. Marijan, he did not know anything about Germa Shipping and Stevedoring Company at Tripoli and the first time he heard about them was when copies of the various applications and oppositions made on behalf of «IVA» were communicated to him. His contention that the defendant ship was never arrested at Tripoli in connection with the collision with plaintiff 2 ship and that no security was given was based on information received from the plaintiffs but neither the plaintiffs nor he, himself, carried out any investigations as to the correctness of such information.

The evidence of Mr. Marijan is supported by the various documents which have been produced and which are exhibits in this case.

In the statement of facts produced as exhibit 2, which is the document issued concerning the movements of the defendant ship at Tripoli, it is clearly stated that the vessel was arrested on the 19th April, 1985, as a result of the collision with plaintiff 2 ship «ALIMA» and was allowed to sail after a letter of guarantee was given by the representative of the owners of the defendant ship. Furthermore, a photocopy of the letter of guarantee given on behalf of the defendant ship and which is certified by Germa Shipping Company, the state Agency in Libya that is handling matters touching shipping in Libya, is also before me. They both support the evidence of the witness called on behalf of the defendant ship.

From the evidence of Mr. Marijan, however, nothing emanates to the effect that such arrest was the result of a judicial process but, on the contrary as it appears from such evidence the ship was detained by means of a process which was initiated by the Claims Department of Germa Shipping Company on behalf of plaintiff 2

ship and was released after a letter of guarantee was given on behalf of the defendant. It is clear, therefore, that such arrest was not an arrest by judicial process and as such it does not fall within the definition of «arrest» under Article 1(2) of the Brussels Convention which defines «arrest» as detention by judicial process. Article 3(3) of the said Convention however, does not apply only to cases of arrest but also of bail or other security given. Notwithstanding the fact that the arrest of the defendant ship which was not effected by judicial process does not fall within the ambit of Article 1(2) of the Brussels Convention, nevertheless, the security given, being a security on a maritime claim for the release of the ship, is a matter within the ambit of Article 3(3). 5 10

This answers the first question and brings me to the second question. Before, however, answering the second question, I shall proceed to examine the third question which I consider as materially connected with the second *o. e.* 15

Article 3(3) of the Brussels Convention expressly mentions an arrest, bail or other security given *in any one or more of the jurisdictions of any of the Contracting States*. It is common ground in this case that the arrest in Limassol was an arrest within one of the jurisdictions of the Contracting States in view of the fact that Yugoslavia, Italy and Great Britain had ratified the Convention and its provisions are extended to Cyprus by virtue of section 19 of the Courts of Justice Law, 1960, whereby the Supreme Court in the exercise of its Admiralty jurisdiction is vested with the jurisdiction of the High Court in England in admiralty matters as exercised on the day previous to the Declaration of the Independence of Cyprus. 20 25

The question, however, which has to be answered is whether the arrest at Tripoli was an arrest within the jurisdiction of any one of the Contracting States to the Brussels Convention. Both counsel conceded that Libya is not a party to the Convention and, as already mentioned, such statement is supported by the list given in the British Shipping Laws, 2nd Edition, vol. 8, at pp. 1142-1143 to which reference has already been made. Therefore, once Libya, within the jurisdiction of which the alleged arrest took place and the guarantee was given, is not a party to the Convention, the provisions of Article 3(3) are not applicable and any such arrest or security given is not such as contemplated by the provisions of the Convention. In the result the only security given within the ambit of Article 3(3) of the Convention is the sub judice one. 30 35 40

Having found as above, I find it unnecessary to deal with the second question as to whether in view of the security given in Libya for the release of the defendant ship from arrest, the plaintiffs are precluded from arresting the ship in Limassol.

- 5 As to the case of *The Golaa*, on which counsel for the applicant-defendant sought to rely as embodying the principles of common law, I find that *The Golaa* is distinguishable from the present case because in *The Golaa* legal proceedings had commenced in the United States and the ship was bailed out for the purpose of being
10 released from the arrest and then legal proceedings commenced in U.K. and the question turned on the principle of *lis alibi pendens*; the facts of that case are in any event distinguishable from the present one. Furthermore that case was decided before the ratification by U.K. of the Brussels Convention (*supra*) which
15 embodies express provisions regulating the matter.

In the result, the application is hereby dismissed with costs in favour of the respondents-plaintiffs. In view of the result reached plaintiffs' application for striking out paragraph (c) of the prayer becomes superfluous and is hereby dismissed with no costs.

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*Application dismissed
with no order as to costs.*