

[A. LOIZOU, J.]

PAPAVASSILIOU & TSANGARIDES AND OTHERS,

*Plaintiffs,*

v.

EAST MEDITERRANEAN LINE AND ANOTHER,

*Defendants.*

(Admiralty Action No. 55/73).

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*Carriage of goods by sea—Contract of—Breach—Damage to cargo—Action for damages against ship owners for such breach—Measure of damages—Claim of damages in terms of foreign currency—Goods invoiced in U.S.A. dollars—Conversion into Cyprus Pounds—Material time—Conversion to be made at the rate of exchange prevailing at the date at which the goods (the damaged goods) were delivered at Famagusta port i.e. January 24, 1973.*

*Foreign currency—Conversion into Cyprus Pounds—Rate of exchange—Claim for damages for breach of contract (or for a tort) in terms of foreign currency—Must be converted into Cyprus Pounds—At the rate of exchange prevailing at the date of the breach or the tortious act—See further supra.*

*Exemption clause in a contract—Loss due to exempted cause—Burden of proof lies on the person seeking to be excused.*

*Contract—Exemption clause.*

*Damages—Breach of contract of carriage of goods by sea—Measure of damages—See supra.*

*Currency—Foreign currency—Conversion into Cyprus currency—Rate of exchange—See supra.*

The plaintiffs in this admiralty action, cargo owners, claim against defendant 2, the ship owners, in respect of damage to a cargo of steel shape tubes shipped on board motor-vessel "SOTERIOS L" from Piraeus to Famagusta. In the relevant bills of lading it was stated that the goods were stowed under deck. But after the bundles of goods were

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cleared from Customs at Famagusta port Lloyd's agents, on the application of the plaintiffs-cargo owners, held a survey on the said consignment and found all the steel tubes to be badly rusty due to contact with water. It was the contention of the plaintiffs that it was a condition of the contract of carriage of the said goods that same would be stowed under deck and that in breach of this clause the goods were carried above deck with the result that during the voyage they have been wetted by sea water and damaged to the extent appearing in the Lloyd's reports referred to hereinabove.

Term 1 of the Bill of Lading provides, *inter alia*, that "the owners, moreover, reserve to themselves the right of stowing on deck at shipper's risk and danger all such goods if from their nature or dimensions the master shall not consider proper or safe to be stowed below deck".

The main questions decided in this case are three, as follows :-

*First question:* The effect of the exemption clause referred to above.

*Second question:* Measure of damages.

*Third question.* The goods being invoiced in U.S.A. dollars how the conversion into Cyprus pounds should be made.

Held, I (*As to the first question above*):

- (1) The burden of proof that a loss is due to an exempted cause falls upon the ship-owner who seeks to excuse himself.
- (2) In the present case the owners have not sought to excuse themselves from this exempted cause; the action in fact went undefended; and if anything, the acceptance of the goods under deck (*see* the Bills of Lading, *supra*) points to the contrary.

Held, II. (*As to the second question above viz. the measure of damages*).

- (1) In the case of damage to goods the comparison is between the net amount which could have been realised at the time and place of arrival, if sound,

and the net amount which could in fact be realised in the open market (Cf. Carver on Carriage by Sea, 12th ed. vol. 2 p. 1227).

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- (2) In the case in hand the damage suffered by each plaintiff has been calculated by assessing the value of the damaged goods on the basis of the invoice price, and adding thereto lost profits at 15% plus import duty, clearance fees as well as the survey fee. According to the evidence the figures arrived at by this calculation, coincide with the difference in the market value of the goods at the time and place of delivery. So, it makes no difference for the purposes of this judgment whether the amount to be awarded is calculated as above, or on the basis of the difference in the market value.

