

15η Μαρτίου, 1982

(Α. ΛΟΙΖΟΥ, Δ.)

ΜΕΤΑΞΥ: ΑΡΑΒΟΕΛΛΗΝΙΚΗΣ ΤΡΑΠΕΖΗΣ Α.Ε.,  
 Έναγούσης,

και

ΤΟΥ ΠΛΟΙΟΥ "WILHELMINA",  
 Έναγομένων.

(Αγωγή Ναυτοδικείου υπ. αρ. 31/82).

Ναυτοδικειον-Απαίτησις δυνάμει πρώτης προτιμωμένης ναυτικής  
 υποθήκης επί του έναγομένου πλοίου-Απαίτησις παραδεκτή  
 υπό των έναγομένων-Ανάγκη όπως απαίτησις και ή φύσις  
 της αποδειχθή δια μαρτυρίας επειδή έγείρονται θέματα προτε-  
 ραιότητας εις την είσπραξιν του λαβεῖν.

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Διά τῆς παρούσης ἀγωγῆς ἡ ἐνάγουσα ἐταιρεία ὑπέβαλεν,  
 μεταξὺ ἄλλων, ἀξίωσιν δι' ἑν ἑκατομμύριον δολᾶρια ΗΠΑ  
 ἢ τὸ ἰσᾶξιον τούτου εἰς Κυπριακὰς λίρας ὀφειλόμενον κεφάλαιον  
 ἐπὶ πρώτης προτιμωμένης ναυτικῆς ὑποθήκης ἐπὶ τοῦ ὑπὸ  
 Ἑλληνικὴν σημαίαν καὶ νηολογίου Πειραιῶς πλοίου  
 'WILHELMINA', συσταθείσης καὶ ἐγγραφείσης νομίμως  
 κατὰ τὴν περὶ τὴν 5ην Νοεμβρίου, 1981".

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Οἱ ἐναγόμενοι διὰ τῆς ὑπερασπίσεως των παρεδέχθησαν  
 τὴν ἀπαίτησιν, ἦτο ὅμως ἀπαραίτητον ὅπως ἀποδειχθῆ ἡ  
 ἀπαίτησις καὶ ἡ φύσις της διὰ νὰ δικαιουῖνται οἱ ἐνάγοντες  
 νὰ τύχουν τῆς προτεραιότητος τὴν ὅποιαν ἀξιοῦν, ἐπειδὴ ὡς  
 ἐκ τῆς φύσεως τῆς ὑποθέσεως ἐγείρονται θέματα προτεραιότητος  
 εἰς τὴν εἴσπραξιν τοῦ λαβεῖν.

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Τὸ ΔΙΚΑΣΤΗΡΙΟΝ ΕΚΡΙΝΕΝ ΟΤΙ:

Ἡ ἀπαίτησις τῆς ἐναγούσης ἐταιρείας ἔχει ἀποδειχθῆ πρὸς  
 πλήρη ἱκανοποίησιν τοῦ Δικαστηρίου. Ἐπομένως ἐκδίδεται  
 ἀπόφασις ὑπὲρ τῆς ἐναγούσης Τραπεζῆς κατὰ τῶν ἐναγομένων  
 ὡς ἡ ἀξίωσις.

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Ἀπόφασις ὑπὲρ τῆς ἐναγούσης  
 ἐταιρείας ὡς ἡ ἀξίωσις.

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Editor's note: An English translation of this judgment appears at pp. 259-62 post.

**'Αγωγή Ναυτοδικείου.**

'Αγωγή δι' εν εκατομμύριον δολλάρια ΗΠΑ (\$1,000,000.)  
όφειλόμενον κεφάλαιον επί πρώτης προτιμωμένης ναυτικής ύπο-  
θήκης επί τοῦ πλοίου "WILHELMINA" συσταθείσης καὶ ἐγ-  
5 γραφείσης νομίμως κατὰ ἡ περι τὴν 5ην Νοεμβρίου, 1981.

Α. Παπαφιλιππου, διὰ τοὺς ἐνάγοντας.

