

1981 April 14

[A. LOIZOU, J.]

ESSEX OVERSEAS TRADE SERVICE LTD.,

*Plaintiffs,*

v.

1. LEGENT SHIPPING CO. LTD., OWNERS OF DEFENDANT 2,

2. THE SHIP "GEORGHIOS GILLAS" OR "GEORGHIOS G",  
*Defendants.*

*(Admiralty Action No. 155/80).*

*Admiralty—Jurisdiction—Governed by the English Administration of Justice Act, 1956—Arrest of ship—Action in rem and in personam against shipowners and ship for breach of contract for carriage of goods—No contention that claim arose out of agreement relating to carriage of goods in a ship or to the use or hire of ship—Admiralty jurisdiction cannot be invoked by an action in rem—Warrant of arrest of ship discharged—Sections 1(1)(h) and 3(1) and (4)(a)(b) of the English Administration of Justice Act, supra.*

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Following the filing of a mixed action in rem and in personam against the defendants whereby the plaintiffs claimed damages for breach of two written contracts between the parties for the carriage of goods and/or damages for the loss caused to the plaintiffs on account of the aforesaid breach, damages for unfit quality of goods carried in a bad state and damages for non delivery and non transport of goods, the Court, upon an *ex-parte* application of the plaintiffs ordered the arrest of defendant 2 ship.

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With the exception of the contention that defendants were the owners of the defendant ship and that that was the only property owned by them, nowhere in the endorsement of the writ or in the affidavits filed, both in support of the application for the issue of the warrant of arrest, or with the opposition to the application for the discharge of the said warrant, there

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was any mention that plaintiffs' claim was a claim arising out of any agreement relating to the carriage of goods in a ship, or to the use or hire of a ship, or in any event a claim arising in connection with a ship.

5 The Admiralty Jurisdiction of this Court and the manner in which it may be invoked is, by virtue of sections 19(1) and 29(2)(a) of the Courts of Justice Law, 1960 (Law 14/60) governed by the English Administration of Justice Act, 1956 and the sections relevant for the purposes of this case are sections 1(1)(h)\* and 3(1) and (4)(a) and (b)\*\*.

10 *Upon an application that the warrant of arrest should be discharged on the ground that an action in rem could not be invoked in the circumstances of this case and on the facts as disclosed in the endorsement of the writ of summons and the affidavits filed in the proceedings:*

15 *Held*, that the only heading under which the choice of an action in rem could be invoked in the circumstances is that of paragraph (h) of section 1 of the Administration of Justice Act, 1956 which refers to "any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship", in which case the provisions of subsection 4 of section 3, of the same Act could be relied upon and the admiralty jurisdiction of the High Court might be invoked by an action in rem against such a ship or a sister ship; that the legal position being so and applied to the facts of the case, especially in view of the absence of any contention anywhere that the claim arose out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship, there is no alternative but to discharge the order of arrest on the ground that the admiralty jurisdiction of this Court could not be invoked by an action in rem in the circumstances; accordingly the warrant of arrest is discharged.

*Order accordingly.*

\* Section 1(1)(h) runs as follows:

"1(1)(h). The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims—

.....  
(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship".

\*\* Section 3(1) and (4)(a) and (b) is quoted at pp. 149-150 *post*.

Cases referred to:

*Rigas v. The Ship "Baalbeck"* (1973) 1 C.L.R. 159.

### Application.

Application by the defendant ship "Georghios Gillas" and the applicants-interveners for an order for the release of the defendant ship from the arrest ordered by the Court on the 5th August, 1980. 5

*P. Sarris with M. Vassiliou*, for the applicants-interveners and the defendant ship.

