

1985 July 1

[SAVVIDES, J.]

KOULOUMBIS PANAYIOTIS AND OTHERS,

Plaintiffs,

v.

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

Defendant.

*(Admiralty Actions Nos. 73-85/82
and 124-133/82).*

*Admiralty—Ship arrested in another admiralty action (59/82)
sold by virtue of an order of appraisalment and sale pen-
dente lite issued in such action—Doctrine of priorities—
Any claim for the payment of the proceeds of such sale
is subject to the operation of said doctrine.*

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The defendant ship was arrested on 26.2.1982 by plain-
tiffs Williams and Glyn's Bank Plc in admiralty action
59/82 (Respondents-Intervenors in these proceedings)
brought against her on a claim under a mortgage for U. S.
Dollars 7,202,465 plus interest thereon.

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On the 23.9.1983 judgment was delivered by the Court
in an application filed in the said action 59/82 by the
plaintiffs on 23.6.1982 for the appraisalment and sale of the
defendant ship pendente lite (see *Williams and Glyns Bank
Ltd. v. Ship "MARIA"* (1983) 1 C.L.R. 773). The appli-
cation was granted and an order was made as follows:

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"As the appraisalment of the ship which has already
been carried out in another action was effected more
than six months ago, I shall direct a new appraisalment
of her value by the marshal in her present condition.

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In the result, I make an order -

- (a) for the sale of the ship pendente lite after the appraisalment of her value by the marshal and

(b) that the proceeds of the sale be brought into Court.”

5 The appraisalment to which reference is made in the above order is an appraisalment made in execution of writs of movables issued by the judgment-creditors in the above Admiralty Actions 73-85/82 and 123-133/82.

10 In compliance with the order of the Court in Action 59/82 dated 10.10.1983 the marshal proceeded to a new appraisalment of the ship and with the approval of the Court and the consent of the parties sold same by private treaty on 13.10.1983 for the sum of U.S. Dollars 1,500,000. The proceeds of the sale were deposited with the Registrar of the Court who, with the consent of all parties concerned and the sanction of the Court, deposited same with the Cyprus Popular Bank, Nicosia.

15 The appraisalment of the defendant ship made in furtherance of the execution of the writs of movables issued by the plaintiffs in the above actions 73-85/82 and 123-133/82 was superseded and substituted by the above order of the Court in Action 59/82. The marshal, in effecting
20 the said sale, was acting under a commission of the Court by virtue of the above order.

25 As the judgment debts in the above actions 73-85/82 and 123-133/82, being crew claims, ranked in priority after marshal's expenses, the plaintiffs in the above actions applied for the payment to them of the judgment-debts out of the fund created by the deposit of the proceeds of sale as aforesaid.

On 1.11.1983 the following directions were given by the Court in the said applications:

30 “In view of the fact that there are sufficient funds to cover the marshal's expenses which rank in priority to other claims, and even after the payment of the claims of the crew there will be still surplus to other creditors who rank next in priority to the crew, the
35 payment out to the crew will not affect the order of priorities which will be determined on a proper application, provided that the caveat already filed against such payment, is withdrawn.

On the question of the marshal's expenses I have al-

ready fixed the application of the marshal on the 18th November and any party is at liberty to file an application for settling the order of priorities in case there is any claim that such order is not in the line already agreed between the parties, that is, (a) marshal's expenses (b) crew claims and (c) other creditors". 5

On 8.11.1983 all parties concerned consented to the payment out of the said deposit of the proceeds of sale to the plaintiffs 80 per cent of their respective claims at the rate of exchange prevailing on the date of the judgment. The balance of the judgments in their favour remained unpaid pending the determination of an application for Directions as to the date and rate of conversion. 10

By letter dated 14.11.1983, the advocates for the defendant ship, applied to the Registrar for the payment to them of any balance of money deposited with the said account, but such application was refused by the Registrar. As a result, Counsel for the defendant ship filed the present applications, one in each of the above actions. 15

Held, dismissing the applications, that the proceeds of the sale in this case represent the res, sold by an appraisal made in Admiralty Action 59/82 with express direction to the marshal that the proceeds were to be paid into Court; any claim for the payment of such proceeds, being the proceeds of the sale of the res, is subject to the operation of the doctrine of priorities; and before payment of any debts in the order of priority that such debts rank, the applicants are not entitled to claim the proceeds of sale. 20 25

Applications dismissed. 30
Costs against the applicant.

Applications.

