

THE FIRST NATIONAL BANK OF CHICAGO,

Plaintiffs,

v.

THE SHIP "BLOCKLAND",

Defendants.

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FIRST
NATIONAL
BANK OF
CHICAGO
v.
SHIP
"BLOCKLAND"

(Admiralty Action No. 102/77).

Admiralty—Vessel under arrest—Abandoned by owners and her safety in danger—Crew on board the ship—Order directing, inter alia, their dismissal, payment of their wages and their repatriation—Made at the instance of a creditor under a registered mortgage who undertook to pay off all their claims and meet all expenses arising as a result of this order—Authority to Marshal to appoint skeleton crew and take steps necessary for safety of ship.

The defendant ship was on February 1, 1977 arrested at the instance of plaintiffs in another action (No. 24/77) in which they claimed salvage expenses and damages in the region of U.S. dollars 850,000.

For a long time the shipowners have ceased to provide for the wages of the master, officers and crew of the said ship and as a result the master, all officers and certain members of the crew, have abandoned the said ship and she was lying at Roads Larnaca on her anchors completely uncontrolled. There remained eight members of the crew on board the vessel but they were not receiving any wages and they were in absolute need of food and drinking water, which has ceased to be provided, and they remained on board the vessel only urged to do so by necessity, as they could not pay for their repatriation expenses; they did not seem to expect any help from the shipowner who, although continuously and urgently requested to help, has not taken any steps to remedy the situation; they could not feel any responsibility towards the defendant ship or the shipowner who has abandoned them and it was asserted that great problems and trouble would ensue unless they were paid, dismissed from the ship and repatriated. The absence of any responsible officer on board the ship could prove disastrous, as a change in the weather could result to her sinking or grounding and

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these dangers could not be minimized unless some responsible officers were employed and put on board the ship in order to maintain and look after her as well as to sail and navigate her in case of bad weather.

The applicants who, as plaintiffs in this action claimed, *inter alia*, the amount of DM 11,371.774.22 under a registered mortgage, against the defendant ship, by means of an *ex-parte* application they applied for an order of the Court authorising them to negotiate and agree the settlement of the claims for wages of the said eight crew members and to dismiss and repatriate them after paying for their repatriation expenses and for their wages. They further applied for an order that the expenses to be incurred by them, in connection with the above matters, be expenses incurred in making the defendant ship available as security for the claim of the applicants under the registered mortgage; that the Marshal of the Admiralty Court be authorised to appoint a proper skeleton crew on board the vessel and take any such steps as may appear necessary for the safety of the defendant ship; and that the expenses to be incurred by the Marshal in carrying out all or any of these directions shall form a first charge on the defendant ship but shall be advanced by the applicants to the Marshal as required. 5
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The said eight members of the crew have instituted proceedings in this Court for their wages and their claim had priority over that of the applicants. 25

Held, (1) that in circumstances such as these of the present case the Marshal, although he is only custodian of arrested property, provides for the crew under the authority of the Omnibus order; that as expenses of this nature are a drain, ultimately, on the proceeds of sale of the ship, if one of the principal creditors thinks fit he may apply to the Court for leave to pay off the crew and stand in their shoes; and that, alternatively, the Marshal may be ordered to repatriate a foreign crew and include the expense of so doing in his charges. 30
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(2) That although the expenses of a move form part of the marshal's expenses and are either recovered from the releasing party or are a first charge on the proceeds of sale, as well as the expenses for the crew, yet, in this case, the problem of providing funds is met by the applicants' willingness to advance them to the marshal as required; and that on the facts 40

placed before this Court and on the law as above stated this is a proper case to grant the order applied for (pp. 214-216 *post*).

Application granted.

5 *Per curiam:* (1) I have decided to grant this application without notice to any other party in view of its very urgency and because I have felt that this course would be fair and just and in the interest of justice. It is justified by the total absence of concern in the ship and her crew on the part of her owners.

