

1985 July 25

[SAVVIDES, J.]

WILLIAMS & GLYNS BANK PLC.,

Plaintiff,

v.

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

Defendant.

(Admiralty Action No. 59/82).

Admiralty—Warrant of arrest—Purpose of—Order for appraisal
and sale of a ship under arrest pendente lite—Upon
such sale warrant of arrest automatically ceases to exist—
Proceeds of such sale represent the res sold—As upon sale
5 the warrant of arrest ceases to exist, an application, filed
after such sale, for setting aside the warrant is without
foundation.

Admiralty—Jurisdiction of the Court—Section 1(1)(c) of the
English Administration of Justice Act, 1956—Sections 19(a)
10 and 29(2)(a) of the Courts of Justice Law, 14/1960—Sale
of ship under arrest pendente lite—Does not deprive Court
of its jurisdiction—Once the Court has been seized with
jurisdiction in the matter and such jurisdiction has never
been contested till the commencement of the hearing, the
15 Court cannot be deprived of its jurisdiction—Rule 74 of
the Cyprus Admiralty Rules.

The defendant ship was arrested in this action by plain-
tiffs on 26.2.1982. The pleadings in the action were com-
pleted a long time ago and in fact the hearing commenced
20 but had to be interrupted due to a number of applications.
When the hearing commenced the question of the juris-
diction of the Court was not in issue; as a matter of fact
the defendants had entered an unconditional appearance
to the action and did not raise such issue in the pleadings.

25 On the 23.9.1983 judgment was delivered by the Court

in an application filed 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 application 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.

In the result, I make an order -

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- (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 order is an appraisalment made in execution of writs of movables issued by the judgment-creditors in the Admiralty Actions 73-85/82 and 123-133/82, which were brought against the defendant ship by her master and her crew.

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In compliance with the order of the Court in this action 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.

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The appraisalment of the defendant ship made in furtherance of the execution of the writs of movables in actions 73-85/82 and 123-133/82 was superseded and substituted by the above order of the Court in this action. The Marshal, in effecting the said sale, was acting under a commission of the Court by virtue of the said order of the 10.10.1983.

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As the judgment debts in the said actions 73-85/82 and 123-133/82, being crew claims, ranked in priority after Marshal's expenses, the judgment-creditors in the said ac-

tions filed application in their respective actions for the payment to them of the judgment-debts out of the fund created by the deposit of the proceeds of sale as aforesaid.

5 On 1.11.1983 the Court gave directions relating to the said applications (see p. 503, post) and on 8.11.1983 all parties concerned consented to the payment out of the said deposit of the proceeds of sale to the judgment-creditors in the said actions 80 per cent of their
10 respective claims at the rate of exchange prevailing on the date of the judgment. It was further agreed that the balance of the said judgment-debts would remain unpaid pending the determination of an application for directions as to the date and rate of conversion.

15 As a result of a refusal by the Registrar to accede to a request made by letter dated 14.11.1983 by the advocates for the defendant ship for the payment to them of any balance in the said account with the Cyprus Popular Bank, a number of applications, one in each of the said
20 actions 73-75/82 and 123-133/82, were filed praying for the payment of any such balance to the advocates of the defendant ship. The Court dismissed the said applications (see *Kouloumbis Panayiotis of Greece and Others v. The Ship "MARIA"* (1985) 1 C.L.R. 486, ante).

25 By the present application counsel for the defendant ship apply for (A) an order of the Court setting aside and/or rescinding and/or discharging the warrant of arrest issued against the defendant ship in this action, (B) an
30 order of the Court setting aside the writ of summons and/or dismissing the action on the ground that the Court has no jurisdiction and/or if the Court ever had ceased to have jurisdiction, (C) a declaration that the Court has no jurisdiction and/or ceased to have jurisdiction in the present case and (D) further or other relief.

35 *Held, dismissing the application* (1) that once a ship is arrested, in practice she either remains in safe custody until sold or security is given to safeguard the plaintiff's claim. After a sale is effected the warrant of arrest of the res is terminated but the proceeds of sale are brought into

Court representing the res and are available for payment out subject to the operation of the doctrine of priorities.