Applications by defendant ship for an order of the Court directing the payment out to the applicant of all and/or any sums of money and/or any balance now deposited with the Cyprus Popular Bank, same being the proceeds of sale of the defendant ship by virtue of a writ of execution. 35

M. Eliades with *A. Skordis*, for appellant-defendant ship.

P. Pavlou, for respondents-plaintiffs.

5 *E. Montanios*, for interveners *Williams and Glyns Bank Plc.*, plaintiffs in Action No. 59/82.

Chr. Christofides for *L. Papaphilippou*, for caveator *Martin Mosvolt*, intervener in Action No. 59/82.

N. Ioannou (Mrs.) for *Chr. Demetriades*, for caveator *TEXACO Ltd.*, plaintiff in Action No. 111/83.

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Cur. adv. vult.

SAVVIDES J. read the following decision. By these similar applications which have been filed in the above actions and which were heard together as presenting common questions of law and fact, counsel for the defendant ship apply for
15 an order of the Court directing the payment out to the applicant of all and/or any sums of money and/or of any balance now deposited with the Cyprus Popular Bank Nicosia (through the Registrar of the Supreme Court), same being the proceeds of sale of the defendant ship by
20 virtue of writs of execution issued by the judgment creditors, plaintiffs in the above actions.

The defendant ship was arrested on 26.2.1982 by plaintiffs in Admiralty Action No. 59/82 brought against her by
25 *Williams and Glyn's Bank plc.*, respondents-intervenors in these proceedings, on a claim under a mortgage on the defendant ship to the said plaintiffs. By the said action the plaintiffs claim a sum of U. S. Dollars 7,202,465, plus interest. The hearing of the said action has not been concluded due to numerous interlocutory applications which have been
30 filed and the effect of which was to protract the proceedings and delay the hearing of the substance of the case.

Respondents-plaintiffs in the above actions are the master and members of the crew of the defendant ship and their claims were for the recovery of wages and other emoluments due to them in respect of which they obtained judgments
35 against the defendant ship.

On the 23rd June, 1982, the plaintiffs in Admiralty

Action 59/82, Williams and Glyn's Bank plc., filed an application for the appraisalment and sale of the defendant ship pendente lite which was opposed on behalf of the defendant ship. The judgment in such application was delivered by me on the 22nd September, 1983, (see, *Williams and Glyn's Bank Ltd. v. Ship "MARIA"* (1983) 1 C.L.R. 773). The reason of the delay in the determination of such application was due, as it appears in the judgment, to the fact that numerous other applications which had been filed in the action had to be dealt with before the application for the appraisalment and sale of the defendant ship. The application was granted and an order was made as follows:

"As the appraisalment of the ship which has already been carried out in another action was effected more than six months ago, I shall direct a new appraisalment of her value by the Marshal in her present condition.

In the result, I make an order -

- (a) for the sale of the ship pendente lite after the appraisalment of her value by the Marshal and
- (b) that the proceeds of the sale be brought into Court."

The appraisalment to which reference is made in the above judgment is an appraisalment made in execution of writs of movables issued by the respondents-plaintiffs judgment-creditors in the above admiralty actions 73/82 - 85/82 and 124/82 - 133/82. The said judgment creditors had applied for the appraisalment and sale of the defendant ship but as the said ship was not under arrest in their respective actions, their applications failed and were subsequently dismissed (see *Kouloumbis and others v. The ship "MARIA"* (1983) 1 C.L.R. 467). As a result and in the light of what was held in the said judgment, the judgment-creditors proceeded to execution by issuing, through the Registrar of the Court, writs of movables by virtue of which the ship was seized by the Marshal in execution of same.

Complying with the order of the Court of the 10th October 1983 in Admiralty Action No. 59/82 the Marshal proceeded to a new appraisalment of the ship and with the approval of the Court and the consent of the parties, sold

same by private treaty on 13.10.1983 for the sum of U.S. Dollars 1,500,000. The proceeds of the sale were deposited by the Marshal with the Registrar of the Court who, with the consent of all parties concerned, and with the sanction
5 of the Court, deposited same with the Cyprus Popular Bank, Nicosia, on an interest-bearing account.

It is clear from the record of these proceedings that any appraisal of the defendant ship which was effected in furtherance of the execution of the writs of movables
10 issued by the plaintiffs in the above actions was superseded and substituted by the order of the Court of the 10th October, 1983 in Admiralty Action 59/82 by virtue of which the ship had been arrested in the first instance and was
15 under arrest at the time when judgment was entered in the above actions. The Marshal, in effecting the sale, was acting under a commission of the Court dated 10th October, 1983 and this is recorded in the Bill of Sale signed by the Marshal on 13th October, 1983, copy of which is
20 annexed as exhibit "D" to the affidavit sworn on behalf of the respondents Williams and Glyn's Bank plc.