*X. Xenopoulos*, for the respondents-plaintiffs. 10

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. This is an application by the defendant ship and the applicants-interveners Talmetka Shipping Co. Ltd., of Paphos, by which the Court is moved to order the release of the defendant ship from the arrest ordered by it on the 5th August 1980, upon the filing by the plaintiffs of this mixed action in rem and in personam. 15

The claim in the said action is:

- (1) The amount of US \$1,690,000.— (one million, six-hundred and ninety-thousand U.S.A. dollars), or the corresponding amount in Cyprus pounds, as damages for breach of two written contracts between the parties, dated 9th February, 1979, and 2nd March 1979, for the carriage of goods i.e. 13,000 metric tons of Bitumen, on or about the end of September, 1979, and/or 20 25
- (2) Damages for the loss caused to them on account of the aforesaid breach by the defendants on the terms of the contractual obligation to provide and carry 13,000 metric tons Bitumen from Galatsi/Reni to Afghanistan, and/or
- (3) Damages for unfit quality of goods carried in a bad state and/or 30
- (4) Damages for non delivery and non transport of 8,000 metric tons of bitumen, and
- (5) Interest at 9% per annum on the aforesaid sum from the date of omission to pay same until payment. 35

As alleged in the affidavit filed in support of the application for the issue of the warrant of arrest, the defendants entered into two contracts with the plaintiffs. The one to supply the latter with the aforesaid quantity of bitumen F.O.R. Galatsi/  
5 Rini to be carried to Afghanistan, and another contract by which the defendants undertook to transport, not later than the end of September, 1979, 2,400 metric tons of the said bitumen to Kushka and the remaining 10,600 metric tons to Termes on the Russian-Afghanistan border.

10 It was further alleged therein that the defendants failed to comply with their obligations with respect to the above contracts as follows:

- 15 (a) Only approximately 400 tons arrived and this was in an unacceptable condition due to the inadequacy of the drums and leakage from them.
- (b) A further consignment was on rail trucks outside Termes but on a similar to above (a) condition, and eventually sold by the Russian authorities against demurrage and other costs.
- 20 (c) 8,000 tons remained at Galatsi and was never delivered as required by the contract, despite the payment of the full price by plaintiffs, which amounts to US \$1,690,000.

It was also contended therein that the defendants were at  
25 all material times a company with limited liability, duly registered as such in Cyprus and that as it appears in the official records of the register of Cyprus ships they are the owners of the defendant ship "GEORGHIOS GILLAS" or "GEORGHIOS G", which, to their knowledge is the only property owned by defendants 1.

30 It is the case for the applicants-intervenors as set out in the affidavit of Ioannis Stavrou Tsagalas, who is the main shareholder—60% of the shareholding—and Chairman of the Board of Directors of the applicant-intervening company, that the  
35 said company was registered on the 10th February, 1978, with the only and exclusive purpose of purchasing from its owners, defendants 1, and exploiting the defendant ship. After negotiations between the two companies there was executed on the

16th November, 1978, a "Private Agreement of Sale of Ship". At the same time there was delivered to them, as alleged by defendants 1, the Bill of Sale of the ship, as well as all documents and records, including a declaration of transfer of the ownership of the ship made on Form M.S.3. The aforesaid Private Agreement of Sale, photocopy of which has been attached to the affidavit of the said Ioannis Tsagalas, was presented to the Maritime Counsellor where the signature of Athanassios Georghiou Gilla, acting on behalf and as fully authorized representative of defendant company No. 1 and the signature of Ioannis Stavrou Tsagalas, acting on behalf of the applicant-intervening company, as purchasers, were duly certified on the 17th November, 1978.

On the 16th November, 1978, Mr. Elias Eliades, advocate of Paphos, submitted to the officer in charge for the registration of ships in Cyprus an application for the transfer of the ownership of this ship to the applicants-interveners. The application was accepted and instructions were forwarded by cable (*exhibit E*) dated the 17th November, 1978, to the Consul of the Republic in Piraeus, Greece, to endorse the certificate of Cyprus registry of the defendant ship provided certain conditions were satisfied. This cable reads as follows:

"VESSEL GEORGHIOS GILLAS OWNED BY LEGEND SHIPPING CO LTD SUBJECT TO MORTGAGE A DATED 14/4/77 STOP YOU MAY ENDORSE CERTIFICATE REGISTRY SAID VESSEL THAT OWNERSHIP TRANSFERRED TO TALMETKA SHIPPING CO LTD PROVIDED FOLLOWING DOCUMENTS DEPOSITED WITH YOU STOP FROM SELLERS 1) BILL OF SALE 2) RESOLUTION OF DIRECTORS RESOLVING SALE 3) POWER OF ATTORNEY 4) CONSENT OF MORTGAGEES FOR THE TRANSFER OF VESSEL AND FROM BUYERS 1) RESOLUTION OF DIRECTORS RESOLVING PURCHASE 2) POWER OF ATTORNEY 3) FORMS M.S.3 M.S.10 STOP CERTIFICATE OF INCORPORATION AND ARTICLES OF ASSOCIATION PRESENTED HERE STOP COLLECT CY£156.—CREW FEES NOV 77—NOV 78 CY£5.400 MILLS 5% SURCHARGE ON CREW FEES NOV 77—JULY 78 CY£10.—RADIO LICENCE 78 CY£0.470 MILS 5% SURCHARGE ON TONNAGE TAX AND

CY£20.—TRANSFER FEES STOP AUTHORITY  
VALID TILL 30/11/78

REGISTRAR CYPRUS SHIPS”.

5 On the same day the said Maritime Consul endorsed on the  
back of the certificate of Cyprus registry (photocopy of which  
has been produced as *exhibit 'D'* attached to the affidavit of  
the applicants), under the heading “Name, Residence and Occu-  
pation of the Owner”, this: Talmetca Shipping Co. Ltd.  
10 having its principal place of business at 1 Pallados Street,  
Paphos” and under the heading “Number of Hundredth Share”  
the words “One Hundred”. He duly signed and sealed this  
endorsement bearing that date.

15 When on the 24th November, 1978, all the documents  
requested were received at the office of the Registrar of Ships  
in Cyprus, it was discovered by the Officer-in-Charge of regi-  
strations, Mrs. Kariolou, who gave also evidence before me,  
that instead of a Bill of Sale they had deposited the Private  
Agreement of Sale of Ship (*exhibit 'A'*).

20 In December 1978, the Secretary of the applicant-intervener  
Company, Mr. Eliades, was informed that the transfer of owner-  
ship of the said ship was not recorded in the Cyprus register  
because a Bill of Sale was not produced as requested; a letter  
to that effect was also forwarded to the Cyprus Consulate in  
Piraeus.

25 In August 1979 there was a further oral communication with  
Mr. Eliades regarding the recording of the transfer of owner-  
ship of the said ship, but he then submitted an application  
(*exhibit 'I'*) for the deletion of this ship from the Cyprus Register,  
as same had been bought by a Greek Company and it would  
30 be registered in the Greek Register and he further asked that  
a cable to that effect be sent to the Consul of the Republic  
in Piraeus.

35 In January 1980, the ship called at Limassol port and her  
Master Eleftherios Tsagalas called at the office of Mrs. Kariolou  
for a certification of certain documents of the ship, whereupon  
Mrs. Kariolou noticed that he was travelling with a Certificate  
of Cyprus Register with the earlier mentioned endorsement  
at its back. Mrs. Kariolou brought to the Master's attention

the fact that such a transfer was never recorded in the Cyprus Register and asked him to deposit the requested Bill of Sale, so that they would be able to proceed with the recording of the transfer.

The Master of the ship, who according to the affidavit of Ioannis Tsagalas, is the owner of 20% of the shares of the applicant-intervening Company, the other 20% belonging to his brother Constantinos and the 60% to him, told her that they had some difference with Mr. Gillas regarding the financial settlement of the instalments and that he would obtain the requested Bill of Sale. After that statement Mrs. Kariolou told him that she would withdraw the certificate of register with the endorsement and issue a new one showing the vessel in ownership of defendant 1 company, to which he agreed and the ship has since then been travelling with this Certificate of Cyprus Register issued in January 1980. It was when the ship was travelling with this Certificate that its subject-arrest was effected.

Among the documents produced by the applicants-interveners in support of their claim of ownership of the defendant ship is a Bill of Sale (*exhibit 'C'*) in the prescribed form which is dated the 16th November, 1978, and which purports to have been executed between Legent Shipping Co. Ltd. as the transferors and the applicant-intervening company as the transferee.