Α. Χαβιαράς, διὰ τὸ ἐναγόμενον πλοῖον.

Ε. Κωνσταντινίδου (Κα.), διὰ τὸ ἐνδιαφερόμενον μέρος 1,  
ἐνάγοντας εἰς τὴν 'Αγ. 22/82.

10 Σ. Ξενοπουλλος, διὰ τὸ ἐνδιαφερόμενον μέρος 2, ἐνάγοντας  
εἰς τὰς 'Αγ. 58/82 καὶ 27/82.

Α. ΛΟΙΖΟΥ Δ. 'Η ἀπαίτησις τῆς ἐναγούσης ἐταιρείας ὅπως  
ἀναφέρεται εἰς τὸ Κλητήριο "Ἐνταλμα ἔχει ὡς ἀκολουθῶς:

15 "(α) Ἐν εκατομμύριον δολλάρια ΗΠΑ (\$1,000,000) ἡ τὸ  
ἰσάξιον τούτου εἰς Κυριακὰς λίρας ὀφειλόμενον κεφάλαιον  
ἐπί πρώτης προτιμωμένης ναυτικῆς ὑποθήκης ἐπί τοῦ  
ὑπὸ Ἑλληνικὴν σημαίαν καὶ νηολογίου Πειραιῶς πλοίου  
'WILHELMINA', συσταθείσης καὶ ἐγγραφείσης νομίμως  
κατὰ ἡ περι τὴν 5ην Νοεμβρίου, 1981.

20 (β) Δολλάρια ΗΠΑ 44,243,07 ἡ τὸ ἰσάξιον τούτου εἰς Κυπρι-  
ακὰς λίρας διὰ συμπεφωνημένον καὶ δεδουλευμένον  
τόκον μέχρι καὶ τῆς 4ης Φεβρουαρίου, 1982, βάσει  
τῶν ὄρων τῆς προαναφερθείσης ὑποθήκης.

25 (γ) Τόκον ἀπὸ 5ης Φεβρουαρίου, 1982 μέχρι ἐξοφλήσεως  
ἐπί ἐπιτοκίῳ τὸ ὅποῖον θέλει καθορίσει ἡ ἐνάγουσα  
εἰς τρία τοῖς ἑκατὸν ἑτησίως ἄνω τοῦ ἐπιτοκίου (ἐπανυ-  
πολογιζομένου καθ' ἐκάστην ἐβδομάδα) ἐπί τῶ ὀποίῳ  
πιστώσεις ἐνὸς μηνὸς ἐπ' ἀνοικτῶ λογαριασμῶ προσφέ-  
30 ρεται εἰς τὴν ἐνάγουσαν εἰς τὴν Διατραπεζητικὴν Ἄγορὰν  
Λονδίνου.

(δ) Ἀπόφασιν διὰ πᾶν ἕτερον ποσὸν ἢ ποσὰ πληρωτέα  
βάσει τῶν ὄρων τῆς προαναφερθείσης ὑποθήκης.

35 (ε) Ἀποζημιώσεις διὰ πᾶν ποσὸν ἢ ποσὰ τὰ ὅποια ἡ  
ἐνάγουσα κατέβαλεν ἢ θέλει καταβάλει ἢ ἀνέλαβε ὅπως  
καταβάλη βάσει τῶν ὄρων τῆς προαναφερθείσης συμφω-  
νίας.

(στ) Ἐξοδα.

Ἡ ἐνάγουσα ἐπιφυλάττει τὰ δικαιώματά της διὰ πᾶσαν  
θεραπείαν ἢ ἀξίωσιν βάσει τῶν ὄρων τῆς προαναφερθείσης  
ὑποθήκης κατὰ τοῦ ὡς ἄνω ἢ ἐτέρου πλοίου ἢ πλοίων,  
κατὰ τῆς πλοιοκτητρίας καὶ ἐγγυητῶν ἢ ἐτέρων προσώπων".