In this case as a result of the sale of the ship the warrant of arrest issued in this action automatically ceased to exist. The res was converted into the proceeds of the sale which were at first deposited into Court and subsequently with a local Bank. Prayer under (A) of this application is without foundation as the ship had ceased to be under arrest and, therefore, at the time of the filing of this application no warrant of arrest was in existence and in consequence there was no subject-matter for such prayer. 5 10

(2) That the claim in the present action is in respect of a mortgage and consequently is within the admiralty jurisdiction of this Court. (See paragraph (c) of subsection (1) of section 1 of the English Administration of Justice Act 1956, which is applicable in Cyprus by virtue of sections 19(a) and 29(2)(a) of the Courts of Justice Law, 14/1960). At the time of the institution of the present action and of the warrant of arrest the defendant ship was at a Cyprus Port within the jurisdiction of this Court; service was properly effected upon her; the defendant ship entered an unconditional appearance; the question of jurisdiction had never before been raised; the pleadings were concluded and the hearing commenced without the question of jurisdiction being an issue in the proceedings. Therefore, once the Court has been seized with jurisdiction in the matter and such jurisdiction has never been contested, till the commencement of the hearing, the Court cannot be deprived of its jurisdiction to adjudicate on the matter. 15 20 25 30

Under rule 74 of the Cyprus Admiralty Rules the Court has power to order the appraisalment and sale of a ship pendente lite; if the submission of counsel for the applicant is to be accepted, then the whole object of appraisalment and sale of the res will amount to the termination of any proceedings by a rightful claimant. 35

The proceeds of sale of the res represent the res and even after the sale of the ship any subsequent proceedings

may be commenced in rem against such proceeds as if they were the property in question.

Application dismissed. Order for costs in favour of respondents-plaintiffs.

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Application.

Application for an order of the Court setting aside and/or rescinding and/or discharging the warrant of arrest issued in this action against the defendant ship and for
10 an order setting aside the writ of summons and/or dismissing the action on the ground that the Court has no jurisdiction and/or ceased to have jurisdiction to try the action.

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

E. Montanios, for respondents-plaintiffs.

Cur. adv. vult.

SAVVIDES J. read the following decision. By this application counsel for the defendant ship apply for -

- 20 (A) An order of the Court setting aside and/or rescinding and/or discharging the Warrant of Arrest issued against the defendant Ship in the present action on the ground that the res/ship has been released and/or
25 otherwise disposed of and/or ceased to be under the control of the Marshal in the present action with the express and/or implied consent of the plaintiffs and/or with their acquiescence into the ship/res leaving the jurisdiction and/or ceasing to form security in the present action and/or on the ground that the res/ship
30 has not been converted at all and/or properly into proceeds paid into Court in substitution to the res for the use and/or security of the plaintiffs.
- (B) An Order of the Court setting aside the Writ of Summons and/or dismissing the action on the ground that
35 the Court has no jurisdiction and/or if the Court ever had ceased to have jurisdiction in the present case.

(C) A declaration that the Court has no jurisdiction and/or ceased to have jurisdiction in the present case.

(D) Any further or other relief.

The facts relied upon in support of the application are set out in an affidavit sworn on the 25th November, 1983 by Antonis Paschalides, advocate in the law office of counsel for applicant, the material parts of which read as follows: 5

“

3. The defendant ship has been sold on 13.10.1983 by virtue of writs of execution against movables and/or fi.fa. in Admiralty Actions 73-85/82 and 124-135/82 (actions by crew members). 10

4. The proceeds of sale, i.e. U.S. Dollars 1,500,000 were deposited by the Registrar in his name with Cyprus Popular Bank, Nicosia. 15

5. Pursuant to Court directions given on 8.11.1983 in the above actions by crew members the Registrar paid out to the judgment-creditors therein 80 per cent of the judgments in their favour the balance being kept with the said account pending final determination by the Court of the rate of exchange and the time of conversion of the judgment debts. 20

6. The defendant ship when sold was not under arrest in the actions in which sale was effected. In fact, the ship, was under arrest only in the present action. The plaintiffs consented and/or acquiesced to the release of the ship from arrest by allowing and/or consenting to the sale as above of the ship in execution of the said judgment debts. 25 30

7. I further verily believe that in view of the said mode of sale and/or the circumstances above described the proceeds thereof do not represent and/or stand in the shoes of the res.

8. I verily believe that as sale was effected through and/or by virtue of writ of execution against movable and/or fi.fa. and/or in the circumstances as above, 35

the defendant ship was released and/or deemed to have been released from arrest and/or in any event defendant ship can no longer be considered as being under arrest. I further verily believe that in the circumstances of the present action, being an action in rem, the Court no longer has, if ever had, jurisdiction over the case.”

The facts material to the present application have already been expounded by me in my judgment delivered on the 1st July 1985, in an application by the same applicant in Admiralty Actions 73-85/82 and 124-133/82, but for the purposes of the present application, I find it necessary to refer to them briefly.