This bill of sale was on the 6th August 1980, presented to the Consular/Consul General of the Embassy of the Republic of Cyprus in Greece, Mrs. Froso Parissiadou who certified that "the signature appearing above/overleaf is the true signature of Georghios Gillas". According, however, to Ioannis Tsagalas the signature on the bill of sale on behalf of the transferors was that of Athanassios Georghiou Gillas, the son of Georghios.

With the exception of the contention that the defendants were the owners of the defendant ship and that that was the only property owned by defendants 1, nowhere in the endorsement of the writ or in the affidavits filed, both in support of the application for the issue of the warrant of arrest, or filed with the opposition to the application for the discharge of the said warrant, there is any mention that this was a claim arising

out of any agreement relating to the carriage of goods in a ship, or to the use or hire of a ship, or in any event a claim arising in connection with a ship.

5 In fact, in the telex, Appendix "A", attached to the affidavit filed in support of the application for the issue of the warrant of arrest, no mention is made that the claim in the proceedings arose out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship. On the contrary in paragraph 7 thereof there is a reference to the price paid for  
10 the quantity of bitumen agreed to be supplied "per metric ton free on rail".

I have dealt with the facts at some length and to the extent that are relevant to the issues raised by this application which are the following two:

- 15 (a) That the warrant of arrest should be discharged on the ground that an action in rem could not be invoked in the circumstances of this case and on the facts as disclosed in the endorsement of the writ of summons and the affidavits filed in the proceedings; and
- 20 (b) that the warrant of arrest should be discharged on the ground that the defendant ship does not belong to defendants 1 having been sold before its arrest to the interveners.

In the case of *Elias Rigas v. The ship "Baalbeck"* (1973) 1  
25 C.L.R. p. 159, I referred to the Law governing the admiralty jurisdiction of this Court, the manner in which it may be invoked and the law it applies in the exercise of such jurisdiction with the particular reference to the issue of a warrant of arrest of  
30 a ship and that the relevant statutory provision is in relation to such cases the Administration of Justice Act 1956, of the U.K.

As stated in the *British Shipping Laws, Admiralty Practice*, (1964) at p. 30: "The provisions of section 3 of the Administration of Justice Act, 1956, relating to the mode of exercise  
35 of Admiralty jurisdiction, may also restrict the plaintiff's choice between the action in rem and the action in personam".

Section 3 reads as follows:

"3.-(1) Subject to the provisions of the next following



section the Admiralty jurisdiction of the High Court... may in all cases be invoked by an action in personam.

(2) The Admiralty jurisdiction of the High Court... may in the cases mentioned in paragraphs (a) to (c) and (s) of subsection (1) of section one of this Act be invoked by an action in rem against the ship or property in question. 5

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, the Admiralty jurisdiction of the High Court... may be invoked by an action in rem against that ship, aircraft or property. 10

(4) In the case of any such claim as is mentioned in paragraphs (d) to (r) of subsection (1) of section one of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court... may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against— 15 20

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person, or

(b) by other ship which, at the time when the action is brought, is beneficially owned as aforesaid". 25

From the aforesaid provision it appears that the only heading under which the choice of an action in rem could be invoked in the circumstances is that of paragraph (h) of section 1 of the Administration of Justice Act (1956) which refers to "any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship", in which case the provisions of subsection 4 of section 3, hereinabove set out could be relied upon and the admiralty jurisdiction of the High Court might be invoked by an action in rem against such a ship or a sister ship. 30 35

The legal position being so and applied to the facts of the case that I have already outlined especially in view of the absence of any contention anywhere that the claim arose out of any

agreement relating to the carriage of goods in a ship or to the use or hire of a ship, I am left with no alternative but to discharge the order of arrest on the ground that the admiralty jurisdiction of this Court could not be invoked by an action  
5 in rem in the circumstances.

Having reached this conclusion I need not therefore proceed to the examination of the second ground relied upon in support of the application for the discharge of the said warrant of arrest and the release of the defendant ship.

10 For all the above reasons the warrant of arrest issued on the 5th August 1980, is discharged with costs against the plaintiffs.

*Application granted with costs.*