

1980 September 23

[DEMETRIADES, J.]

SCHEEPSWERF BODEWES-GRUNO,

Plaintiffs,

v.

THE SHIP "ALGAZERA" NOW LYING
AT THE PORT OF LIMASSOL,

Defendants.

(Admiralty Action No. 271/79).

Admiralty—Ship—Sale pendente lite—Ship under arrest—Her condition deteriorating and her value diminishing—Lack of interest by owners to bail her out, pay wages of the crew or keep skeleton crew to maintain her—Order for her appraisal and sale pendente lite—Rules 74 to 76 of the Cyprus Admiralty Jurisdiction Order, 1893. 5

The plaintiffs in this action moved the Court for an order of sale pendente lite of the defendant ship. The ship has been arrested on the application of the plaintiffs following the filing of an action by them for the equivalent in Cyprus Pounds of D. Fls. 650.000 being balance of agreed price in respect of the construction of the ship; and though it was anchored in the new port of Limassol it was exposed to weather conditions and to dangers of collision with the jetty and with ships entering or going out of the harbour; that this danger was becoming greater due to lack of fuel and the unreadiness of the engines of the ship; that as a result of lack of maintenance of the hull due to the absence of crew to maintain it the hull and other parts of the vessel were suffering from corrosion; and that the engines and the generators were also deteriorating. 10 15 20

Held, that the condition of the ship is most unsatisfactory, is deteriorating and her value diminishes from day to day; that these factors, coupled with the lack of interest on the part of the owners of the ship to bail her out, their failure to pay the wages of the crew or to keep a skeleton crew to maintain her, are good 25

reasons for the making of the order applied for; and that, accordingly, an order for the sale* of the defendant ship pendente lite after an appraisal of its value and the bringing of the proceeds of the sale into Court will be made.

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Application granted.

Cases referred to:

The "Myrto" [1977] 2 Lloyd's Rep. 243 at p. 260.

Application.

10 Application for an order that the defendant ship be appraised and sold pendente lite.

L. Papaphilippou, for the applicants.

D. HadjiChambis for *E. Montanios*, for the respondents.

Cur. adv. vult.

15 DEMETRIADES J. read the following judgment. By their present application the plaintiffs claim:—

- (a) An order of the Court directing the sale pendente lite of the defendant ship, which is now under arrest and under the custody of the Marshal at the port of Limassol.
- 20 (b) Directions that the proceeds of the sale of the ship be brought into Court and the fees and expenses of the Marshal or other appointed person be vouched and submitted to the Registrar of the Court.
- 25 (c) Any other order or directions as the Court may consider proper under the circumstances.
- (d) The costs of this application.

The plaintiffs in the present Action are a firm of ship-builders and by their Action they claim:—

- 30 (a) The equivalent in Cyprus Pounds of D. Fls. 650.000 being balance of agreed price in respect of the construction of the ship.
- (b) Damages.
- (c) Legal interest and costs.

* On the same day the Court, adopting the facts and reasoning of this judgment, made another order for the sale pendente lite and appraisal of the defendant ship on the application of the plaintiffs in Admiralty Action No. 279/79.

The ship is registered in Abu Dhabi and flies the flag of the United Arab Emirates. She has been arrested in the Action and remains under such arrest. Her value, according to an appraisal made by the Admiralty Marshal by virtue of an order of the Court was, as on the 26th March, 1980, approximately 5
1.000.000.00 U.S. Dollars.

The grounds on which this application is based appear in an affidavit sworn by Mr. Christakis Christophides, an advocate employed by the firm of lawyers appearing for the plaintiffs, and they are in a nutshell:- 10

- (a) The vessel is uninsured and in case of damage by rough sea or winds or other perils of the sea, the claim of the plaintiffs will remain unsatisfied.
- (b) The vessel is at present in the anchorage of the port of Limassol and is exposed to the risk of damage by the perils of the sea. 15
- (c) The costs of the arrest of the vessel, as well as the crew wages which are unpaid, are increasing day after day considerably.
- (d) The owners of the vessel have failed so far to bail out the vessel and, apparently, they exhibit indifference regarding her bailing out. 20
- (e) The vessel is a reffer and/or of such construction that her use is of a limited kind of trade and that because of this she may not fetch sufficient price in view of the limited demand of such kind of vessels. 25

The application was strongly opposed by the defendants who, in an affidavit sworn by Miss Persefoni Panayi and which accompanies the opposition of the defendants, allege that the order applied for by the plaintiffs-applicants cannot be granted as the defendants dispute the jurisdiction of the Court and the validity of the claim; that the application cannot be entertained before the determination of the application for the warrant of arrest; that the vessel is safe from any hazardous weather conditions or other dangers; and that the vessel is not, by reason of her continued arrest, deteriorating or her value diminishing to any appreciable extent. 30 35

The defendants, further, in the said affidavit, allege that there

are no mortgages or other encumbrances of judgments against the defendant ship and that the claims by the crew against the defendant ship are disputed and defended. The defendants, further allege that they are suffering great damage as a result of the arrest of the ship and their consequent inability to employ her on her normal trading operations and that a sale of the ship pendente lite would cost further and irreparable damage to them. They deny that they have in any way exhibited indifference in bailing out the vessel but that they have been prevented from so doing through impecuniosity resulting from lack of revenue caused by the arrest.

