

1982 March 8

[A: LOIZOU, DEMETRIADES, SAVVIDES, LORIS, STYLIANIDES,  
PIKIS, JJ.]

THE SHIP "HERMIA",

*Appellant-Defendant,*

v.

EVISAR COMPANIA NAVIERA, S.A.,

*Respondents-Plaintiffs.*

(Civil Appeal No. 6271).

*Admiralty—Salvage—Duty of salvor—Degree of care and skill—  
—Negligence of salvor—Principles applicable—Court will take  
a lenient view of the conduct of salvors—Burning ship—Salvors  
offering salvage services on own initiative—Having no suitable  
equipment—And no previous experience—Sinking of ship—  
Conclusion of trial Judge that salvors guilty of negligence sustained.*

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Following the breaking out of a fire on board the ship  
"Alexandra K", whilst sailing from Elefsina port of Greece  
for Jeddah—Saudi Arabia with a cargo of timber and other wood  
products, the ship's radio officer called for assistance and was  
informed that three tugboats were on their way towards the ship.  
Some time later there arrived at the spot the appellant ship  
"Hermia", a liner ship, whose captain boarded the burning  
ship and volunteered the take the sailors in distress to Limassol  
port of Cyprus. The captain of the burning ship declined the  
offer and left his ship. Then the captain of the appellant ship  
at his own initiative and without consulting or informing the  
captain of the burning ship volunteered to offer salvage services  
to the latter ship; and having tied the burning ship with ropes  
started towing it towards Cyprus. In the course of their journey  
the steel wire connecting the two ships was broken; and in spite  
of attempts to have it reconnected the burning ship was  
abandoned because she was heavily rolling and because the  
appellant ship had been damaged. The burning ship was finally  
sunk. In the course of the operation the crew of the appellant  
ship tried to fight the fire but they were unsuccessful because

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they were not properly trained and they did not have suitable equipment.

5 In an action by the owners of "Alexandra K" for damages for negligence by the appellant ship in rendering salvage services to the said ship the trial Judge after stating that "in considering whether a salvor has shown such a want of reasonable skill and knowledge as ought materially to affect the Court's award, or is guilty of an error of judgment, the Court will incline to the lenient view" held:

10 That as the defendant ship had no suitable equipment to such an extent as was reasonable and as a member or members of the crew had no previous experience, the salvors have failed to discharge the duty showing that they have used such skill and care as was reasonable in those circumstances; and that  
15 this was a classic case of negligence and not simply question of making mistakes in good faith or errors of judgment by the crew of the defendant ship.

Hence this appeal by the salvors which was mainly directed  
20 against the conclusions of the trial Judge regarding their negligence.

*Held*, that the trial Judge directed himself properly on the Law and did not overlook the attitude that Courts take a lenient view of the conduct of salvors or would be salvors, and how slow they are to find those who try their best in good faith in their effort for salvage guilty of negligence for mistakes or errors  
25 of judgment in their effort to save life or property in peril at sea; that the conclusions of the trial Judge based on the evidence as accepted by him duly warranted the findings that in the circumstances and making the allowances just referred to,  
30 the appellants were negligent; accordingly the appeal must fail.

*Appeal dismissed.*

Cases referred to:

- Anglo-Saxon Petroleum Co. Ltd. & Others v. Damant* [1947]  
2 *All E.R.* 645;  
35 *The Tojo Maru Owners of Motor Tanker Tojo Maru (her cargo and freight) v. N.V. Bureau Wijsmuller* [1971] 1 *All E.R.* 1110;  
*The "St. Blane"* [1974] 1 *Lloyds Law Reports* 557.

**Appeal.**

Appeal by defendants against the judgment of a Judge of the Supreme Court (Hadjianastassiou, J.) dated the 12th February, 1981 (Adm. Action No. 156/76) whereby they were adjudged to pay the amount of U.S. dollars 150,000.—to the plaintiffs as damages for the loss of their ship "Alexandra K" due to their negligence in rendering salvage services to the said ship. 5

*Fr. Saveriades*, for the appellant.

*K. Saveriades, Ch. Mylonas and M. Vassiliou*, for the respondent. 10

A. LOIZOU J. gave the following judgment of the Court. This is an appeal from the judgment of a Judge of this Court\* by which the appellants were adjudged to pay the amount of U.S. dollars 150,000.—or the equivalent in Cyprus pounds with interest thereon at 9% per annum from 12th February, 1981, to date of payment and costs as damages for the loss of the ship of the respondents due to the negligence of the appellants in rendering salvage services to the ship in question. 15

The facts of the case appear clearly in the judgment of the learned trial Judge and I hope I am doing him no injustice by attempting to summarize them to the extent necessary for the purpose of determining the issues raised by this appeal. 20

On the 16th September, 1978, the ship "ALEXANDRA K", after being loaded with a cargo of timber and other wood products at the Elefsina port in Greece, sailed for Jeddah in Saudi Arabia. Two days later a fire broke out on board the ship whereupon the ship's radio officer called for assistance through the International Ships' Station S.O.S. The S.O.S. signal was sent to all ships and all harbour or port stations, as well as to the Operations Department of the Ministry of Mercantile Marine, of Greece, informing of the fire aboard their ship. They communicated, also, over the radio phone and by means of a portable wireless from the life-boat with the Turkish boat "DENIS" and the Greek "MINI LACE", sending a signal of distress. 25 30 35

\* Reported in (1981) 1 C.L.R. 99.

