1983 September 14

[SAVVIDES, J.]

KOULOUMBIS PANAYIOTIS AND OTHERS,

Plaintiffs,

v.

THE SHIP "MARIA" NOW ANCHORED IN THE PORT OF LIMASSOL ,

Defendants.

(*Admiralty Actions Nos.* 73-85/82).

Admiralty—Maritime lien—Transferability—Principles applicable—Seamen judgment-creditors for wages—Volunteer applying for sanction of the Court to pay judgment debt, after judgment-creditors had been repatriated and taken steps for execution by sale of the ship, and be subrogated to their rights—Principles on which such an application may be granted—Interveners mortgagors of the ship—Whether they have a locus standi and can oppose the application.

The plaintiffs in these actions, who were members of the crew of the defendant ship, after obtaining judgment against the ship in respect of their wages put into motion the machinery of execution and took steps for the sale of the ship. Whilst these steps were in progress the applicant, applied for directions authorising him to pay the judgments in favour of the plaintiffs and be subrogated to their rights and priority against the defendant ship.

The applicant was a volunteer who came forward ready to pay what was due to the crew and thus execution by sale of the ship by virtue of writs issued by the plaintiffs in the above actions be postponed, so that no detriment was caused to the defendant ship by her sale. The reason that he has offered to make these payments is that he was the brother-in-law of one Vlasopoulos who and/or whose family had an interest in the defendant ship though they were not owners or shareholders of same.

The plaintiffs, judgment-creditors in the above actions, have been repatriated and though served with copies of the applications, have not appeared and have not taken part in these proceedings. Counsel for the defendant ship consented to the application. The application was opposed by the interveners, mortgagors of the defendant ship, who were plaintiffs in Action No. 59/82 against the said ship, claiming U.S. dollars 7,202,465, plus interest under a mortgage deed and who were also judgment-creditors against the defendant ship in Action No. 177/82.

On the questions: (*a*) *Whether the interveners have a locus standi in this case and can oppose the present applications, and* (*b*) *whether the prayer of the applicant in these applications should be granted:*

Held, (1) that if the sanction of the Court is granted, then the maritime lien in favour of the plaintiffs which would have normally disappeared if payment was made to them without the sanction of the Court, would be transferred to him with the existing priority over the interveners' claims; that if for the purpose of avoiding the sale the owners or any person interested in the defendant ship was bound to pay the judgment debts, the lien of the judgment-creditors which operates in priority to the claim of the interveners would have been satisfied and the funds, which may be available for payment to the interveners, would be relieved of the burden of the judgments in the above actions; that if the sanction of the Court is granted, the owners and or any person interested in the defendant ship, with no detriment to themselves, as for whatever it is paid a lien with a priority over the interveners will be acquired, will achieve their object of avoiding the sale with the result that the interest accruing on the amount of the judgments will continue to run indefinitely draining the fund available for payment of other debts; that, therefore, the result of this application, if granted, would prejudicially affect the interests of the interveners; and that, accordingly, they have a locus standi in these proceedings to protect their interests.

(2) That if a volunteer came forward and paid the wages of the crew or their repatriation expenses without the sanction of the Court, he would not automatically acquire the lien which operates in favour of the crew which is not assignable; that the sanction of the Court is given in cases where the volunteer was a

creditor having a direct interest in the res and payment is deemed necessary so that the wages of crew discontinued to run and drain the funds available for payment to other creditors and furthermore it is considered necessary that funds should have been made available for the payment of their wages and expatriation expenses either by the creditor providing such funds to the Marshal for payment and then after the sale of the ship being reimbursed out of Marshal's expenses which rank in priority to other debts, or by paying them directly to the crew, with the leave of the Court, and being subrogated to the priority of the crew; that since in the present case the crew have left the ship and they have been repatriated and there is no question of burdening the ship with running wages draining the funds available for payment to creditors; that since the crew are now in the position of judgment creditors with a priority claim and they are in the process of enforcing the judgments in their favour by execution and sale of the ship; and that since the applicant, is a complete stranger in the action, having no direct interest in the res either as a creditor or as owner or a person having an interest in the ship, intervening in the hope to satisfy the various claimants and applying for the supervision of the execution and sale of the defendant ship this is not a proper case justifying this Court to exercise its discretion in favour of the applicant by granting these applications; accordingly the applications must fail.

Applications dismissed.

