1984 April 10

[SAVVIDES, J.]

PANAYIOTIS KOULOUMBIS AND OTHERS

Plaintiff

v.

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

Defendant

(*Admiralty Actions Nos.* 73–85 and 124–135.8

Judgment—Foreign currency—Judgment expressed in foreign currency or its equivalent in Cyprus Pounds—Date of conversion of foreign currency into Cyprus Pounds—Judgment against ship which was sold by writs of movables—Appropriate date of conversion the date when the judgment-creditors applied for the first time for the issue of writs of movables, without excluding the possibility in a proper case to consider as the appropriate date the date when the affidavit to be annexed to the application for the issue of a writ of movables is sworn

Applicants were judgment-creditors of the defendant sh The judgments in their favour were expressed in Greek Drachm or their equivalent in Cyprus Pounds and their costs in Cypr Pounds

The defendant ship was sold by writs of movables issued by appellants-plaintiffs and the proceeds of the sale were depos by the Marshal in Court following directions to that effe

The plaintiffs on the 27th October, 1983 applied that judgments in their favour be paid out of the fund in Court whi fund resulted from the execution of the writs issued by thei When such application came before the Court on the 8th Nov mber, 1983, a question arose as to the date of conversion of t Drachmas into Cyprus Pounds. Counsel appearing for the tw interveners in these actions, alleged that the conversion should effected on the date of payment, whereas counsel for plainti contended that the conversion should be effected on the date

judgment. Counsel for the defendant ship did not oppose the application and left the matter to the Court.

Held, that once the judgment had to be enforced in this country the conversion should take place immediately before enforcement; that in the circumstances of the present cases the appropriate date should be the date when the plaintiffs judgment-creditors applied for the first time for the issue of writs of movables, without excluding the possibility in a proper case to consider as the appropriate date the date when the affidavit to be annexed to the application for the issue of a writ of movable is sworn.

Order accordingly.

Cases referred to:

Papavassiliou and Tsangarides v. East Mediterranean Line and Another (1974) 1 C.L.R. 183.

Miliangos v. George Frank (Textiles) Ltd [1975] 3 All E.R. 801 at p. 809;

In re Railways of the Havana and Regla Warehouses Ltd. [1960] 2 All E.R. 322.

Jugoslavenska Oceanska Plovidba v. Castle Investment Co. Inc. [1973] 3 All E.R. 498;

Barclays Bank v. Levin Bros [1976] 3 All E.R. 900;

Jean Kraul A.G. v. Albany Fabrics [1977] 2 All E.R. 116;

Federal Commerce v. Tradax Export [1977] 2 All E.R. 41;

The Despina R. [1977] 3 All E.R. 874;

The Folias [1978] 2 All E.R. 764 and on appeal [1979] 1 All E.R. 421;

George Veflings Rederi A/S v. President of India [1979] 1 All E.R. 380;

In re Dynamics Corporation of America [1976] 2 All E.R. 669;

In re Lines Bros. Ltd [1982] 2 All E.R. 183;

Trade Development Bank v. The Ship "Ariadni P.I" [1981] 1 C.L.R. 653,

Lamaignere v. Selene Shipping Agencies Limited (1982) 1 C.L.R. 227 at p. 235.

Application.

Application by applicants judgment-creditors for a direction regarding the date of the conversion into Cyprus pounds of the

Drachmas, in which the judgment in their favour was expressed.

P. Pavlou, for applicants judgment-creditors.

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

E. Montanios with *P. Panayi* (*Miss*), for the intervener *Williams & Glyn's Bank*.

L. Papaphilippou, for the intervener *Mosvold*.

Cur. adv. vult.

SAVVIDES J. read the following judgment. Applicants are judgment-creditors of the defendant ship. The judgments in their favour are expressed in Greek Drachmas or their equivalent in Cyprus Pounds and their costs in Cyprus Pounds.

The defendant ship was sold by writs of movables issued by the appellants-plaintiffs and the proceeds of the sale were deposited by the Marshal in Court following directions to that effect.

The plaintiffs on the 27th October, 1983 applied that the judgments in their favour be paid out of the fund in Court which fund resulted from the execution of the writs issued by them. When such application came before the Court on the 8th November, 1983, a question arose as to the date of conversion of the Drachmas into Cyprus Pounds. Counsel appearing for the two interveners in these actions, alleged that the conversion should be effected on the date of payment, whereas counsel for plaintiffs contended that the conversion should be effected on the date of judgment. Counsel for the defendant ship did not oppose the application and left the matter to the Court.