10 (2) By authorising the dismissal of the crew, this should in no way be taken as discharging the owners from any liability they may have towards these members of the crew arising out of their contract of employment or that any pronouncement is made other than merely authorising their discharge for the sake and the purposes of these proceedings.

15 Cases referred to:

The Arantzazu Mendi [1939] A.C. 256 at p. 266;

The Leoborg [1963] 2 Lloyd's Rep. 128;

Borneo Co. v. "Mogileff" and Freight [1920] 7 Ll.L.Rep. 130;

The "General Serret" [1925] 23 Ll.L.Rep. 14 at p. 15.

20 **Ex parte application.**

Ex parte application for an order, *inter alia*, authorizing applicants to negotiate the settlement of the claims for wages of eight crew members of the defendant ship and to pay and discharge all such fair claims being claims with priority over the claims of the applicants.

25 *E. Psillaki* (Mrs.), for applicants.

The following decision was delivered by:-

30 A. LOIZOU, J.: The applicants who as plaintiffs in this action, claim against the defendant under a registered mortgage dated the 18th April, 1974 the Cyprus pound equivalent of DM 11,371.774.22 being the principal outstanding as at 6th April, 1977 and of DM 399,851.41 being interest accrued under the said mortgage, Deed of Covenants and Loan Agreement until the same date, by
35 the present *ex-parte* application apply for an order of the Court:

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(a) Authorising the applicants to negotiate and agree the settlement of the claims for wages of eight crew members of the defendant ship—plaintiffs in Admiralty Actions Nos. 92, 93, 94, 95, 96, 97, 98 and 99 of 1977—and to pay and discharge all such fair claims being claims with priority over the claims of the applicants in the above action. 5

(b) Authorising the applicants to dismiss and repatriate the above crew members after paying for their repatriation expenses and for their claims for wages as above. 10

(c) Directing that the expenses to be incurred by the applicants in connection with the above be expenses incurred in making the defendant ship available as security for the claim of the applicants under the Registered mortgage. 15

(d) Directing that the Marshal of the Admiralty Court be authorised to appoint a proper skeleton crew on board the vessel.

(e) Directing that the Marshal of the Admiralty Court be authorised to take any such steps as may appear necessary for the safety of the defendant ship. 20

(f) Directing that the expenses to be incurred by the Marshal in carrying out all or any of the Directions under (e) above shall form a first charge on the defendant ship but shall be advanced by the applicants to the Marshal as required. 30

(8) Directing and/or authorising any other act or matter as to the Honourable Court may deem fit.

The facts relied upon are set out in the accompanying affidavit and the cables of the Marshal to the Chief Registrar of this Court (*exhibits 'A' and 'X'*). Briefly, they are as follows: 35

The defendant ship has been arrested at Larnaca since the 1st February, 1977, having been so arrested at the instance of plaintiffs in Admiralty Action No. 24/77 in which the claim for salvage expenses and damages is in the region of US dollars 850,000. 40

For a long time now the ship owners have ceased to

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5 provide for the wages of the master, officers and crew of the said ship and as a result, the master and all officers, as well as certain members of the crew, have abandoned the defendant ship now lying at Roads Larnaca on her anchors completely uncontrolled.

10 The eight members of the crew remaining on board the vessel, have not received any wages for a long time now and they are in absolute need of food and drinking water which has ceased to be provided and they remain on board the vessel only urged to do so by necessity, as they cannot pay for their repatriation expenses. They do not seem to expect any help from the ship owner who, although continuously and urgently requested to help, has not taken any steps to remedy the situation.

15 They cannot feel any responsibility towards the defendant ship or the ship owner who has abandoned them and it is asserted that great problems and trouble will ensue unless the said crew is paid, dismissed from the ship and repatriated.