Held, III. (*Regarding the third question, above viz. conversion of a claim in terms of foreign currency into Cyprus Pounds*):

- (1) A claim for damages for breach of contract (or for tort) in terms of a foreign currency must be converted into Cyprus Pounds at the rate of exchange prevailing at the date of the breach (or of the tortious act). (See *Re United Railways of Havana and Regla Warehouses Ltd.* [1960] 2 All E.R. 332 H.L.; see also *S. S. Celiq v. S. S. Voltorno* [1921] 2 A.C. 544 and the case of *Syndic in Bankruptcy of Nasrallah Khoury v. Khayat* [1943] 2 All E.R. 406; also, *L. Loucas Ltd. and Another v. Export Credits Guarantee Department* [1973] 2 All E.R. 984).
- (2) On the evidence adduced the rate of exchange of U.S.A. dollars against Cyprus Pounds at the time material to these proceedings was 2.610 and it is on this basis that the conversion must be made. Such date is the 24th January, 1973, the date at which the goods were delivered.

*Judgment for the plaintiffs as above. Order for costs £83 in favour of the plaintiffs.*

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Cases referred to :

*Re United Railways of Havana and Regla Warehouses Ltd.* [1960] 2 All E.R. 332, H.L.;

*S. S. Celia v. S. S. Volturno* [1921] 2 A.C. 544;

*Syndic in Bankruptcy of Nasrallah Khoury v. Khayat* [1943] 2 All E.R. 406;

*L. Loucas Ltd. and Another v. Export Credits Guarantee Department* [1973] 2 All E.R. 984.

#### Admiralty Action.

Admiralty action for damage caused to a cargo of steel shape tubes of various sizes shipped on board motor-vessel "Soterios L." from Piraeus to Famagusta.

*L. Papaphilippou*, for the plaintiffs.

No appearance for the defendants.

The following judgment was delivered by :-

A. LOIZOU, J. : The plaintiffs, cargo owners, claim against defendants 2, ship owners, in respect of damage to a cargo of steel shape tubes of various sizes shipped on board motor-vessel SOTERIOS L. from Piraeus to Famagusta.

Defendants 2 acknowledged this shipment on board their vessel by Bills of Lading, copies of which have been produced as *Exhibits 'A' - 'H'* duly signed by their agent and it was stated therein that the goods were stowed under deck. Upon arrival of the ship in Famagusta and after the bundles of goods were cleared from Customs Lloyd's agents, on the application of the consignees, held a survey on the said consignment and found all the steel tubes contained in the bundles to be badly rusty due to contact with water. Copies of these reports have been produced as *exhibits*.

It is the contention of plaintiffs that it was a condition of the contract of the carriage of the said goods that same would be stowed under deck and that in breach of the said terms the goods were carried above deck. As a result, they had been wetted by sea water during the voyage and damaged to the extent appearing in the Lloyd's reports hereinabove referred to, whereas,

had they been shipped under deck, no such damage would have been caused. Further and in the alternative, it has been claimed by plaintiffs that defendants 2 had a duty as carriers to carry the goods in question in safety to their destination without exposing them to any risk or damage by sea water and/or otherwise.

Leave to seal and serve notice of the writ of summons outside the jurisdiction on the two defendants was granted by the Court, but at the request of plaintiffs no service was effected on defendants 1—who acted as ship's agents and signed the Bills of Lading on behalf of the master—but defendants 2, though duly served, entered no appearance and the claim against them went undefended.

It may be convenient at this stage to refer to term 1 of the Bills of Lading in question which provides, *inter alia*, “..... The master and owners are entitled to carry every kind of goods of inflammable, explosive, corrosive, liquid strong smelling or otherwise dangerous nature, arms and ammunition, the shippers and consignees resigning any claim and demands resulting therefrom. The owners, moreover, reserve to themselves the right of stowing on deck at shipper's risk and danger all such goods if from their nature or dimensions the master shall not consider proper or safe to be stowed below deck”.

