

1982 April 12

[SAVVIDES, J.]

TAKIS PHOTIADES,

Plaintiff,

v.

THE DIRECTOR OF PORTS AND MARSHAL
OF THE ADMIRALTY COURT,

Defendants.

(Admiralty Action No. 19/78).

Contract—Sale of goods—Auction—When is the sale complete—Highest bidder refusing to comply with his undertaking to pay the amount for which he had bid—Committed a breach of the contract of sale—Liable to pay damages—Section 64 of the Sale of Goods Law, Cap. 267.

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Damages—Breach of contract—Measure of damages—Compensation for pecuniary loss flowing from the breach—Duty to take all reasonable steps to mitigate loss—Sale of ship by auction—Highest bidder refusing to pay the amount for which he had bid—Seller re-auctioning the ship and knocking her down at a lower price—Seller acted in a most reasonable way in an effort to mitigate the loss—Entitled to recover the difference between the price realised at the two auctions as damages for breach of contract.

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Interest—Damages for breach of contract of sale of goods—Award of interest on the amount of damages—Section 3(1) of the English Law Reform (Miscellaneous Provisions) Act, 1934, applicable by virtue of sections 19(a) and 29(2) of the Courts of Justice Law, 1960 (Law 14 of 1960), and section 61 of the Sale of Goods Law, Cap. 267.

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On the 15th December, 1977 the defendant acting under an order of the Court put up for sale by public auction motor vessel "Pegassos III" which was under arrest in the Limassol Port. The value of the ship was appraised and the reserved price was fixed at £180,000.—. The auction took place on the date

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so fixed at which a number of persons interested were present, including the plaintiff. The auction was concluded and the defendant knocked down the ship to the highest bidder who was the plaintiff who had made a bid for the sum of £181,000.—

5 A record was prepared and signed by the Marshal and the plaintiff to the effect that the ship was knocked down to the plaintiff for the sum of £181,000.— After the signing of the said record the plaintiff was asked to pay forthwith the deposit of 10 per cent of the value of the ship. The plaintiff left without paying
10 such deposit and on the following day the defendant cabled the plaintiff holding him responsible for the amount due. The plaintiff refused to pay, alleging that the auction was null and void and not properly conducted and that in any event he did not bid personally but as an agent of a group of companies.

15 The defendant repudiated such allegations and informed the plaintiff that in view of his refusal to comply with the agreement, he was intending to re-auction the ship, holding the plaintiff responsible for any damage which might occur as a result of such refusal. The new auction was published in the daily
20 newspapers and plaintiff was also informed about it, as well as other persons who were interested in the purchase of the ship. The new auction was effected on the 4th January, 1978 at which a number of interested bidders attended, and the ship was knocked down to the highest bidder, a certain Farouk Soultan,
25 for the sum of £103,000.—

The defendant brought all the facts to the notice of the Attorney-General for necessary action to be taken in the case but in the meantime the plaintiff filed the present action whereby he claimed for a declaration that the public auction for the sale
30 of M/V Pegassos III held by defendant at Limassol on the 15th December, 1977 and the subsequent knocking down of the said ship to plaintiff is null and void and of no legal effect whatsoever, and for an order of the Court setting aside the sale and knocking down of the said ship at the price of £181,000.—

35 By his defence the defendant denied the allegations of plaintiff and counterclaimed against him for £78,000.—, being the difference between the price for which the ship was sold to plaintiff and the price realised at the second auction as damages for breach of contract of sale.

40 After repeated adjournments at the request of plaintiff the

action was fixed for hearing on the 29th March, 1982; and as plaintiff failed to appear at the hearing Counsel for defendant, exercising his rights under the Rules of Court, applied for the dismissal of the action for want of prosecution and for leave to proceed with his counterclaim against the plaintiff. There-
 upon the plaintiff's action was dismissed with costs and defendant
 proceeded to prove his counterclaim against the plaintiff. 5

On the counterclaim:

Held, (1) that a sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary
 manner; and, until such announcement is made, any bidder 10
 may retract his bid (see section 64 of the Sale of Goods Law,
 Cap. 267); that sales by auction are subject to the general law
 relating to the sale of goods; that in this case the Court is satisfied
 that the sale had been concluded and this fact was acknowledged 15
 by the plaintiff in writing; that by his refusal to comply with
 his undertaking to pay the amount for which he had bid at the
 auction, the plaintiff has committed a breach of the contract
 of sale and, therefore, he is liable to pay damages.

