

1981 January 15

[A. Loizou, J.]

NEDERLANDSE SCHEEPHYPOTHEEKBANK
AND ANOTHER,

Plaintiffs,

v.

THE SHIP "SEA GLORY",

Defendants.

(Admiralty Action No. 91/79).

Admiralty—Ship—Creditors' priorities—Marshal's expenses—Mortgagees—Necessaries men—Priority of Marshal's expenses over the other two claims—And priority of mortgagees over necessaries men.

5 This was an application for determining the priority between
the claims of the plaintiffs in Admiralty Actions Nos. 91/79
and 122/79 and of the plaintiffs in Admiralty Action No. 116/79.
The claim of the plaintiffs in the first two actions, for which
10 judgments were given, arose out of registered first, second and
third preferred registered foreign mortgages and out of expenses
paid by them as arresting plaintiffs, with the sanction of the
court and upon an undertaking by them, towards the Marshal's
expenses.

15 The judgment debt in Action No. 116/79 arose out of neces-
saries.

20 *Held*, that the claims relating to the mortgages and the
Marshal's expenses have priority over the claim for necessaries;
that, moreover, the Marshal's expenses being expenses incurred
in accordance with the undertaking of the arresting plaintiffs
and with the sanction of the Court, have priority over the foreign
mortgages.

Order accordingly.

Cases referred to:

25 *The Commercial Bank of the Near East Ltd., v. The Ship "Pegasos
III" (1978) 1 C.L.R. 597.*

Application.

Application by the plaintiffs, judgment creditors, for an order determining the priorities of several claims against the defendant ship and for an order directing that they be paid their judgment debt and costs plus an amount of £1,036,940 mils representing an amount paid by them towards the Marshal's expenses out of the proceeds of sale of the defendant ship which have been lodged in Court. 5

S. Karides, for the applicants.

Y. Erotokritou, for the respondents. 10

Cur. adv. vult.

A. LOIZOU J. read the following judgment By the present application the applicants, plaintiffs/judgment creditors in the present action and in Admiralty Action No. 122/79, seek the following order: 15

(a) An order of the Court directing that the applicants—plaintiffs in Admiralty Actions Nos. 91/79 and 122/79 be paid their judgment debts and costs, plus the amount of £1,036,940 mils, representing the amount paid by them towards the Marshal's expenses out of the proceeds of sale of the defendant ship in priority to the claim of the plaintiffs in Adm. Action No. 116/79 and/or directing that the Letter of Guarantee given to the plaintiffs in Adm Action No. 116/79, by the applicants—plaintiffs in Adm. Action No 91/79 and 122/79, pursuant to the order of the Court dated 17.7.79 should be released and/or discharged 20 25

(B) An order of the Court determining the priority between the claims of the applicants—plaintiffs in Adm. Actions Nos. 91/79 and 122/79 and of that of the plaintiffs in Adm. Action No. 116/79. 30

(C) Any further or other relief

(D) The costs of this application".

The relevant facts are as follows:

The defendant ship "SEA GLORY" was arrested by an order of the Court dated 9.4 1979 at the instance of the plaintiffs in the present action. After judgment was obtained therein in default of appearance, the said ship was sold by public auction, 35

pursuant to an order of the Court, for the sum of US \$ 630.000.— or its equivalent in Cyprus Pounds C£227,477.885 mils, which proceeds were deposited in Court. At a later stage, however, the Court made directions for the payment out to the plaintiffs
5 in this action of such proceeds upon furnishing by them of a Bank Guarantee for the benefit of the plaintiffs' judgment—debt and costs in Admiralty Action No. 116/79, that is, the only respondents in this application.

The amount of money referred to in paragraph (A) of the
10 prayer for relief of this application and for which judgments were given in Admiralty actions Nos. 91/79 and 122/79 arose in the first action under a registered first preferred mortgage on the defendant ship and in the second action under a registered second and third preferred mortgage on the same ship
15 and interest due thereunder; all mortgages are dated the 14th March 1978, and were duly executed and registered in accordance with the Greek Law in the Department of Ships Registries and Naval Mortgages of the Central Port of Piraeus, the ship in question being registered under the Greek flag.

20 The judgment debt in action No. 116/79 is for necessaries, namely for bunkers supplied to the defendant ship for her operation or maintenance during the months of November and December 1978, as it appears in the petition.

The amount claimed in paragraph (B) of the prayer for relief
25 are expenses paid by the arresting plaintiffs who covered part of the expenses of the Marshal with the sanctions of the Court as per this order dated 16th April, 1979, in respect of crew fees and their repatriation expenses.

The order of priorities with regard to the subject claims is
30 that the aforesaid amounts under both paragraphs (A) and (B) have priority over the claim for necessaries in Action No. 116/79 and I need not differentiate in an elaborate way as to the order of priority between the amount in prayer (B) and the amount in prayer (A), as they are both due to the same persons.
35 Suffice it to say, however, that the amount under prayer (B) being expenses incurred in accordance with the undertaking of the arresting plaintiffs and in addition to that sanctioned by the Court, have priority over the foreign mortgages referred to in prayer (A), (see *The Commercial Bank of the Near East*

Ltd. v. The ship "PEGASOS III" (1978) 1 C.L.R. p. 597, and the English authorities referred to therein and the summing up given in *The British Shipping Laws, Admiralty Practice*, Vol. 1, para. 1574, at pp. 742 et seq.).

In view of the aforesaid determination of the priorities an order is hereby made for the discharge of the letter of guarantee given as already said by the present applicants upon directions of the Court for the benefit of the plaintiffs in Admiralty Action No. 116/79 in order to cover their judgment-debt and costs, had the determination of the priorities went in their favour.

Costs of these proceedings in favour of the applicants.

Order accordingly.