Οἱ ἰσχυρισμοὶ της ὡς πρὸς τὴν αἰτίαν ἀγωγῆς βρίσκονται  
εἰς τὴν Ἀναφορὰν ἢ ὁποῖα κατεχωρήθη εἰς τὸ Δικαστήριον εἰς  
ἀπάντησιν τῆς ὁποίας κατεχωρήθη ὑπεράσπισις διὰ τῆς ὁποίας  
εἶναι παράδεχτὴ ἢ ἀπαίτησις τῆς ἐναγούσης ἐταιρείας. 5

... Σήμερον κατόπιν ἀδείας τοῦ Δικαστηρίου καὶ συμφώνως πρὸς τοὺς  
δικαστικούς θεσμοὺς ἐκτὸς τῆς ἐναγούσης ἐταιρείας καὶ τῶν ἐνα-  
γομένων, ἐνεφανίσθησαν μὲ δικαίωμα παρεμβάσεως, τὰ ἐνδια-  
φερόμενα μέρη, ἦτοι οἱ ἐνάγοντες εἰς τρεῖς ἄλλες ὑποθέσεις διὰ  
τῶν ὁποίων ἐγείρεται ἀπαίτησις κατὰ τοῦ ὑπὸ σύλληψιν ἐνα-  
γομένου πλοίου. 10

Ἐπειδὴ ὡς ἐκ τῆς φύσεως τῆς ὑποθέσεως ἐγείρονται θέματα  
προτεραιότητος εἰς τὴν εἰσπραξίν τοῦ λαβεῖν εἰς τοιαύτας περι-  
πτώσεις ἐναντι ἄλλων οἱ ὁποῖοι ἔχουν ἀπαιτήσεις κατὰ τοῦ πλοίου  
ἢ τοῦ ποσοῦ τὸ ὁποῖο ἀπέφερε ἢ πώλησιν του, εἶναι ἀπαραίτητο  
ὅπως ἀποδειχθεῖ ἢ ἀπαίτησις καὶ ἡ φύσις της διὰ νὰ δικαιουῖνται  
νὰ τύχουν τῆς προτεραιότητος τὴν ὁποῖαν ἀξιοῦν. Ὡς ἐκ τούτου  
παρὰ τὴν παραδοχὴν τῆς ἀπαιτήσεως ἐκ μέρους τῶν ἐναγομένων  
ἐκλήθη μαρτυρία καὶ ἔχει ἀποδειχθεῖ πρὸς πλήρη ἱκανοποίησιν  
μου ἢ ἀπαίτησις τῆς ἐναγούσης ἐταιρείας διὰ τὸ ἀξιούμενον κεφάλαιο  
ὡς προερχόμενον ἐκ πρώτης προτιμωμένης ναυτικῆς ὑποθήκης  
ἐπὶ τοῦ ἐναγομένου πλοίου, τῶν τόκων μέχρι τῆς 4ης Φεβρουαρίου  
1982, καὶ τοῦ ἀντιτίμου ἀσφαλίσεως τοῦ πλοίου διὰ μίαν τριμηνίαν,  
ὡς ἐπίσης καὶ οἱ ὀφειλόμενοι τόκοι ἀπὸ 5ην Φεβρουαρίου 1982  
μέχρι τῆς ἐξοφλήσεως τοῦ ποσοῦ. Ὁ τρόπος ὑπολογισμοῦ  
τοῦ τόκου ἐκτίθεται εἰς τὴν προαναφερθεῖσαν παράγραφον (γ)  
τῆς ἀξιώσεως ὡς ἐκτίθεται εἰς τὴν Ἀναφορὰν τῆς ὑποθέσεως. 20  
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Ὑπὸ τῆς ἐναγούσης ἐταιρείας ἐκλήθη ἐπίσης ὡς μάρτυς ὁ  
Γεώργιος Μωράτης, δικηγόρος ἀσκῶν τὸ ἐπάγγελμα ἐν Ἑλλάδι  
καὶ ὁ ὁποῖος δύναται νὰ θεωρηθῆ ἀναμφίβολα εἰδικὸς ἐπὶ τοῦ  
θέματος τοῦ Ἑλληνικοῦ Νόμου, ὡς ἔχων θεωρητικὴν κατάρτισιν  
καὶ πρακτικὴν ἐξάσκηση ἐπὶ τῶν θεμάτων ἐπὶ τῶν ὁποίων κατέ-  
θεσε ἐνώπιόν μου. Κατὰ τὸ Ἑλληνικὸ Δίκαιο τὸ πρωτότυπο  
συμβάσεως παραμένει πάντοτε παρὰ τῷ συμβολαιογράφῳ καὶ  
χρησιμοποιεῖται δι' ὅλους τοὺς νομικοὺς σκοποὺς, μεταξύ τῶν  
ὁποίων καὶ ἀπόδειξις τούτου ἐνώπιον Δικαστηρίων ὡς καὶ διὰ 35