In addition to the affidavit of Mr. Christophides filed in support of the application—and who was tendered as a witness and was cross-examined by the respondents—the applicants called two witnesses, (a) Mr. M. Savva, a Registrar of this Court who has in his possession the files of Admiralty Actions, and (b) Mr. Yiannis Karidjis, the Marshal. The defendants-respondents tendered for cross-examination Miss Panayi, the affiant of the affidavit which was filed in support of the opposition.

The application is based on rules 74 to 76 of the Cyprus Admiralty Jurisdiction Order 1893 which read:—

“74. It shall be lawful for the Court or Judge, either before or after final judgment, on the application of any party and either with or without notice to any other party, by its order to appoint the marshal of the Court or any other person or persons to appraise any property under the arrest of the Court, or to sell any such property either with or without appraisal, or to remove or inspect and report on any such property or to discharge any cargo under arrest on board ship.

75. Every order appointing any person to appraise or to remove or to discharge any such property, shall direct the person or persons appointed immediately after the carrying out of the said order forthwith to furnish to the Registrar a statement in writing, signed by such person or persons, showing the value of the property appraised or what has been done under such order, and, in the case of any order to inspect and report, the condition of the property inspected, and showing also the amount of the fees, costs,

charges and expenses payable to or incurred by such person or persons in carrying out the order of the Court.

Every such statement so furnished shall be filed.

76. Every order appointing any person or persons to
 sell any such property, either with or without appraisalment, 5
 shall direct the person or persons so appointed immediately
 upon the completion of the sale to pay into Court the gross
 proceeds of the sale and to furnish to the Registrar a state-
 ment signed by such person or persons showing the amount 10
 of the moneys so paid into Court and the amount of the
 fees, costs, charges, or expenses payable to or incurred by
 such person or persons in carrying out the order of the
 Court; and such statement shall be accompanied by any
 vouchers necessary to show the amount of the moneys
 expended by such person or persons. 15

Every such statement and voucher shall be filed."

In the words of Brandon J. in the *Myrto*, [1977] 2 Lloyd's Rep. 243 at p. 260—

"The question whether an order for the appraisalment and
 sale of a ship under arrest in an action in rem should be 20
 made pendente lite, arises normally only in a case where
 there is a default of appearance or defence. In such a case
 it has been a common practice for the Court to make such
 an order on the application of the plaintiffs on the ground 25
 that, unless such order is made, the security for their claim
 will be diminished by the continuing course of maintaining
 the arrest, to the disadvantage of all those interested in
 the ship, including, if they have any residual interest, the
 defendants themselves. Where the defendants to an action
 in rem against a ship appear in the action with the intention 30
 of defending it, they almost invariably obtain the release
 of the ship from arrest by giving bail or providing other
 security for the claim satisfactory to the plaintiffs. For
 this reason there appears to be no reported case in which 35
 the Court has had to consider in what circumstances it
 would be right to make an order for appraisalment and sale
 of a ship pendente lite in a defended case.....
 I accept that the Court should not make an order for the
 appraisalment and sale of a ship pendente lite except for

no reason and this whether the action is defended or not. I accept further that, where the action is defended and the defendants oppose the making of such an order, the Court should examine more critically than it would normally do in a default action the question whether good reason
5 for the making of an order exists or not".

As it has not been contended by the defendants in the present application that an order for the sale of the ship pendente lite should not be made because the claim of the plaintiffs is contested
10 and defended, what I shall have to decide is whether there are good reasons for the making of the order applied for.

No argument was advanced by the respondents in support of their grounds of opposition that the order cannot be granted as the defendants dispute the jurisdiction of the Court and the
15 validity of the claim and that the application for the warrant of arrest has not been determined and I shall, therefore, not deal with this as I consider same to have been abandoned.

As I have already mentioned, the applicants called two witnesses in addition to their affidavit which was filed in support
20 of their application. Mr. Savva, the Registrar of this Court, who is one of their witnesses, produced a number of Admiralty Action files and stated that the vessels involved in them were sold by public auction after an order of the Court and after judgment was given in the actions and that, with a few excep-
25 tions, the prices fetched were much less than those of the appraised values. This evidence I find of no help and in fact it is immaterial to the reasons that the Court should have in mind when deciding whether an order of this nature should be made.

The evidence which is material for deciding the present application is that of the Marshal. The Marshal, in his evidence, spoke about the dangers to the vessel, safety and her condition, both as regards her hull and engines. About safety, the Marshal told the Court that though the vessel is anchored in the new port
30 of Limassol with both its anchors dropped, it is exposed to weather conditions and to dangers of collision with the jetty and with ships entering or going out of the harbour. Further, this
35 danger, he said, is becoming greater due to lack of fuel and the unreadiness of the engines of the ship. Regarding the condition

of the ship, the Marshal said that as a result of lack of maintenance of the hull due to the absence of crew to maintain it, the hull and other parts of the vessel are suffering from corrosion which is becoming worse due to her immobility and electrolisis. The engines and the generators, which have been inactive since January 1980 as a result of lack of bankers as well as spare parts, also deteriorate. 5

I shall not enter into the details of the evidence of the Marshal on the above subjects, as I consider it unnecessary, but in my view the above nutshell of his evidence shows that the condition of the ship is most unsatisfactory, is deteriorating and her value diminishes from day to day. 10

The above grounds, coupled with the lack of interest on the part of the owners of the ship to bail her out, their failure to pay the wages of the crew or to keep a skeleton crew to maintain her, are, in my mind, good reasons for the making of the order applied for. 15

In the result I make an order—

- (a) for the sale of the ship pendente lite after an appraisal of its value, and 20
- (b) that the proceeds of the sale be brought into Court.

Costs of this application against the respondents.

Application granted with costs.