20 The absence of any responsible officer on board the ship could prove disastrous, as a change in the weather could result to the sinking or grounding of the defendant ship, and these dangers cannot be minimized, unless some responsible officers and as suggested in para. 7 of the said affidavit, "one Master and one Engineer as well as some able seamen, in other words a so-called skeleton crew, is employed and put on board the ship in order to maintain and look after her as well as to sail and navigate her in case of bad weather".

30 The applicants are willing and ready to advance and make available all necessary funds to the Marshal for the purpose of securing such a skeleton crew consisting of loyal and conscientious seamen.

35 The first cable from the Marshal (*exhibit 'A'*), was sent to the Chief Registrar of this Court on the 6th April, 1977 and the second cable on the 15th April, 1977 (*exhibit 'B'*). They read:

40 "REFER ARREST SHIP 'BLOCKLAND' JUDGMENT ADMIRALTY COURT 23/77 AND INFORM THAT CAPTAIN AND FIRST ENGINEER

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ABANDONED SHIP WHICH REMAINS AN-
CHORED WITHOUT ANY SAFETY STOP
THERE ARE ON BOARD THE SHIP EIGHT
SAILORS FOREIGNERS SHORT OF FOOD AND
WATER SUPPLY FOR SAFE DETENTION WE
NEED CREW I.E. CAPTAIN FIRST ENGINEER
ASSISTANT ENGINEER AND AT LEAST SIX
SAILORS WHOSE MONTHLY REMUNERA-
TION ESTIMATED £3,200 AND THE VICTU-
ALLING £900 MONTHLY STOP AS CREW
UTTERS THREATS THAT IT WILL SABOTAGE
SHIP AND GENERALLY SITUATION TERRI-
BLE REQUEST SECURE RELEVANT EXPEN-
DITURE AND INFORM ME WHICH MEASURES
WE TAKE FOR SAFE KEEPING OF SHIP STOP
MARSHAL.

M.V. 'BLOCKLAND' UNDER ARREST AT
LARNACA ABANDONED BY OWNERS MAS-
TER AND OFFICERS STOP EIGHT CREW
MEMBERS ALL FOREIGNERS REMAIN A-
BOARD WITHOUT FOOD WATER AND OTHER
ELEMENTARY NECESSITIES STOP LARGE
AMOUNTS ARE DUE TO THEM AS WAGES
STOP CREW MEMBERS ARE PRACTICALLY
WILD BECAUSE THEY AND THEIR FAMILIES
ARE STARVING STOP VESSEL CONSIDERED
UNSAFE AT ANCHORAGE WITHOUT OFFI-
CERS STOP SUGGEST BRING HER TO LIMAS-
SOL AND MOOR HER INSIDE BREAKWATER
PORT STOP AUTHORISE ACTION AND EX-
PENDITURE ESTIMATED CL500 STOP PLEASE
SECURE FUNDS FOR CREW VICTUALLING".

On the basis of the aforesaid facts, it has been contend-
ed on behalf of the applicants that the conclusion may be
drawn that she has been abandoned by her owners, her
safety is in jeopardy and in imminent danger of sinking or
of being badly damaged and that the order of the Court
applied for is the only remedy to the situation and the only
way of maintaining the applicants' security of the ship.

The aforesaid members of the crew have instituted pro-
ceedings in this Court for their wages (Actions Nos.
92/77 - 99/77, both inclusive), which claim has priority

over that of the applicants and which the applicants are prepared to settle, in addition to paying for their repatriation expenses.

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5 It appears that the plight of this crew not unique in its nature, occurs when ships are under arrest and for some reason or other, credit cannot be obtained and considerable hardship is suffered by seamen when their supplies are exhausted, unless assistance is given. As pointed out in the British Shipping Laws, 1 Admiralty Practice, p. 272, para.
10 274,

"In such circumstances, the marshal, although he is only the custodian of arrested property, provides for the crew under the authority of the omnibus order.

15 Expenses of this nature are a drain, ultimately, on the proceeds of sale of the ship, and therefore if one of the principal creditors thinks fit he may apply to the court for leave to pay off the crew and stand in their shoes.