The defendant ship was arrested in this action by plaintiffs on 26.2.1982. Pleadings in the action were completed a long time ago and in fact the hearing commenced but had to be interrupted due to a number of applications which were filed and had to be determined prior to the continuation of the hearing.

On the 23rd June, 1982 plaintiffs in this action filed an application for the appraisalment and sale of the defendant ship pendente lite which was opposed on behalf of the defendant ship. Judgment in such application was delivered by me on the 22nd September, 1983 (see *Williams and Glyns Bank Ltd. v. Ship "MARIA"* (1983) 1 C.L.R. 773). The reason of the delay in the determination of such application was, as it appears in the judgment, due 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 judgment-creditors in the Admiralty Actions 73-85/82 and 123-133/82, which were brought against the defendant ship by the master and the crew of the defendant ship. 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 10.10.1983, in this action 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 of the Court, deposited same with the Cyprus Popular Bank, Nicosia on an interest bearing account.

It is clear from the record of the proceedings that any appraisalment of the defendant ship which was effected in furtherance of the execution of the writs of movables issued by the plaintiffs in the said actions was superseded and substituted by the order of the Court of the 10.10.1983 in this action, by virtue of which the ship had been arrested in the first instance and was under arrest at the time when judgment was entered in the crew 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 annexed as exhibit "D" to the affidavit sworn on behalf of the respondents-plaintiffs.

5 Out of the fund created by the deposit of the proceeds of the sale of the ship, the judgment-creditors in the said actions filed applications in their respective actions, for the payment to them of their 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 the judgment-creditors, Mr. Eliades, for the defendant ship, Mr. Montanios for plaintiffs in this 10 action and interveners in the crew actions and Mr. Papaphilippou for the intervener Mosvold, I made the following directions:

15 "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 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 20 such payment, is withdrawn.

25 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."

30 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 in actions 73-75/82 and 123-133/82 80 per cent of their claim at the rate of exchange prevailing on the date of the judgment. The 35 balance of the judgments in their favour remained pending the determination of an application for directions as to the date and rate of conversion.

40 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 a number of applications, one in each of the said actions, praying for the payment to them of the proceeds of the sale. Such applications were heard by me and were dismissed for the reasons stated in the judgment delivered on 1.7.1985. 5

By their written address counsel for applicant-defendant ship confused their prayer in this application with the prayer in their applications of the 15th November, 1983 in Admiralty Actions 73-85/82 and 123-133/82. Whereas by this application they are praying for the discharge of the warrant of arrest, by their written address they refer to the application as being for the payment out to the applicants of any balance of the proceeds of the sale of the ship. Bearing in mind, however, the whole tenor of the arguments in the written addresses of both parties, I shall treat the prayer in this application as being the one mentioned in the application and not in the address of counsel for applicant. 10 15

Lengthy argument has been advanced by counsel for the applicant in their written address in support of the grounds set out in the affidavit annexed to their application. The biggest part of such address is a verbatim repetition of their address in their application of the 15th November, 1983, in Admiralty Actions 73-85/82 and 123-133/82 for the payment out to them of the balance of the proceeds of the sale and only by the last two pages of their address they advanced further argument concerning the present application. 20 25

It is the contention of counsel for applicant, that when a ship, being a movable, is sold by virtue of writs against movables, no fund in substitution of the res is created and, therefore, the proceeds thereof do not stand in the shoes of the res. Furthermore, they contended that after the ship was sold, she ceased to be within the jurisdiction of the Court and cannot be or be deemed to be under arrest. Therefore, the action being an action in rem ceased to have a subject matter and should be dismissed. Moreover, even if for the sake of argument the defendant ship was to accept that a fund was created, the proper remedy for any 30 35 40

claimant could not possibly be a warrant of arrest of the fund.

5 Counsel for the defendant ship concluded by maintaining that no valid warrant of arrest can or could possibly exist against the ship and, therefore, the warrant of arrest should be set aside or discharged. Consequently the action cannot be maintained and should be dismissed.

Counsel for the respondents-plaintiffs by his written address maintained that-

10 (a) Concerning prayer "A" of the application such prayer is without a subject matter because there is no warrant of arrest of the defendant ship in force nor there was one in force at the time when the application was made, as such warrant had expired and/or had been discharged
15 as a result of the sale of the defendant ship by the Marshal on 13.10.1983 and the signing by him of a bill of sale after such sale had been ordered by the Court.