(2) That under the general principles of contract, it is well 20
 settled that the person who has proved a breach of a bargain
 must be compensated for the pecuniary loss flowing from such
 breach; that it is also well settled that such person has a duty
 to take all reasonable steps to mitigate loss consequent on the
 breach (see, inter alia, *British Westinghouse Electric and Manu- 25*
facturing Co. Ltd. v. Underground Electric Railways Company
of London [1912] A.C. 673 (H.L.); that defendant acted in the
 most reasonable way in the circumstances of the case in an
 effort to mitigate the loss, consequent on breach, by re-auctioning
 the ship; that the defendant has proved that the amount of 30
 damages which resulted is £78,000 and, therefore, he is entitled
 to recover from the plaintiff such amount.

(3) That interest may be awarded to the defendant on the
 amount claimed (see section 3(1) of the English Law Reform
 (Miscellaneous Provisions) Act, 1934 applicable by virtue of 35
 sections 19(a) and 29(2) of the Courts of Justice Law, 1960
 (Law 14/1960) and section 61 of the Sale of Goods Law, Cap.
 267); that though the cause of action in this case arose at the
 moment when the plaintiff repudiated the agreement which was

the 15th December, 1977, in the circumstances it is reasonable to award interest as from the date when the second auction took place, that is, the 4th January, 1978; that such interest is fixed at the rate of 7 per cent per annum as from 4th January, 1978 till today and legal interest as from today till payment.

Judgment for defendant on his counterclaim for £78,000.

Cases referred to:

10 *British Westinghouse Electric and Manufacturing Co. Ltd. v. Underground Electric Railways Company of London* [1912] A.C. 673;

Bellingham v. Dhillon [1973] 1 All E.R. 20;

Nadrep Ltd. v. Willmet [1978] 1 All E.R. 746;

Levison v. Farin [1978] 2 All E.R. 1149.

15 **Admiralty action.**

Admiralty action for a declaration that the public auction for the sale of the M/V Pegassos III held by defendant and the subsequent knocking down of the said ship is null and void and for an order setting aside the sale and knocking down of the said ship at the price of £181,000.—

No appearance for the plaintiff.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

25 SAVVIDES J. read the following judgment. Plaintiff's claim, in this action is for a declaration that the public auction for the sale of M/V Pegassos III held by defendant at Limassol on the 15th December, 1977 and the subsequent knocking down of the said ship to plaintiff is null and void and of no legal effect
30 whatsoever, and for an order of the Court setting aside the sale and knocking down of the said ship at the price of £181,000.—

The defendant in this case is the Director of Ports who was also at the material time the Marshal of the Admiralty Court. The facts of the case are briefly as follows:

35 On the 15th December, 1977 the defendant acting under an order of the Court put up for sale by public auction motor vessel Pegassos III which was under arrest in the Limassol

Port. The value of the ship was appraised and the reserved price was fixed at £180,000. The auction took place on the date so fixed at which a number of persons interested were present, including the plaintiff. The auction was concluded and the defendant knocked down the ship to the highest bidder who was the plaintiff who had made a bid for the sum of £181,000.—. A record was prepared and signed by the Marshal and the plaintiff to the effect that the ship was knocked down to the plaintiff for the sum of £181,000.—. After the signing of the said record the plaintiff was asked to pay forthwith the deposit of 10 per cent of the value of the ship. The plaintiff left without paying such deposit and on the following day the defendant cabled the plaintiff holding him responsible for the amount due. The plaintiff refused to pay, alleging that the auction was null and void and not properly conducted and that in any event he did not bid personally but as an agent of a group of companies.