Cases referred to:

The Petone [1917] P. 198 at pp. 205, 206, 208, 209;

The Janet Wilson [1857] Swab. 261;

The Leoborg (No. 2) 1 Ll. L.R. 380 at p. 383;

The Leoborg [1963] 2 Ll. L.R. 128;

The Mogileff and Freight [1921] 7 Ll. L.R. 130;

The Vasilia [1972] 1 Ll. L.R. 51;

The Berostar [1970] 2 Ll. L.R. 403;

Commercial Bank of the Near East v. The Ship Pegassos III (1978) 1 C.L.R. 597 at p. 617.

Applications.

Applications for directions authorising applicant to pay the judgments in favour of the plaintiffs and be subrogated to their rights and priority against the defendant ship.

M. Marangou (*Miss*), for applicants.

M. Eliades with *A. Skordis*, for the defendant ship.

E. Montanios with *P. Panayi* (*Miss*), for the intervener.

Cur. adv. vult.

SAVVIDES J. read the following judgment. By these applications the applicant applies for directions authorising him to pay the judgments in favour of the plaintiffs in the above actions and be subrogated to their rights and priority against the defendant ship.

The applicant, according to an affidavit filed on his behalf, is a volunteer who comes forward ready to pay what is due to the crew and thus execution by sale of the ship by virtue of writs issued by the plaintiffs in the above actions be postponed, so that no detriment is caused to the defendant ship by her sale. The reason that he has offered to make these payments is that he is the brother-in-law of one Vlasopoulos who and/or whose family have an interest in the defendant ship though they are not owners or shareholders of same. According to the allegation of the applicant, the said Vlasopoulos is the person who was managing the affairs of the defendant ship.

The plaintiffs, judgment-creditors in the above actions, though served with copies of the applications, have not appeared and have not taken part in these proceedings. Counsel for the defendant ship consented to the application. The application was opposed by the interveners-mortgagors of the defendant ship, who are plaintiffs in Action No. 59/82 against the said ship, claiming U.S. dollars 7,202,465, plus interest under a mortgage deed and who are also judgment-creditors against the defendant ship in Action No. 177/82.

Counsel for the applicant argued that the interveners have no locus standi in these proceedings. The plaintiffs judgment-creditors, counsel submitted, have priority over the mortgage of the interveners as their claim was in respect of crew wages and that, if the applicant paid to them their dues and was sub-

rogated to their rights, the plaintiffs were not to be affected concerning priorities, as the priority which the applicant would gain would be the one already existing in favour of the judgment-creditors. Counsel contended that the right of the interveners to intervene had ended after judgment was entered and that the interveners were given the right to intervene to protect their interests in the above actions whilst proceedings were pending before this Court. Once judgment was given in these actions, then the role of the interveners came to an end, especially bearing in mind the fact that the judgments were given with the consent of the interveners. Therefore, once they have ceased to act as interveners, they cannot oppose the present applications.

Counsel further argued that the interveners are estopped from opposing these applications as they themselves had in another action made a similar application and sought the Court's sanction to make payment to members of the crew and expatriate them, which was granted by the Court.

In conclusion, she contended that the interveners had, in any event, to establish that they have an interest in these proceedings and that such an interest may be detrimentally affected by the granting of this application.

As to the object of filing the present applications, counsel submitted that if payment is effected without the sanction of the Court, then the lien operating in favour of the judgment-creditors will not be assignable to the applicant and the mortgagors will have priority over any claim by the applicant. But if the payment is sanctioned by the Court and the subrogation is authorised by the Court, then all rights vested in the judgment-creditors will authomatically be assigned to the applicant who will enjoy the benefit of the priority which was vested in the judgment-creditors.

Counsel for the interveners, on the other hand, submitted that the interveners have a locus standi in these proceedings and that the order already made for their intervention does not cease to operate after judgment, but they are entitled to participate in any proceedings whereby their intrests may be prejudiced.

In the present case if the owners or persons interested in the defendant ship paid the claims of the judgment-creditors, then

they would not enjoy the priority operating in favour of the judgment-creditors. For this reason a stranger comes forward alleging to act by way of personal interest to help his brother-in-law, ready to pay what is due, provided the sanction of the Court is given and thus acquire the priority existing in favour of the judgment-creditors and at the same time manipulate and postpone the execution against the defendant ship which is already pending, as a result of action taken by the judgment-creditors and the interest on the judgment debts will continue to run indefinitely, thus draining the assets which may be availalbe after the sale of the ship for payment to the interveners.

He further argued that the applicant is a complete stranger, not being a party to the proceedings and has not shown any interest in the res. He comes forward alleging that he is a relative of a person who is interested in the affairs of the ship and who, in fact, has not any share in the defendant ship. In cases where payment to a volunteer was authorised by the Court, such volunteer was a creditor of the defendant ship and not a complete stranger as in the present case. If a stranger, who has no interest in the proceedings, is allowed to obtain an order of the Court in the terms applied for, then, counsel submitted, the Court opens the door to the possibility of defrauding the interests of claimants in the ship.

