

1989 August 11

(DEMETRIADES, J.)

ABDUL HAMID AL SAHI,

*Plaintiff,*

v.

THE SHIP «AL GAZERA», NOW LYING AT THE PORT OF LIMASSOL,

*Defendant.*

*(Admiralty Action No. 300/79).*

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*Admiralty — Action for a declaration that plaintiff is the owner of certain number of shares in the ship «AL GAZERA», possession of such ship, an account and Judgment for any sum that may be found due.*

In the light of the evidence and the view, which the Court took as to the credibility of witnesses, the Court found that the version of the defendant cannot stand; however, the property in the ship never passed to the plaintiff or defence witness Abuzeid, because the price for her construction was not paid in full. The plaintiff was simply entitled to be registered as owner of the ship of so much percentages of her as corresponding to the money he contributed for her construction. The plaintiff is also entitled to US \$30,000 paid for bunkers for the ship to sail from Rotterdam to Abu Dhabi.

*Declaration as aforesaid respecting ownership. Judgment for US Dollars 30,000. Costs in favour of Plaintiff.*

**Admiralty action.**

Admiralty action for a declaration that the plaintiff is the owner of 51/64th or 71/100th shares of the defendant ship «Al Gazera».

*St. Mc Bride with E. Psillaki (Mrs.), for the plaintiff.*

*E. Montanios with D. Hadjihambis and P. Panayi (Miss), for the defendant.*

*Cur. adv. vult.*

DEMETRIADÈS J. read the following judgment. By his action the plaintiff claims against the defendants -

A. A declaration of the Court that he is the owner of 51/64th or 71/100th shares of the defendant ship «AL GAZERA».

5 B. Possession of the defendant ship «AL GAZERA».

C. An account of all earnings of the defendant ship «AL GAZERA» during her trading between the time of completion of the said ship and her arrest in Cyprus, and of the amount due to the plaintiff in respect thereof.

10 D. Payment of the amount found due to the plaintiff on the taking of the above account and interest thereon at such rate and for such period as the Court shall think fit under the British Law Reform (Miscellaneous Provisions) Act 1934 applicable in Cyprus.

E. Any further or other relief.

15 F. Interest.

G. Costs.

The facts that led to the present action are, in brief, the following:

20 .In 1978 a certain Mr. Abuzeid, Defence Witness No. 2, and the plaintiff entered into a written agreement (date the 3rd July, 1978 - exhibit No. 1) with the ship building firm of Scheepswerf Bodewes-Gruno of Foxhol Holland, hereinafter to be referred to as the «firm», by which the latter undertook to build for them a ship in accordance with specifications and terms described in the said  
25 agreement. The price agreed for the construction of the vessel was 3,700,000 D. Fls. When this contract was signed, the ship was already under construction as Mr. Abuzeid had earlier entered into an agreement with the firm for her construction and had then paid on account of her price the sum of D. Fls. 1,200,000.

30 It is an admitted fact that on the day exhibit No. 1 was signed by the parties the plaintiff paid to the firm the sum of D. Fls. 800,000 and that at a later date he made a further payment of D. Fls. 800,000. Later on, the plaintiff paid on account a further sum of 400,000 D. Fls. and signed two cheques each for the sum of D. Fls.  
35 325,000 payable to the order of the firm.

After the ship was constructed and before its full price was settled, by an agreement entered between the parties the ship was

allowed to sail to Abu Dhabi in the United Arab Emirates for the purpose of being registered there in the name of the plaintiff and Mr. Abuzeid.

The plaintiff in giving evidence alleged that to facilitate the ship to sail to Abu Dhabi, he gave Mr. Abuzeid U.S. \$30,000 for bunkering and other expenses. This was denied by Mr. Abuzeid. 5

As the full price of the vessel was not paid - the two cheques having not been honoured - the firm filed in the Admiralty Court of Cyprus Action No. 271/79 by which they claimed the balance of the sale price. At the same time the ship, which was at the time anchored at Limassol, was arrested. That action was defended by Cerise Maritime Co. S.A., a company registered in Panama, which claimed ownership of the ship alleging that they had bought it from Mr. Abuzeid. They further claimed that the ship, after the sale, was renamed «Sherry Joy». 10 15

In defending that action Cerise called Mr. Abuzeid as a witness, who alleged that he had bought from the plaintiff his share in the ship by paying to him in cash the sum of St. £285,000.

Two issues were raised in that action, namely -

(a) Whether, in the light of the provisions of the contract entered between the plaintiff, Abuzeid and the firm, the plaintiff could transfer his share to anybody; and 20

(b) the veracity of the evidence of Mr. Abuzeid that he had paid the plaintiff the sum mentioned above.

As regards the first issue I found that the ownership of the ship, since its full price had not been paid to the yard, had not passed to the plaintiff or Mr. Abuzeid and that the plaintiff was not entitled to transfer his share. 25

As regards the second issue, I found that the story given by the defence was concocted, unreliable and untrue and I dismissed it without hesitation. 30

The reasons for my said findings are to be found at pages 195 - 197 of the (1987) 1 C.L.R. in which the judgment I delivered in Admiralty Action No. 271/79 appears, starting at p. 186.

It is to be noted that no appeal was filed against my decision and that as a result the proceeds of the sale of the ship were paid to the 35

plaintiff in Action No. 271/79 in part satisfaction of the judgment debt in that action.

In the light of the above and having heard the evidence adduced by the defendants in this action, who are the same as those in  
5 Action No. 271/79, I hold that their defence must fail.

Having reached the above conclusion, I am at a loss to what judgment the plaintiff is entitled.

Having carefully considered the matter, I have come to the conclusion that the plaintiff would have been entitled to a  
10 declaration that he was entitled to be registered as owner of so much percentage shares of the ship as it represented the money he contributed towards the value of the ship. Further, the plaintiff, the  
evidence of whom I accept on this issue, is entitled to judgment for  
U.S. \$30,000 which he paid for bunkers for the ship to sail from  
15 Rotterdam to Abu Dhabi.

In the result, there will be a declaration and judgment in favour of the plaintiff as above.

As regards costs, I have come to the conclusion that since at the time of the filing of this action and the completion of its hearing  
20 judgment in Admiralty Action No. 271/79 had not yet been delivered, the plaintiff is entitled to his costs.

Costs to be assessed by the Registrar.

*Declaration and judgment in  
favour of plaintiff as above.*