The defendant repudiated such allegations and informed the plaintiff that in view of his refusal to comply with the agreement, he was intending to re-auction the ship, holding the plaintiff responsible for any damage which might occur as a result of such refusal. The new auction was published in the daily newspapers and plaintiff was also informed about it, as well as other persons who were interested in the purchase of the ship. The new auction was effected on the 4th January, 1978 at which a number of interested bidders attended, and the ship was knocked down to the highest bidder, a certain Farouk Soultan for the sum of £103,000.—.

The defendant brought all the facts to the notice of the Attorney-General for necessary action to be taken in the case but in the meantime the plaintiff filed the present action.

It is the allegation of the plaintiff, according to the petition, that there were irregularities at the sale, particulars of which are set out in paragraph 4(a) of the petition, such as that the auction and bidding had been interrupted for 15 minutes without any lawful justification, that when the plaintiff arrived there the Marshal asked him whether he was going to bid over the sum of £180,000.—which made him form the impression that there were already bidders for that amount, whereas that amount was the reserved price fixed by the Court and he was the only bidder over and above that amount; also, that the sale was

concluded at a speed, although there were still other bidders present ready to take part in the auction. It is also alleged in the alternative that the sale was null and void in view of the fact that although plaintiff mentioned to the defendant that
5 he was not bidding in his personal capacity but on behalf of a joint venture of one of the companies of Photos Photiades in co-operation with another foreign company, the defendant recorded in the minutes that the plaintiff was bidding for his own account. It is further alleged that the defendant took
10 advantage of the state of confusion prevailing and knocked down the ship to the plaintiff personally, giving no time to him to concentrate and record down that he was acting as an agent. Upon realising his mistake, the plaintiff some time after the signing of the record protested to the defendant that he was
15 misled and informed him that he was withdrawing his bid, but defendant refused to allow him to do so. For the said reasons, the plaintiff filed the present action claiming the remedies set out in the writ of summons.

By his defence the defendant denied the allegations of plaintiff
20 and counterclaimed against him the difference between the price for which the ship was sold to plaintiff and the price realised at the second auction as damages for breach of contract of sale. In view of the fact that there was an allegation by plaintiff in his petition that he was bidding as an agent of Photos Photiades,
25 the defendant joined as a party in the counterclaim, Photos Photiades as defendant 2, and counterclaimed against him, in the alternative, the damages incurred.

After several adjournments at the request of plaintiff the action came up for hearing on the 20th January, 1982. Counsel
30 appearing for plaintiff was absent abroad on the day and counsel appearing for him applied for a further adjournment to enable counsel handling the case appear before the Court. The following remarks appear in the record of the Court on that day:

“This case has been pending for a long time and it is with
35 great reluctance that I shall grant this very last adjournment on the following condition: That if on the new date of hearing counsel for plaintiff is not ready to prosecute his case, then the action will be dismissed and the defendant will be at liberty to proceed with his counterclaim on that

day. Counsel, therefore, for plaintiff should make arrangements that in case he will not be available on the day of hearing for one reason or another, to instruct in time another advocate to appear on his behalf to proceed with the case".

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The hearing was, as a result, adjourned to the 24th of February, 1982 when counsel for plaintiff and defendants in the counterclaim appeared and applied for leave to withdraw, as according to what he alleged there was a conflict of interest between the two defendants in the counterclaim which had led to litigation between them and, therefore, he could not appear for either of them. Plaintiff was present on that day and he agreed with the statement made by his counsel and applied for an adjournment to instruct another advocate to appear in this case and Mr. L. Clerides undertook to inform Photos Photiades, defendant 2 in the counterclaim, about the new date of hearing. The Court granted the adjournment with great reluctance and the following was stated by the Court:

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"There have been repeated adjournments in this case at the instance of plaintiff on all occasions, and I made certain observation on the 20th of January, 1982 about the undesirability of these adjournments. In fact, on such date, there was an express direction that if plaintiff was not ready to prosecute the case, the action would have been dismissed and the defendant would have been at liberty to proceed with his counterclaim on that date. In view, however, of the new developments, which have been explained to day by counsel for the plaintiff and once there is no objection on the part of the defendant and the interested party, I shall grant this adjournment but I wish to point out to the plaintiff that he must come ready for hearing with his new counsel whom he has to retain, as soon as possible, on the new date of hearing, and, also, on the undertaking by Mr. L. Clerides to inform defendant 2 in the counterclaim to act accordingly. If plaintiff and both defendants in the counterclaim fail to act accordingly, the defendant in the present case is at liberty to take any course he will deem necessary in the circumstances of the case".