Concerning the payment of wages and repatriation expenses made by the interveners to members of the crew with the sanction of the Court in another action and the priority in respect of such payments acquired by them, it was a payment which was made by them as plaintiffs in the actions, and creditors, and the crew was already on board the ship and it was necessary that the crew should leave the ship in order that their wages stop running, burdening the already heavily burdened ship. In the present case the crew have already obtained judgments and the machinery of execution by sale of the ship has been put into motion, and what is due to them will be collected from the proceeds of the sale in priority to any other claim. The crew have not taken part in these proceedings and they have not even moved the Court asking for this arrangement to be approved as they, themselves, by the completion of the execution of the judgment, will collect what is due to them.

The issues, therefore, which pose for consideration before me

are - (a) whether the interveners have a locus standi in this case and can oppose the present applications, and (b) whether the prayer of the applicant in these applications should be granted.

I shall first deal with the first issue. The interveners have been authorised to intervene in these actions. Their intervention does not terminate upon judgment being entered in the actions but they are entitled to appear in any proceedings subsequent thereof, whereby their interests may be affected, for the purpose of protecting the interests they have in the case. A question which I have to consider is whether the interests of the interveners will be prejudicially affected if these applications are granted. The plaintiffs judgment-creditors in the above actions, have already taken steps for the execution of the judgments in their favour. On the one hand they have issued writs of execution against the defendant ship and, on the other they filed two applications before this Court, one for the arrest and sale of the defendant ship and the second for the appraisement and sale by the Marshal of the defendant ship. The execution of the writs was suspended pending the determination of the first application in which finally judgment was given on the 1st August, 1983 whereby I dismissed same as unnecessary having found as follows:

> "It is clear from their contents that rules 168-171 regulate the procedure for the issue of a writ of execution of moveables. By the said rules the power to issue such writ is vested in the Registrar of the Court who is the competent person to deal with the matter, on the written application of the judgment-creditor addressed to him. There is no provision under such rules that any directions from the Court are necessary before the Registrar proceeds with the exercise of his powers under rules 168 - 171. In fact, going through the file of the case, I have noticed that the applicants applied on 23.9.82 for the issue of writs of execution against the defendant ship and the Registrar of this Court had no difficulty in granting the application and issuing such writs addressed to the Marshal for the seizure of the defendant ship, its appraisement and sale in execution of the judgments."

The other application is still pending before the Court.

What is clear from all these steps taken by the plaintiffs

judgment-creditors is that the machinery of execution has been put into motion and steps have been taken for the sale of the defendant ship. Having regard to the value of the ship, as appraised in another action before me, it appears that the claims of the judgment-creditors which rank in priority to other claims, except Marshal's expenses, will be fully covered by the sale of the ship even in the worst case. So, they run no risk of losing any part of what is due to them and this is obviously the reason that they have not appeared in the present proceedings because, being sure that they will collect in full what is due to them, they do not mind if they are paid by the proceeds of the sale of the ship or by anybody else.

What appears from the argument advanced before me, is that the person who is interested to prevent the execution of the writs by the sale of the defendant ship is one Vlasopoulos and his faimily who are, alleged to be persons interested in the defendant ship. If the claims of the judgment-creditors are paid by them, they definitely will have no priority over the interveners' claim as the lien in favour of the plaintiffs is not transferable to them.

As to the transferability of maritime lien, in Halsbury's Laws of England, 3rd Edition, volume 35, p. 794, para. 1226, we read:

> "As a general rule maritime liens other than the lien for bottomry are not transferable, but a Court having Admiratly jurisdiction has in some cases allowed persons who have, with the sanction of the Court, paid off claims against a ship to have the same advantages as to priorities as the person had whose claim they have satisfied ...."

And under footnote (b) on the same page:

> "In some early cases persons who had paid off claims without the sanction of the Court were allowed to avail themselves of the priority enjoyed by those whose claims they had satisfied. In *The Cornelia Henrietta* (1866), L.R.1A. & E. 51, Dr. LUSHINGTON laid down the rule that these payments must be made with the sanction of the Court if the priority of the claim satisfied was to be claimed by the person satisfying the claim. HILL, J., exhaustively reviewed all the previous authorities in *The Petone,* [1917] P. 198; 14 Asp. M.L.C. 283, and in view of this judgment

it would appear that the cases, where parties paid off claims without the sanction of the Court and then avail themselves of the priority enjoyed by the person whose claim had been satisfied, would no longer be followed."