σκοπούς αναγκαστικής εκτελέσεως κ.λ.π. πιστοποιημένον αντίγραφον τούτου και εις την προκειμένη περίπτωση κατετέθη ενώπιον μου ως τεκμήριο τοιοῦτον πιστοποιημένον αντίγραφον δεόντως πιστοποιημένον και ὑπὸ Προέδρου Πρωτοδικῶν.

- 5 'Επίσης εὐρίσκω ἐκ τῆς προσαχθείσης μαρτυρίας ὅτι ἡ ἀπαίτησις τῆς ἐναγοῦσης ἐταιρείας προέρχεται ἐκ πρώτης προτιμωμένης ναυτικῆς ὑποθήκης ἐπὶ τοῦ ἐναγομένου πλοίου και δίδω ἀπόφασιν ὑπὲρ τῆς ἐναγοῦσης Τραπεζῆς κατὰ τῶν ἐναγομένων διὰ τὸ ὡς ἄνω ποσὸ και τόκους, και περιπλέον μὲ τὸκον ἀπὸ 5 Μαρτίου
- 10 1982, ἐπὶ ἐπιτοκίῳ τὸ ὅποῖον θέλει καθορίσει ἡ ἐνάγουσα εις τρία τοῖς ἑκατὸν ἐτησίως ἄνω τοῦ ἐπιτοκίου (ἐπανυπολογιζομένον καθ' ἑκάστην ἑβδομάδα) ἐπὶ τῷ ὀποίῳ πιστώσεις ἐνὸς μηνὸς ἐπ' ἀνοικτῶ λογαριασμῷ προσφέρεται εις τὴν ἐνάγουσαν εις τὴν Διατραπεζητικὴν Ἀγορὰν Λονδίνου.
- 15 'Επιδικάζονται ἐπίσης ἔξοδα πρὸς ὄφελος τῆς ἐναγοῦσης Τραπεζῆς ἐναντίον τῶν ἐναγομένων, ἅτινα νὰ ὑπολογισθοῦν ὑπὸ τοῦ Πρωτοκολλητοῦ.

'Απόφασις ὑπὲρ τῆς ἐναγοῦσης  
τραπεζῆς ὡς ἄνωτέρω μετ' ἔξόδων.

- 20 This is an English translation of the judgment in Greek appearing at pp. 256-259 ante.

*Admiralty—Claim by virtue of first-preferred mortgage on ship—Admitted by defendants—Necessary for claim and its nature to be proved by evidence because there arise questions of priority regarding collection of amount due.*

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The appellant company claimed, inter alia, "one million U.S.A. dollars (\$1,000,000) or their equivalent in Cyprus pounds due under a first preferred mortgage on the ship 'Wilhelmina' flying the Greek flag and registered at Piraeus, constituted and legally registered on or about the 5th November, 1981".

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The defendants by their defence admitted the claim; but it was necessary for the claim and its nature to be proved by evidence in order that the plaintiffs may be entitled to be accorded the priority which they claim, as in view of the nature of the case there arise questions of priority in the collection of the amount due.