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On the 29th March, 1982, neither the plaintiff who was also defendant 1 in the counterclaim, nor defendant 2 in the counter-

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claim appeared at the hearing. Counsel for defendant exercising his rights under the Rules of Court, applied for the dismissal of the action for want of prosecution and for leave to proceed with his counterclaim against plaintiff, asking leave to withdraw
5 the counterclaim against defendant 2 in the counterclaim without prejudice. In the result, the plaintiff's action was dismissed with costs in favour of defendant and also the defendant's counterclaim against defendant 2 was also dismissed with no order for costs and defendant proceeded to prove his counter-
10 claim against the plaintiff. A witness testified for defendant who produced the record of the minutes of the auction dated 15th December, 1977 which was signed by the plaintiff and the defendant (exhibit 1). Also a letter dated 30th December sent to the plaintiff, whereby plaintiff's allegations against the validity
15 of the auction are repudiated (exhibit 2). The record of the second auction dated 4th January, 1978 as to the sale of the ship to one Farouk Soultan for the sum of £103,000.—was also produced (exhibit 3). The witness who was present at the first auction, assisting the defendant, described the circum-
20 stances under which the auction took place. He related that the plaintiff had rang from Nicosia requesting that the auction be postponed for 15 minutes to give him the chance to arrive from Nicosia and the defendant agreed to that and waited till his arrival. After the arrival of the plaintiff the defendant
25 personally and through the auctioneer brought to the notice of all persons interested that the reserved price for the ship was £180,000.—and that anybody who was interested had to bid over that amount and that each bid should not be for less than £500.— every time.

30 Plaintiff bid for £181,000.—and as he was the highest bidder the ship was knocked down to him for that amount. After the conclusion of the auction the defendant prepared the record which was signed by the defendant, the plaintiff and the witness, affirming the sale of the ship to the plaintiff. Then the plaintiff
35 was asked to pay the deposit which was 10 per cent of the purchase value but he failed to do so. About ten minutes later, the plaintiff came back to the defendant and alleged that he was under the impression that he was bidding in dollars and not in Cyprus Pounds and said that he did not want the ship
40 and he did not consider himself bound by the auction. The defendant told him that it had been made clear during the auction

that the price was in Cyprus Pounds and that no sale could be effected at a public auction in foreign currency and drew his attention to the fact that he was bound by the agreement and that he was holding plaintiff responsible for any damage which might result from such breach. Plaintiff left and as a result of his refusal to comply with the agreement, the defendant for the purpose of mitigating the loss, proceeded to re-auction the ship, informing the plaintiff and all other persons who were present in the first auction and other interested parties, about such course and the date when the new auction was to take place and also after having published notice of such auction in the local press. The new auction took place on the 4th January, 1978 at which, according to exhibit 3, a number of bidders attended, amongst whom was the brother of the plaintiff, ex-defendant 2 in the counterclaim, and the ship was knocked down at such auction to one Farouk Soultan for £103,000.— which was the highest bid. As a result, there was a deficit between the price at which the ship was knocked down to the plaintiff in the first auction and the amount realised at the second auction, which amounted to £78,000.—, and this is the amount of damages counterclaimed by defendant against the plaintiff.

Under the Sale of Goods Law, Cap. 267, section 64, in the case of a sale by auction, “the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid”.

Sales by auction are subject to the general law relating to the sale of goods. In the present case, I am satisfied that the sale had been concluded and this fact was acknowledged by the plaintiff in writing. By his refusal to comply with his undertaking to pay the amount for which he had bid at the auction, the plaintiff has committed a breach of the contract of sale and, therefore, he is liable to pay damages.