Directions were given for written addresses to be filed in support of the contention of each party. Counsel for applicants in advancing his argument submitted that once the judgments were given in Drachmas or their equivalent in Cyprus Pounds and no particular time was fixed for the conversion, the only reasonable inference which can be drawn from such judgments is that the conversion should take place at the date on which such judgments were given. In support of his argument he sought to rely on the case of *Papavassiliou & Tsangarides and others* v. *East Mediterranean Line and another* (1974) 1 C.L.R. 183, where A. Loizou, J., expressed the opinion that the claim and judgment must be in terms of Cyprus Pounds. He invited the Court to distinguish the present case from *Miliangos* v. *George*

Frank (Textiles) Ltd. [1975] 3 All E.R. 801, as in that case, there were directions in the judgment as to the date when the conversion was to take place, whereas in the present case, no such directions were made and in consequence the date of the judgment is the proper day for conversion.

Counsel for intervener Williams and Glyn's submitted that the words "or their equivalent in Cyprus Pounds" was only inserted in the judgment for the purpose of aid in execution, should such aid be required, and contended that the conversion should take place on the date of payment following in this respect *Miliangos* and all other English cases which followed that case since 1975 and also certain decisions of this Court in which the principles laid down in *Miliangos* case were adopted.

Counsel for intervener Mosvold also submitted that the words "or their equivalent in Cyprus Pounds" are added in the judgments in order to aid execution where there is no fund in Court at all or where the fund in Court is in local currency. Relying on the *Miliangos* case he submitted that the date of conversion of a judgment debt is the date of payment of the judgment or, alternatively, the date of enforcement that is the date of the affidavit leading to execution.

In England the question as to whether a judgment could be given in foreign currency appeared as finally settled by the decision in Re *United Railways of the Havana and Regla Warehouses Ltd.* [1960] 2 All E.R. 332, in which the House of Lords affirmed the proposition in rule 177 at page 914 of the 7th Edition of DICEY'S CONFLICT OF LAWS, that an English Court cannot give judgment for the payment of an amount in foreign currency and that a debt expressed in foreign currency must be converted into sterling. As Lord Denning said in that case at page 356: "..... if there is one thing clear in our law, is that the claim must be made in sterling and the judgment given in sterling." It was also held in that case that:

> "As to the rate of exchange for conversion of the foreign currency in which the unfulfilled obligations of the railway company under the lease (which created debts due in foreign currency) were payable was that prevailing as and when each sum fell due and became unpaid."

Viscount Simonds at page 343 had this to add:

> "In this country, the rule is settled so as to bind all courts that, where the claim is in damages for breach of contract or for a tortious act, the date of conversion is the date of that breach or that act."

The origin of the rule as understood by Lord Denning "lies in the fact that, for long years, sterling was regarded as a stable currency 'of whose true-fixed and resting quality there is no fellow in the firmament'. Sterling is the constant unit of value by which, in the eye of the law, everything else is measured. So long as sterling is regarded as stable whilst other currencies go up and down, it would seem that justice is best done by taking the rate of exchange at the date of the breach."

The situation, however, as regards currency stability since 1960 has changed substantially. As Lord Wilberforce observed in the case of *Miliangos* v. *George Frank (Textiles) Ltd.* (supra) at p. 809:-

> "Instead of the main world currencies being fixed and fairly stable in value, subject to the risk of periodic re-or de-valuations, many of them are now 'floating', i.e. they have no fixed exchange value even from day to day. This is true of sterling. This means that, instead of a situation in which changes of relative value occurred between the 'breach-date' and the date of judgment or payment being the exception, so that a rule which did not provide for this case could be generally fair, this situation is now the rule. So the search for a formula to deal with it becomes urgent in the interest of justice".

This state of facts became recognised in those commercial circles which were closely concerned with international contracts, and this appears particularly in the field of arbitration where in 1965, two of the most experienced Artibrators in the City of London made their awards expressed in terms of US dollars. The validity of such awards came to be tested in the Courts in the case of *Jugoslavenska Oceanska Plovidba* v. *Castle Investment Co. Inc.* [1973] 3 All E.R. 498. But the radical change in the old practice was brought about by *Miliangos* v. *George Frank (Textiles) Ltd.* (supra) which did not follow and departed

from the previous decision of the House of Lords in the *Havana Railways*' case and approved the *Jugoslavenska* case. It was held in the *Miliangos* case (Lord Simon of Glaisdale dissenting):

> "Where a plaintiff brought an action for a sum of money due under a contract he was entitled to claim and obtain judgment for the amount of the debt expressed in the currency of a foreign country if the proper law of the contract was the law of that country and the money of account and payment was that of the same country. If it was necessary to enforce the judgment that amount was to be converted into sterling at the date when leave was given to enforce the judgment. It followed that the plaintiff was entitled to an order that the defendants should pay him the sum due in Swiss francs or the sterling equivalent at the time when leave was given to enforce the judgment".