Out of the fund created by the deposit of the proceeds of the sale of the ship, the plaintiffs, judgment-creditors in the above actions, applied for the payment to them of their
25 judgment-debts, which, being crew claims, ranked in priority after Marshal's expenses. Such application came before me on the 1st November, 1983 when, after having heard what was said by Mr. Pavlou, advocate for plaintiffs, judgment-creditors, Mr. Eliades, for the defendant ship, Mr. Montanios for the intervener Williams and Glyn's Bank
30 plc., and Mr. Papaphilippou for the intervener Mosvold, I made the following directions:

"In view of the fact that there are sufficient funds to cover the Marshal's expenses which rank in priority to other claims, and even after the payment of the
35 claims of the crew there will be still surplus to other creditors who rank next in priority to the crew, the payment out to the crew will not affect the order of priorities which will be determined on a proper application, provided that the caveat already filed against
40 such payment, is withdrawn.

On the question of the Marshal's expenses I have already fixed the application of the Marshal on the 18th November and any party is at liberty to file an application for settling the order of priorities in case there is any claim that such order is not in the line already agreed between the parties, that is, (a) Marshal's expenses (b) crew claims and (c) other creditors." 5

On the 8th November, 1983 all parties concerned appeared before the Court and consented to the payment out of the proceeds of the sale to the plaintiffs 80 per cent of their claim at the rate of exchange prevailing on the date of the judgment. The balance of the judgments in their favour remained pending the determination of an application for directions as to the date and rate of conversion. 10 15

By letter dated 14.11.1983, advocates for the defendant ship applied to the Registrar for the payment to them of any balance of money deposited with the said account but such application was refused by the Registrar. As a result, counsel for the defendant ship filed the present applications, one in each of the above actions. 20

It has been the contention of counsel for the defendant ship that once the plaintiffs in Action 59/82 consented and/or acquiesced to the release of the defendant ship from arrest by allowing and/or consenting to the sale of the above ship in execution of the judgment-debts in the above actions, they have abandoned their security and they have been deprived of claiming the balance of the sale price which has been deposited with the Bank. Therefore, applicant is entitled to any balance of the proceeds after deducting any amount required to cover any amount remaining due under the writs issued in Actions 73/82-85/82 and 124/82 - 133/82. Counsel for applicant further contended that due to the mode of sale in this case, the proceeds of the sale are proceeds from writs of execution against moveables and/or writs of fi.fa. and they do not in any way represent the res against which the claim of plaintiffs in Action 59/82 stands. 25 30 35

The application was opposed by respondents-plaintiffs, by the interveners Williams and Glyn's Bank, plaintiffs in Action 59/82, by caveator Martin Mosvold, intervener in Action No. 59/82 and by Texaco Ltd. caveators in these
5 actions. Counsel for respondents contended that the sale of the defendant ship was effected by an order of the Court for the appraisalment and sale of the defendant ship with directions that the proceeds of the sale be paid into Court and be dealt with following the order of priorities of various claims against the defendant ship. It was their
10 contention that in an action in rem the proceeds of sale represent the res which was sold under an order of appraisalment and any claim for the payment out of such proceeds is subject to the operation of the doctrine of priorities.

15 The proceeds of the sale in this case represent the res which was sold by an appraisalment made in Admiralty Action 59/82 with express direction to the Marshal that the proceeds were to be paid into Court. As already mentioned, according to the bill of sale issued by the Marshal
20 the sale was effected under the commission of the Court dated 10th October, 1983. No appeal has been made against such order.

From what appears in the record of the proceedings counsel for the defendant ship never contested the directions made by the Court on 1.11.1983 as to the order of
25 priorities but came later with the present applications claiming any balance of the proceeds as belonging to the applicant, thus ignoring any other claims on the defendant ship by way of mortgage, lien or otherwise. Any claim for the
30 payment out of such proceeds, being the proceeds of the sale of the res, is subject to the operation of the doctrine of priorities and before the payment of any debts in the order of priority that such debts rank, the applicants are not entitled to claim the proceeds of the sale. They will be
35 so entitled if there is a surplus after the payment of all debts ranking in priority.

I have, therefore, come to the conclusion that these applications cannot succeed as there are other claims against

such proceeds ranking in priority as mentioned in the directions of this Court of the 1st November, 1983.

The applications are, therefore, dismissed with costs against the applicant and in favour of the respondents.

*Applications dismissed with
costs against applicant.*

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