Under the general principles of contract, it is well settled that the person who has proved a breach of a bargain must be compensated for the pecuniary loss flowing from such breach. It is also well settled that such person has a duty to mitigate loss consequent on the breach. Such principles are enunciated with clarity in *British Westinghouse Electric and Manufacturing Co. Ltd. v. Underground Electric Railways Company of London*

[1912] A.C. 673 a House of Lords decision where Viscount Haldane, L.C. had this to say:

5 "I think that there are certain broad principles which are quite well settled. The first is that, as far as possible, he who has proved a breach of a bargain to supply what he contracted to get is to be placed, as far as money can do it, in as good a situation as if the contract had been performed.

10 The fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach; but this first principle is qualified by a second, which imposes on a plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps.

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----- this second principle does not impose on the plaintiff an obligation to take any step which a reasonable and prudent man would not ordinarily take in the course of his business. But when in the course of his business he has taken action arising out of the transaction, which action has diminished his loss, the effect in actual diminution of the loss he has suffered may be taken into account even though there was no duty on him to act".

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25 The above dictum was applied in *Bellingham v. Dhillon* [1973] 1 All E.R. 20, *Nadrep Ltd. v. Willmet* [1978] 1 All E.R. 746, *Levison v. Farin* [1978] 2 All E.R. 1149.

30 In the present case I find that defendant acted in the most reasonable way in the circumstances of the case in an effort to mitigate the loss, consequent on breach, by re-auctioning the ship.

35 On the evidence before me and the various documents produced, I am satisfied that the defendant has proved that the amount of damages which resulted is £78,000.—, and, therefore, he is entitled to recover from the plaintiff such amount.

I am now coming to consider the claim of plaintiff for interest. Under section 61 of Cap. 267, provision is made for the payment of interest by way of damages and special damages as follows:

“61(1) Nothing in this Law shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

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(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price—

- (a) to the seller in an action by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable; 10
- (b) to the buyer in an action by him for the refund of the price in a case of a breach of the contract on the part of the seller—from the date on which the payment was made”. 15

Under the English Law Reform (Miscellaneous Provisions) Act, 1934, section 3(1), it is provided as follows:

“3.—(1) In any proceedings tried in any Court of Record for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

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Provided that nothing in this section—

- (a) shall authorise the giving of interest upon interest; or
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or 30
- (c) shall affect the damages recoverable for the dishonour of a bill of exchange”. 35

Under the provisions of sections 19(a) and 29(2) of the Courts of Justice Law, 1960 (Law 14/1960), the Supreme Court in the exercise of its admiralty jurisdiction shall apply the law and

practice applicable in the High Court of England in the exercise of its admiralty jurisdiction. By virtue of such provision the provisions under section 3(1) of the Law Reform (Miscellaneous Provisions) Act 1934 which is applicable in England in any proceedings tried in any Court of Record (which includes the Admiralty Court), is extended to Cyprus. Therefore, interest may be awarded on the amount claimed. Though the cause of action in this case arose at the moment when the plaintiff repudiated the agreement which was the 15th December, 1977, in the circumstances I find it reasonable to award interest as from the date when the second auction took place, that is, the 4th January, 1978. I fix such interest at the rate of 7 per cent per annum as from 4th January, 1978 till today and legal interest as from today till payment. Plaintiff also to pay the costs of the defendant on the amount recovered on the counterclaim.

In the result, judgment is given on the counterclaim in favour of defendant and against the plaintiff in the sum of £78,000.—with interest at 7 per cent per annum as from the 4th January, 1978 till today and with legal interest as from today till payment. Plaintiff to pay also the costs of the counterclaim.

Plaintiff's claim against defendant stands as already dismissed with costs in favour of defendant. Defendant's counterclaim against defendant 2 in the counterclaim stands as already dismissed with no order for costs.

*Judgment on the counterclaim
for defendant and against the
plaintiff in the sum of £78,000.*