What happened then to avoid these consequences? The applicant, a volunteer who is a complete stranger in the proceedings and has nothing to do either with the ship or with any one of the parties directly involved, comes in, ready and willing to pay the claims of the judgment-creditors and asks for the sanction of the Court to do so, so that the lien in favour of the judgment-creditors be assigned to him. If such sanction is granted, then the lien in favour of the plaintiffs which would have normally disappeared if payment was made to them without the sanction of the Court, would be transferred to him with the existing priority over the interveners' claims. If for the purpose of avoiding the sale the onwers or any person interested in the defendant ship was bound to pay the judgment debts, the lien of the judgment-creditors which operates in priority to the claim of the interveners, would have been satisfied and the funds, which may be available for payment to the interveners, would be relieved of the burden of the judgments in the above actions. If the sanction of the Court is granted, the owners and or any person interested in the defendant ship, with no detriment to themselves, as for whatever it is paid a lien with a priority over the interveners will be acquired, will achieve their object of avoiding the sale, with the result that the interest accruing on the amount of the judgments will continue to run indefinitely draining the fund available for payment of other debts.

In view of the above, I have come to the conclusion that the result of this application, if granted, would prejudicially affect the interests of the interveners and, therefore, they have a locus standi in these proceedings to protect their interests.

Irrespective, however, as to whether the interveners have a locus standi or not in these proceedings, the applicant has to satisfy the Court that, in the circumstances as set out by him, the Court is justified to exercise its discretion in granting this application, which brings me to consider the second issue before me.

An elaborate and exhaustive exposition of the authorities

as to when volunteers who make payments in discharge of seamen's wages and master's disbursements acquire the maritime lien which the seamen and master had in respect thereof, appears in the judgment of Hill, J., in *The Petone* [1917] P. 198. The learned judge after reviewing the authorities dating as back as 1822, concluded as follows (at pp. 208, 209):

> "These, I believe, are the cases. For the view of the more modern text writers I may refer to (and he refers to certain authorities). They treat maritime liens, other than liens for bottomry, as not transferable.
>
> In my view the weight of authority is strongly against the doctrine that the man who has paid off the privileged claimant stands in the shoes of the privileged claimant and has his lien, whether it be regarded as a general doctrine or as applied to wages only.
>
> I say nothing about contractual assignments of debts or claims supported by maritime liens. It is not necessary to consider how far such an assignment carries with it in all cases the maritime lien; it does so in the case of bottomry; whether it does so in any other cases it is not necessary to express an opinion. In the present case there is no question of assignment. The plaintiffs paid the wages and/or disbursements. The master and crew have been paid and their debts satisfied. They assigned nothing to the plaintiffs. The plaintiffs do not claim as their assignees but in their own right as having paid the men off. Counsel for the plaintiffs contends that the doctrine is an application of the principle of subrogation. But I know of no principle of English law which says that one who, being under no compulsion and under no necessity to protect his own property, but as a volunteer, makes a payment to a privileged creditor, is entitled to the rights and remedies of the person whom he pays. That is the position of the plaintiffs. They chose as volunteers to pay off debts which constituted a marine lien upon the ship. They did not, in my opinion, thereby acquire any maritime lien. They have, therefore, no right in rem based upon a maritime lien. They have no right in rem independent of a maritime lien".

Reference to the oldest authority is made by Hill, J., in the above case at pp. 205, 206 as follows:

> "The practice had been established before Dr. Lushington's day. The earliest instance which I have discovered is *The Kammerhevie Rosenkrants*[1], where Lord Stowell in 1822 granted an application on behalf of bondholders to permit them 'to pay the wages of the crew, in order to save the expense arising from their detention on board, and to decree that they should be reimbursed their advances out of the proceeds of the ship, prior to the satisfaction of any other claim thereon' "

In *The Janet Wilson*, (1857) Swab. 261, which is also referred to in *The Petone*, a bondholder's action, in which an owner applied for payment out of the proceeds of moneys advanced by him for wages, pilotage, and disbursements before he was aware of the bond, Dr. Lushington refused and said:

> "I thought I had established, in preceding cases, the rule that it was not competent to any person, without leave of the Court, to pay wages which might have been incurred, and then come to the Court and make application to have that money refunded. I thought I had declared in former cases that it was necessary application should be made to the Court prior to the time the money was paid, for leave to make such payment, and then the Court would judge of the circumstances".