The *Miliangos* case has been followed ever since by the English Courts and applied in the cases of *Barclays Bank* v. *Levin Bros.* [1976] 3 All E.R. 900, *Jean Kraut A.G.* v. *Albany Fabrics* [1977] 2 All E.R. 116, *Federal Commerce* v. *Tradax Export* [1977] 2 All E.R. 41, *The Despina R* [1977] 3 All E.R. 874 and on appeal [1979] 1 All E.R. 421, *The Folias* [1978] 2 All E.R. 764 and on appeal [1979] 1 All E.R. 421 and *George Veflings Rederi A/S* v. *President of India* [1979] 1 All E.R. 380 (in which Lord Denning, M.R., described the effect of *Miliangos* case on the law on this subject as having been revolutionised).

As to the date of conversion Lord Wilberforce had this to say in *Miliangos* case at pp. 813-814:-

> "As regards the conversion date to be inserted in the claim or in the judgment of the Court, the choice, as pointed out in the *Havana Railways* case, is between (i) the date of action brought, (ii) the date of judgment (iii) the date of payment. Each has its advantages, and it is to be noticed that the Court of Appeal in *Schorsch Meier* and in the present case chose the date of payment, meaning, as I understand it, the date when the Court authorises enforcement of the judgment in terms of sterling. The date of payment is taken in the convention annexed to the Carriage of Goods by Road Act 1965 (Schedule, art 27(2)). This date gets nearest to securing to the creditor exactly what

he bargained for. The date of action brought, though favoured by Lord Reid and Lord Radcliffe in the *Havana Railways* case, seems to me to place the creditor too severely at the mercy of the debtor's obstructive defences (of this case) or the law's delay. It may have been based on an understanding of the judgment of Holmes J in the *Deutsche Bank* now seen to be probably mistaken: see Mann on The Legal Aspect of Money and cases cited. The date of judgment is shown to be a workable date in practice by its inclusion in the Carriage by Air Act 1961, which gave effect to the Hague Convention 1956 varying, on this very point, the Warsaw Convention 1929, but, in some cases, particularly where there is an appeal, may again impose on the creditor a considerable currency risk. So I would favour the payment date, in the sense I have mentioned. In the case of a company in liquidation, the corresponding date for conversion would be the date when the creditor's claim in terms of sterling is admitted by the liquidator. In the case of arbitration, there may be a minor discrepancy, if the practice which apparently adopted (see the *Jugoslavenska case*) remains as it is, but I can see no reason why, if desired, that practice should not be adjusted so as to enable conversion to be made as at the date when leave to enforce in sterling is given".

and Lord Cross at p. 838:

"I would go no further on this occasion than to say that the Court has power to give judgment for payment of money in a foreign currency and that one case in which such a judgment should be given is where the action is brought to enforce a foreign money obligation. In that case if the defendant fails to deliver the foreign currency the date for its conversion into sterling should be the date when the plaintiff is given leave to levy execution for a sum expressed in sterling. I say nothing one way or the other as to the date for conversion into sterling of sums ascertained in foreign currency for damages for breach of contract or tort".

Also Lord Edmund-Davies had this to say at p. 841:-

"But for that fact, the most just rate would be that prevailing when the award was being enforced, for the plaintiff had

been kept out of his money until then, and I see no reason why this latter rate should not be the one adopted when judgments expressed in a foreign currency are being enforced".

Lord Fraser expressed the following opinion at p. 841, 842:-

"The question is what the conversion date should be. Theoretically, it should, in my opinion, be the date of actual payment of the debt. That would give exactly the cost in sterling of buying the foreign currency. But theory must yield to practical necessity to this extent that, if the judgment has to be enforced in this country, it must be converted before enforcement. Accordingly I agree with my noble and learned friend that conversion should be at the date when the Court authorises enforcement of the judgment in sterling.

I would add that I am not entirely satisfied that difficulty, and even injustice, may not occur if the rule continues to be that damages are converted at the breach-date while foreign debts are converted at the date of payment. In the instant case, if the appellant's counterclaim had been successfully maintained, this question might have had to be decided. As things are, it does not arise, and I would agree that it is not necessary or appropriate to consider cases other than foreign debts".

As to the power of the Court to depart from an established rule and the reason for having so to do Lord Wilberforce said at p. 814:

"I would say that, difficult as this whole matter undoubtedly is, if once a clear conclusion is reached as to what the law ought now to be, declaration of it by this House is appropriate. The law on this topic is judge made; it has been built up over the years from case to case. It is entirely within this House's duty in the course of administering justice, to give the law a new direction in a particular case where, on principle and in reason, it appears right to do so. I cannot accept the suggestion that because a rule is long established only legislation can change it—that may be so when the rule is so deeply entrenched that

it has infected the whole legal system, or the choice of a new rule involves more far-reaching research than Courts can carry out".