This is an exemption clause and the burden of proof that a loss which has occurred has been due to an exempted cause, has been held to fall upon the ship owner who seeks to excuse himself. The owners have not sought to excuse themselves from this exempted cause; if anything, the acceptance of the goods under deck points to the contrary. (See Carver, Carriage By Sea, 12th Ed. vol. 1, paragraph 154).

The plaintiffs by the evidence called have substantiated their claim. It remains now to consider the question of damages to which each plaintiff is entitled.

The particulars of damage in respect of each plaintiff, appear in paragraph 6 of the Statement of Claim and are based on the respective Lloyd's survey reports. The amounts are given in dollars, but the total in U.S.

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dollars had been converted into Cyprus Pounds, so, in the circumstances the claim is as it should be, in Cyprus Pounds.

It seems to me that the principle of law applicable to a case where there is a claim for damages for breach of contract, or for tort in terms of a foreign currency, must be converted into Cyprus Pounds at the rate prevailing at the date of breach or tortious act. Furthermore, when a plaintiff sues in the Courts of Cyprus the claim and judgment must be in terms of Cyprus Pounds. The aforesaid has been well settled under English Law applicable to our case, in, *inter alia*, the case of *Re United Railways of Havana and Regla Warehouses Ltd.* [1960] 2 All E.R., 332, where Viscount Simonds makes an extensive analysis of the law dealing with authorities that cover a period of more than 300 years regarding the question as to what sum in Sterling is recoverable by a person suing in the Courts of England, for a sum of money payable in foreign currency. Also, of assistance are the cases of *S. S. Celia v. S. S. Volturmo* [1921] 2 A.C. 544, and the case of *Syndic in Bankruptcy of Nasrallah Khoury v. Khayat* [1943] 2 All E.R. 406, as well as the case of *L. Loucas Ltd. and Another v. Export Credits Guarantee Department* [1973] 2 All E.R., 984.

Evidence has been adduced to the effect that the rate of exchange of U.S. dollars against Cyprus Pounds at the time material to the present proceedings, was 2.610 and it is on this basis that the conversion must be made. Such a date is the 24th of January, 1973, the date at which they were delivered.

In the ordinary course of things the value of the goods for which compensation must be made, if they have been lost or damaged, is that which they would have had at the time and place at which they ought to have been delivered in proper condition. As pointed out in *Carver on Carriage By Sea*, 12th Ed. vol. 2, p. 1227 —

“The value is ordinarily estimated by reference to the market price at the place. But if there is no market at the estimation in which such goods can be replaced, so that they could only be bought there, if at all, at a fancy price, that would not be the proper measure of their value. In *O’Hanlan*

v. *Great Western Railway* [1865] 6 B. & S. 484, it was held that the value in such a case must be ascertained by considering their cost at the place of manufacture, and the expenses of transit, and adding a reasonable sum for profit to the importer.

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In the case of damage to goods the comparison is between the net amount which could have been realised at the time and place of arrival, if sound, and the net amount which could in fact be realised in the open market."

In the case in hand the damage suffered by each plaintiff has been calculated by assessing the value of the damaged goods, on the basis of the invoice price, and adding thereto lost profit at 15 per cent, plus import duty and clearance fees, as well as the survey fees. According to the evidence adduced, the figures arrived at by this calculation, coincide with the difference in the market value of the goods at the time and place of delivery. So, it makes no difference for the purposes of this judgment, whether the amount awarded is calculated as above, or on the basis of the difference in the market value. The amounts claimed by each plaintiff converted into Cyprus Pounds at the rate hereinabove indicated, are as follows :-

plaintiff 1	£409.950.
plaintiff 2	£ 52.000.
plaintiff 3	£161.500.
plaintiff 4	£357.200.
plaintiff 5	£271.700.
plaintiff 6	£205.900.
plaintiff 7	£392.500.
plaintiff 8	£318.700.

For all the above reasons, there will be judgment for each plaintiff, accordingly, with £83.- costs.

*Judgment and order  
for costs as above*