The judgment in *The Petone* was subscribed and followed by Hewson, J., in *The Leoborg* (No. 2) [1964] 1 Ll. L.R. 380, who, at p. 383 had this to say:

> "The decision in *The Petone*, supra, has never been challenged and I propose to accept it".

Expenses in the nature of wages and repatriation expenses of crews of arrested ships are a drain, ultimately, on the proceeds of sale of the ship, and, therefore, if one of the principal creditors think fit he may apply to the Court for leave to pay off the crew and stand in their shoes (*The Leoborg* [1963] 2 Ll. L.R.128.

1. (1822) 1 Hagg. Adm. 62.

The Mogileft and Freight [1921] 7 Ll. L.R. 130. See, also, Admiralty Practice Vol. 1, 1964 Edition, para. 274, page 120).

"When the Court is moved for an order for sale in respect of a vessel which still has members of her crew on board the Court may direct that the order for sale shall lie in the registry until all the crew have left the vessel, as in the case of *The Pacific Challenger* (1959 Fo. 240). The order made in this case further provided that the mortgagees could pay the master and crew such anounts as the registrar found to be due in the wages action and could stand in their shoes in respect of any sums so paid.

It is imperative that the crew should be paid off and leave the vessel before the sale is commenced and if a plaintiff has no funds for the purpose he should ask the Court for an order that the marshal pay their repatriation expenses and make an advance on their wages. (Admiralty Practice, Vol. 1, 1964 Edition, para. 387, page 170).

In *The Vasilia* [1972] 1 Ll. L.R., 51, leave was given to the mortgagees of the Panamian motor vessel Vasilia, to make payments through the Admiralty Marshal to the master and crew to enable them to be signed off and repatriated, so that the order for the sale of the ship could be carried out.

In *The Berostar* [1970] 2 Ll. L.R. 403, the plaintiffs asked leave of the Court to pay off the master and crew of the motor vessel Berostar, and to be subrogated to their rights in respect of arrears of wages. Allowing the application BRANDON, J., said that if the Marshal was put in funds to pay off the crew he could then reimburse the plaintiffs out of the sale of the vessel and they would have the same priority as if they had paid the wages themselves.

In *The Commercial Bank of the Near East* v. *The Ship "Pegassos" III* (1978) 1 C.L.R. 597 at p. 617, A. Loizou, J. had this to say:

"All previous authorities, however, were exhaustively reviewed in the *Petone* (supra) and the position is now that the cases where parties paid off claims without the sanction of the Court and then availed themselves of the priority

enjoyed by the person whose claim had been satisfied, would no longer be followed".

It is clear from the above authorities that if a volunteer came forward and paid the wages of the crew or their repatriation expenses without the sanction of the Court, he would not automatically acquire the lien which operates in favour of the crew which is not assignable. The question as to whether a contractual assignment of debts or claims supported by maritime liens may operate in favour of the volunteer making the payment, though considered in *The Petone* (supra) was left open (see p. 208). As in the present case no question of contractual assignment is raised, I find it unnecessary to explore on such issue.

It is clear from all the above, that in all cases in which the sanction of the Court was given, the volunteer was a creditor having a direct interest in the res and payment was deemed necessary so that the wages of crew discontinued to run and drain the funds available for payment to other creditors and furthermore, it was considered necessary that funds should have been made available for the payment of their wages and expatriation expenses either by the creditor providing such funds to the Marshal for payment and then after the sale of the ship being reimbursed out of Marshal's expenses which rank in priority to other debts, or by paying them directly to the crew, with the leave of the Court, and being subrogated to the priority of the crew. In the present case the crew have left the ship and they have been repatriated and there is no question of burdening the ship with running wages draining the funds available for payment to creditors. The crew are now in the position of judgment creditors with a priority claim and they are in the process of enforcing the judgments in their favour by execution and sale of the ship.

The applicant, as I have already explained, is a complete stranger in the action, having no direct interest in the res either as a creditors or as owner or a person having interest in the ship, intervening in the hope to satisfy the various claimants and applying for the supervision of the execution and sale of the defendant ship.

Counsel for interveners has submitted that if a complete stranger without a just cause comes forward submitting applications of this nature, then the door may be opened for champer-

tous agreements by allowing strangers to negotiate the purchase of claims of crew and legalise such agreements under the disguise of a desire to assist them. Though there may be some substance in such argument, I am not going to let such matter influence the exercise of my discretion in this case.

Having considered all the material before me and the legal authorities already mentioned, I have come to the conclusion that this is not a proper case justifying me to exercise my discretion in favour of the applicant by granting these applications. In the result, the applications are dismissed with costs in favour of the interveners against the applicant.

Applications dismissed. Order for costs as above.