20 Alternatively, the marshal may be ordered to repatriate a foreign crew and to include the expense of so doing in his charges. It would not be practical to ask for such a direction without including a request that an advance be made in respect of outstanding wages, otherwise, the crew would probably refuse to go".
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The authorities cited for the aforesaid proposition are, *The Arantzazu Mendi* [1939] A.C. 256, 266, *The Leoborg* [1963] 2 Lloyd's Rep. 128, *Borneo Co. v. "Mogileff" and Freight* [1920] 7 Ll.L.Rep. 130 and *The "General Serret"*
30 [1925] 23 Lt.L.Rep. 14, 15.

In the *Mogileff and Freight* case (*supra*) the plaintiffs were given power to pay off all claims of the crew supported by maritime lien and to stand in the shoes of the crew with regard to those claims, and it was stated there that
35 "somebody must get the crew out of the ship which was to be sold by the marshal and if necessary, the plaintiffs would have leave to provide *viaticum*".

In the *Serret* case (*supra*), it was stated that the Judge would order the admiralty marshal to repatriate the crew,

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as he had suggested, and it was added that "if someone could be found who would pay the crew's wages and stand in their shoes in the claim against the owners, it would be an advantage".

In the present case the applicants, one of the principal creditors, if not the principal creditor, concerned about the safety of the ship, have offered to bear themselves the expenses for the repatriation of the remaining crew and settle their claims for wages in addition to bearing the expenses to be incurred by the Marshal in carrying out the directions of this Court regarding the steps that may appear necessary for him for the safety of the defendant ship which, directions, are left to his discretion, but naturally may include, *inter alia*, the steps suggested by him in his cable (*exhibit 'B'*), namely, "moving her to Limassol and mooring her inside breakwater port".

It is true that if a vessel were lying in an unsafe place, when arrested, the Marshal who has an overriding responsibility for the safe custody of the arrested property, could apply *ex-parte* for an immediate order to move her, provided that she could be moved, if the order for the arrest did not meet the circumstances of the case (see British Shipping Laws (*supra*), p. 120). But as in the order prayed directions are sought by the applicants authorizing the Marshal to take any such steps as may appear necessary for the safety of the defendant ship, an application by the Marshal becomes superfluous.

Although the expenses of a move form part of the marshal's expenses and are either recovered from the releasing party or are a first charge on the proceeds of sale, as well as the expenses for the crew (see British Shipping Laws (*supra*) para. 272), yet, in this case, the problem of providing funds is met by the applicants' willingness to advance them to the Marshal as required.

On the facts placed before me and on the law as I have already stated it to be by reference to the English authorities, I have come to the conclusion that this is a proper case to grant the order applied for, as set out in paras. (a) - (f), inclusive.

In conclusion, I would like to say that I have decided to

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grant this application without notice to any other party,
in view of its very urgency and because I have felt that this
course would be fair and just and in the interest of justice.
It is justified by the total absence of concern in the ship
5 and her crew on the part of her owners. I have given due
consideration as to whether notice of these proceedings
should have been given to the remaining members of the
crew, but I have thought it unnecessary, as the terms un-
der which their dismissal from the ship and their repatria-
10 tion is granted, must satisfy their full claims and meet their
express wishes, and that any further delay would be de-
trimental to all concerned.

Furthermore, by authorizing their dismissal as prayed
for, in paragraph (b) of the application, in no way this
15 should be taken as discharging the owners from any liabi-
lity they may have towards these members of the crew
arising out of their contract of employment or that any
pronouncement is made other than merely authorizing
their discharge for the sake and for the purposes of these
20 proceedings.

In all the circumstances the applicants, in my view,
were fully justified in taking this course for the safeguard
of the res which constitutes the security of the money they
advanced.

25 In the result, the application is granted as per para-
graphs (a) - (f) inclusive, with costs in cause.

Application granted.
Costs in cause.