In some of the cases which followed *Miliangos* case the judgments were expressed in foreign currency "or the equivalent in sterling at the date of payment or enforcement" and in others in foreign currency "or for the sterling equivalent at the time when leave given to enforce judgment" or "at the rate of exchange ruling at the date of payment".

The dicta of Lord Wilberforce and Lord Cross in *Miliangos* case that the date of conversion in the case of a company in liquidation would be the date when the creditor's claim in terms of sterling is admitted by the liquidator have not been followed in *Re Dynamics Corporation of America* [1976] 2 All E.R. 669 and *Re Lines Bros Ltd.* [1982] 2 All E.R. 183 in which it was held that the conversion date should be the date of the commencement of the winding-up, since that date was the date which existing liabilities were to be valued and the date beyond which no further liabilities could accrue.

Prior to 1974, our Courts following the rule laid down in the *Havana Railways* case were reluctant to give judgments in foreign currency. As a result, judgments were given in Cyprus currency. Thus, in *Papavassiliou & Tsangarides & Others* (supra), A. Loizou, J., at p. 188 had this to say:-

> "It seems to me that the principle of law applicable to a case where there is a claim for damages for breach of contract or for tort in terms of foreign currency (the claim) must be converted into Cyprus Pounds at the rate prevailing at the date of breach or tortious act. Furthermore, when a plaintiff sues in the Courts of Cyprus, the claim and judgment must be in terms of Cyprus Pounds".

After, however, such rule ceased to be followed as a result of the decision in *Miliangos* case our Courts adopted the new rule that judgments may be given in foreign currency. Thus, in *Trade Development Bank* v. *The Ship "ARIADNI PA"* (1981) 1 C.L.R. 653 it was held, following *Miliangos* case and *The Despina R.* that plaintiffs were entitled to obtain judgment payable in U.S. dollars.

Also, in *Lamaignere* v. *Selene Shipping Agencies Limited* (1982) 1 C.L.R. 227, Pikis J. had this to say at page 235:

> "The development of English law along its present lines was dictated not by any problems peculiar to English society but by the need to facilitate international trade and keep the avenues of commerce open, considerations relevant to the policy of the law in every country. The solution is a just one and in the absence of any legislative restrictions, it should be followed in Cyprus with equal benefit".

Before concluding on the legal aspect of the case I wish to add that there is nothing either in the Court of Justice Law 1960 or in our Admiralty Rules or the R.S.C. in England prohibiting a judgment to be given in foreign currency.

Under the Rules of the Supreme Court of Cyprus in its Admiralty jurisdiction and the Civil Procedure rules no leave is required from the Court to issue a writ of movables for enforcement of the judgment when no period for stay is mentioned in the judgment or the period fixed for payment has expired. A writ of execution is issued by the Registrar of the Court upon the filing of a formal application for the issue of same supported by an affidavit verifying the amount due and by an office copy of the judgment sought to be executed. No discretion is given to the Registrar to refuse such application and no leave is required from him for the issue of a writ of movables for execution of a judgment for the payment of a sum of money and costs.

Rule 168 of the Admiralty Rules provides as follows:

> "168. Where any party shall desire to obtain execution of a judgment or order by sale of movable property or by attachment of movable property, he shall make a written application for the same to the Registrar, and shall at the same time produce to the Registrar an office copy of the judgment or order sought to be executed.
>
> The application shall be signed by the judgment creditor or his advocate and shall be filed".

Its corresponding rule under the Civil Procedure Rules (Order 40, rule 7) provides:

> "7. Every person to whom any sum or money or any

costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to apply for the issue of writs to enforce payment thereof, subject nevertheless as follows:-

(a) If the judgment or order is for payment within a period therein mentioned, no writ shall be issued until after the expiration of such period;

(b) The Court or Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit".

Having dealt with the principles as emanating from the above authorities I am now coming to consider, in the circumstances of the present cases which is the appropriate date for conversion of the amounts awarded in drachmas into their equivalent in Cyprus pounds. I am inclined to the view that once the judgment had to be enforced in this country the conversion should take place immediately before enforcement. In the circumstances of the present cases I find that the appropriate date should be the date when the plaintiffs judgment-creditors applied for the first time for the issue of writs of movables, without excluding the possibility in a proper case to consider as the appropriate date the date when the affidavit to be annexed to the application for the issue of a writ of movable is sworn.

Having examined the records of the cases I find that the dates when the plaintiffs filed their applications for the issue of writs of movables in the first instance are as follows:

In actions Nos. 73-85 such date was the 23rd September, 1982 and in actions Nos. 124-133/83 the 28th September, 1983.

In the result I direct that the date for conversion of drachmas into Cyprus Pounds in actions Nos. 73-85 should be the 23rd September, 1982, and in actions Nos. 124-133/82 the 28th September, 1983.

In the circumstances I make no order for costs in this application.

Order accordingly.