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*Held, that the claim of the plaintiff company has been proved*

to the full satisfaction of the Court; accordingly judgment will be given in favour of the plaintiff company and against the defendants as per claim.

*Judgment for plaintiffs as per claim*

**Admiralty action.**

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Admiralty action for US. \$1,000,000.- under a first preferred mortgage on the ship "WILHELMINA" constituted and legally registered on or about 5th November, 1981.

*L. Papaphilippou*, for the plaintiffs.

*A. Haviaras*, for the defendant ship.

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*E. Constantinidou (Mrs.)*, for interested party No. 1, plaintiffs in Adm. Action No. 22/82.

*X. Xenopoulos*, for interested party No. 2, plaintiffs in Adm. Actions Nos. 58/82 and 27/82.

A. LOIZOU J. gave the following judgment. The claim of the plaintiff company as stated in the writ of summons is as follows:

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"(a) One million U.S.A. dollars (\$1,000,000) or their equivalent in Cyprus pounds due under a first preferred mortgage on the ship 'WILHELMINA', flying the Greek flag and registered at Piraeus, constituted and legally registered on or about the 5th November 1981.

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(b) 44,243,07 U.S.A. dollars or their equivalent in Cyprus pounds being agreed and accrued interest until the 4th February, 1982 under the terms of the aforesaid mortgage.

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(c) Interest from the 5th February, 1982 until settlement at a rate to be fixed by the plaintiff at three per cent per annum above the rate (re-calculated every week) on which credits for one month in an open account are offered to the plaintiff company in the Banking market of London.

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(d) Judgment for any other amount or amounts payable under the terms of the above mortgage.

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(e) Damages for every amount or amounts which were paid by the plaintiff or would be paid by plaintiff

or undertaken to be paid by plaintiff under the terms of the aforesaid mortgage.

(f) Costs.

5           The plaintiff company reserves its rights for any remedy or claim under the terms of the aforesaid mortgage against the said or any other ship or ships and against the ship-owning company and guarantors or other persons".

10          The allegations of the plaintiff company with regard to the cause of action are found in the petition filed in Court; in reply there has been filed a defence by means of which the claim of the plaintiff company is admitted.

15          To-day with the leave of the Court and in accordance with the Rules of Court, besides the plaintiff company and the defendants, there appeared, with the right to intervene, the interested parties, that is the plaintiffs in three other cases by means of which there is raised a claim against the defendant ship which is under arrest.

20          As in view of the nature of the case there arise questions of priority in the collection of the amount due as against those having claims against the ship or the proceeds of her sale it is essential that the claim and its nature be proved in order to be entitled to be accorded the priority which they claim. Therefore in spite of the admission of the claim by the plaintiffs  
25          evidence was adduced and there has been proved to my full satisfaction the claim of the plaintiff company for the amount claimed, as emanating from a first preferred mortgage on the defendant ship, the interest until the 4th February, 1982 and the premiums for insuring the ship for a quarter, as  
30          well as the interest due from the 5th February 1982 until settlement.

35          The plaintiff company called also as a witness Georghios Moratis, a practising advocate in Greece who undoubtedly can be considered as an expert on the question of Greek Law as possessing theoretical knowledge and training on the questions on which he testified before me. According to Greek law the original of a contract remains with the notary public and there

is used for all legal purposes, amongst them being its proof before the Courts as well as for purposes of compulsory execution etc., a certified copy thereof and in this case there was produced before me as an exhibit a certified copy duly certified also by the President of the Courts of First Instance. 5

I also find from the evidence adduced that the claim of the plaintiff company emanates from a first preferred mortgage on the defendant ship and I hereby give judgment for the plaintiff Bank and against the defendants for the above amount with interest and in addition with interest from the 5th March, 1982, at a rate to be fixed by the plaintiff at three per cent per annum above the rate (recalculated every week) on which credits of one month in an open account are offered to the plaintiff in the Banking Market of London. 10

Costs are adjudged in favour of the plaintiff Bank and against the defendants, to be assessed by the Registrar. 15

*Judgment for plaintiffs as above with costs.*