20 (b) Concerning prayer "B" of the application, they raised a procedural objection to the effect that such prayer could not be maintained as applicant has entered an unconditional appearance and has failed before entering appearance or after entering a conditional appearance to take steps to have the writ of summons and service thereof set aside.
25 Furthermore, that the pleadings had been closed and the hearing had commenced and no objection has been raised concerning the issue or the service of the writ of summons. In any event, counsel contended, the action was properly instituted against the defendant ship and that the Court has jurisdiction to adjudicate in the action.

30 I shall deal first with prayer "A" of this application. Under rule 50 of the Cyprus Admiralty Rules, a warrant of arrest may be issued at the time of or at any time after the issue of the writ of summons. The arrest procedure gives to the plaintiff security for his claim at the beginning of
35 an action which is of vital importance to admiralty proceedings. Once a ship is arrested, in practice she either remains

in safe custody until sold or security is given, and the plaintiff's claim is safeguarded. (See British Shipping Laws, Vol. 1, Admiralty Practice, 1st Edition page 106, para. 251). After a sale is effected the warrant of arrest of the res is terminated but the proceeds of the sale are brought into Court as representing the res and are available for payment out subject to the operation of the doctrine of priorities. 5

The proceeds of the sale of the defendant ship which was sold by an appraisalment made by the Marshal in compliance with the express directions made in this action were brought into Court. No appeal has been made against such order. As a result of the sale of the defendant ship the warrant of arrest automatically ceased to exist and the res was converted into the proceeds of the sale which have been deposited into Court for payment out to the various claimants subject to the operation of the doctrine of priorities. Such sale of the ship and the realisation of the proceeds of the sale which were deposited into Court and subsequently with a local Bank, terminated the warrant of arrest of the ship. In the result, I have come to the conclusion that prayer under "A" is without any foundation whatsoever, as the defendant ship after the sale had ceased to be under arrest and, therefore, at the time of the filing of this application no warrant of arrest was in existence and in consequence there was no subject matter for such prayer. 10 15 20 25

I come now to prayers "B" and "C" of this application which can be dealt with together.

Under the provisions of section 1 of the English Administration of Justice Act, 1956 which is applicable in Cyprus by virtue of the Courts of Justice Law, 1960 (sections 19(a) and 29(2)(a)), one of the type of cases which may be brought in the admiralty jurisdiction under paragraph (c) of sub-section (1) of section 1 is for any claim in respect of a mortgage of, or a charge on a ship or any share therein. The claim in the present action is in respect of a mortgage and consequently is within the admiralty jurisdiction. 30 35

tion of this Court. At the time of the institution of this action and the issue of a warrant of arrest the defendant ship was at a Cyprus port within the jurisdiction of this Court and service was properly effected upon it in the manner
5 provided by the Cyprus Admiralty Rules (rule 16(a)). An unconditional appearance was entered by the defendant ship and the question of exercise of jurisdiction by this Court has never been raised neither by entering a conditional appearance and applying to have the writ of summons and
10 service thereof set aside or by raising such issue in the pleadings. The pleadings were concluded and the hearing of the action commenced without the question of jurisdiction being an issue in the proceedings. I am therefore of the opinion that once the Court has been seized with jurisdiction in the matter and such jurisdiction has never been
15 contested, till the commencement of the hearing, this Court cannot be deprived of its jurisdiction to adjudicate on the matter. Counsel for applicant have not put before the Court any sound argument supported by legal authorities
20 on the matter, that once the Court is seized with jurisdiction in an action in rem, the fact that the rem is sold by an order of the Court, deprives the Court of jurisdiction in the matter.

Under the Cyprus Admiralty Rules (rule 74) there is
25 power in the Court for the appraisalment and sale of a ship pendente lite. If this rule is to be interpreted in the way counsel for the applicant has suggested, then the whole object of appraisalment and sale of the res will amount to the termination of any proceedings by a rightful claimant,
30 to his detriment and to the benefit of the defendant. If the submission of counsel for applicant is to be accepted, then rule 74 will become entirely nugatory as a plaintiff in an action in rem would not dare to exercise his rights under such rule as by so doing he would be deprived of
35 his cause of action.

As already mentioned, the proceeds of the sale represent the res and even after the sale of the ship any subsequent proceedings may be commenced in rem against such pro-

ceeds as if they were the property in question. (See British Shipping Laws, vol. 1 Admiralty Practice, page 8, para. 6).

I find the argument of counsel for the defendant ship in this respect entirely unfounded.

In the result, the application is dismissed with costs in 5
favour of respondents-plaintiffs.

*Application dismissed
with costs in favour of
respondents-plaintiffs.*