

1989 July 3

(A. LOIZOU, P., DEMETRIADES, STYLIANIDES, HADJITSANGARIS, CHRYSOSTOMIS,  
NIKITAS, ARTEMIDES, JJ.)

MICHAEL MOURTZINOS,

*Plaintiff,*

v.

THE SHIP «GALAXIAS» NOW LYING IN THE PORT OF LIMASSOL,

*Defendant.*

*(Admiralty Action No. 198/88).*

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*Judgments and orders — Stay of execution — A successful litigant should not be deprived of the fruits of his success, except for valid reasons and the possibility that the judgment under appeal may be reversed or varied.*

- 5       The amount originally fixed by a Judge of this Court for bailing out  
the ship under arrest was reduced by him from 1.8 million U.S.  
Dollars to 500,000 U.S. Dollars\*. An oral application to the Judge for  
staying execution of the order was dismissed. As a result this ex parte  
10       application was brought before the Full Bench of this Court. In the  
light of the principle appearing in the hereinabove headnote and the  
facts of this case the application was dismissed.

*Application dismissed with no order as to costs.*

*Cases referred to:*

- Erinford Properties Ltd. v. Cheshire* [1972] 2 All E.R. 448;
- 15       *Charalambous v. C. Nicolaidis and A. Neophytou and Co.* (1985)  
1 C.L.R. 737.

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\* See (1989) 1 C.L.R. 314

**Application.**

Application by plaintiffs for the stay of the enforcement of the Order dated 21st June, 1989 by which the amount that was required to be lodged for bailing out the defendant ship was reduced from one million eight hundred thousand U.S. dollars to five hundred thousand dollars.

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*L. Papaphilippou with N. Cleanthous*, for the applicant

*Cur. adv. vult.*

A. LOIZOU, P. read the following judgment of the Court. Upon the delivery of the judgment of the learned trial Judge, by which inter alia the amount fixed by him on the 12th April 1989 for bailing out the defendant ship, which had been arrested on the application of the plaintiff, was reduced from one million eight-hundred thousand U.S. dollars to five hundred thousand U.S. dollars or its equivalent in Cyprus currency, and consequently the order of the 12th April 1989 was amended accordingly, counsel for the appellant applied before him orally, under Order 203 of the Cyprus Admiralty Jurisdiction Order 1893, to fix once more at one-million eight-hundred thousand dollars the amount for bailing out the ship and this by means of an interim order as he intended to file an application for review under Order 165. His main argument was that the amount of two-hundred thousand U.S. dollars, fixed as damages, referred only to the specific breach of Clause 9 of the contract and not to the general damages connected with the use of the vessel, with the chartering of the vessel and the breach of the agreement as a whole.

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The learned trial Judge refused to grant such order and consequently an ex parte application was made by the appellants for the stay of the enforcement of the Order, dated 21st June 1989, with which as already stated, the amount that was required to be lodged for bailing out the defendant ship was reduced from one-million eight-hundred thousand U.S. dollars to five hundred thousand dollars.

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As the learned trial Judge had dealt in the first instance with this matter, when he was moved orally by counsel as above set out, this application was taken by the Full Bench.

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The action in which the warrant of arrest, and a number of procedural steps were taken, is one in which the following remedies were claimed in the writ of summons:

5 «(a) damages for breach of a written agreement dated 15th September, 1988, in connection with the use, exploitation and chartering of the ship 'GALAXIAS';

10 (b) 256,260 US Dollars, or its equivalent in Cyprus currency, and C£15,700, sums of money paid to the owners and/or their representative in connection with the above ship and/or on the basis of the above agreement;

15 (c) 149,608.90 US Dollars, or its equivalent in Cyprus currency, for costs incurred and payments made by the plaintiff as charterer and/or for the account and at the request of the owner of the ship 'GALAXIAS' and/or in connection with the supply of goods and materials and/or in connection with repairs, constructions and equipment of the ship 'GALAXIAS';

20 (d) damages for fraud and/or misrepresentation and/or deceit committed by and on behalf of the owner of the ship 'GALAXIAS' in connection with the agreement for chartering and/or use of the ship in question;

(e) any further and/or other remedies;

(f) interest at the rate of 9% per annum from the filing of the present action as damages or otherwise; and

25 (g) costs.»

Under term 9 of the agreement the compensation to be paid by the owning Company, in case of breach to the other party was fixed at two-hundred thousand U.S. dollars. It reads as follows:

30 «Party A shall sign on demand any necessary documents for the formation of the new company and/or shall duly execute a bill of sale and/or shall execute any further document that should be reasonably required to enable the ship to be legally transferred to the new company and/or enable the ship to be registered with the Greek and/or any other flag. If Party A fails

to comply with any of the above demands, Party B will have the right to cancel the agreement and thereupon any amount of the price paid shall be returned to it plus an amount of 200,000 US Dollars as agreed damages.▶

The principles governing the question of ordering stay of execution may be summed up as follows: A successful litigant is not to be deprived of the fruit of his success, except for valid reasons and the possibility that the judgment under appeal may be reversed or varied (see in this respect *Erinford Properties Ltd., v. Cheshire* [1972] 2 All E.R. 448, *Charalambos Charalambous v. C. Nicolaidis and A. Neophytou and Co.*, (1985) 1 C.L.R. 737 at p. 740. 5 10

We have examined the facts and circumstances of the case and in particular the allegation of the loss of use of the ship, which is the item under which the amount of one-million eight-hundred thousand dollars is claimed and which is simply set out as such in paragraph 10(d) of the affidavit of Mr. Takoushis, filed on behalf of the applicant, and we have come to the conclusion that we are not at this stage satisfied that we should stay the part of the order which relates to the reduction of the amount. 15 20

The application is therefore dismissed with no order as to costs.

*Application dismissed.  
No order as to costs.*