A life-boat was lowered from her left side and the chief officer, who was injured, the telegraphist and other sailors went into that boat. The captain, the second lieutenant, the first and second engineers and one sailor, descended into a  
5 second life-boat. At about 21.00 hrs.—21.30 hrs., the ship "HERMIA" arrived to the scene and the captain of the burning ship boarded the coming boat to inquire whether they could take the sailors of one of the two life-boats to the nearest port in Greece; the reply of the captain of the "HERMIA" was that  
10 being a liner it was difficult to deviate, but he could take the sailors in distress to the port of Limassol in Cyprus. He did not, however, ask help for his ship as he had already received assurance from the Ministry of Mercantile Marine of Greece that assistance was coming to their help and already the lights  
15 of approaching ships and tugs were visible in the horizon. He declined the offer of the captain of the "HERMIA" and they kept waiting in the two life-boats, not far from their burning ship, when they noticed that the "HERMIA" brought her stern near the tow of the "ALEXANDRA K" and tied the latter  
20 with ropes and started towing her away.

Soon afterwards the ship "MINI LACE" arrived and at the same time they tried to communicate with "HERMIA" by telephone and by other means but there was no response from the captain of that ship. Eventually the captain and the crew  
25 arrived at Piraeus from where they took a variety of measures to take their ship but without success.

As to what happened after "ALEXANDRA K" was towed away by "HERMIA" there was the evidence of Mr. Nietzil, a consulting engineer who was on the ship "HERMIA" because  
30 she had engine trouble and her owner had asked him to stay on board during the voyage in order to look after and repair her engine, if necessary. The "HERMIA" went close to "ALEXANDRA K" and once there was no danger, himself and the chief-mate Baeske climbed on to the burning ship.  
35 Then having prepared their fire-fighting equipment connected the extinguishing pumps in order to raise the pressure and having brought their fire hose over to the burning ship, the pump was switched on but after two or three minutes the hose-pipe broke for the reason that in order to cover the distance between the  
40 two ships they had connected also the deck-wash hoses with a

hose-pipe which apparently could not stand the increased pressure that was used to pump the water at the required distance. On further instructions from the captain of the "HERMIA" they tried to repair the damage of the hoses but unsuccessfully. They towed the ship in a way that the fire might not spread. They waited for about two hours in order to see whether a tug-boat would appear at the scene and then they proceeded with their journey to Cyprus towing with them the burning ship. At midnight a tug-boat was seen, it came up to a distance of about 50-60 meters, she followed them for about three hours without doing, he alleged, anything, waiving or shouting or use her radio and then she turned off behind an island and was not seen again. The captain of "HERMIA" said that he called them on the V.H.F. but there was no response.

With regard to the towing of "ALEXANDRA K" the facts are that she was tied and towed for about two to two and a half hours after the captain left "HERMIA" and informed Hellas radio about it. They towed her first on a very short rope but it broke after two hours and then a new connection was made which took them 40 minutes to an hour to prepare and they started towing the burning ship again. The wind then increased and the steel-wire connecting "ALEXANDRA K" to "HERMIA" broke again. They tried several times to get close to the ship to reconnect the steel-wire but as "ALEXANDRA K" was heavily rolling and because their ship had been damaged they informed their charterers about their position and they abandoned the burning ship.

The version of the tug-boat in question, however, as appearing from the ship's log was that the "HERMIA" did not reply to their calls by V.H.F. and after they followed it for a while at a reduced speed they came near the Karpathos—Rhodes straits, they turned away in order to meet the other tug-boats that had also sailed to the assistance of the burning ship.

After "ALEXANDRA K" was abandoned she sank and no trace of her has been found since. When "HERMIA" arrived at Limassol the present proceedings were instituted against her. A warrant of arrest was issued against her and she was released upon a Bank guarantee being given in the sum of U.S. dollars 350,000.— In the course of the hearing the scrap

iron value of the ship "ALEXANDRA K" was agreed at U.S. dollars 150,000.

5 The learned trial Judge in his elaborate judgment dealt with the law with regard to claims of negligence against persons who render or try to render assistance at sea and we are in agreement with him on the exposition of the law. As the trial Judge pointed out the legal position in law is succinctly set out in *Kennedy's text book on the Law of Civil Salvage*, 3rd Ed., at p. 162:

10 "In considering whether a salvor has shown such a want of reasonable skill and knowledge as ought materially to affect the Court's award, or is guilty only of an error of judgment, the Court will incline to the lenient view, and will take into favourable consideration any special circumstances which tend to exonerate the salvor from blame, such as, e.g. a request for help, the suddenness of the emergency or the absence of more efficient means of succour".

20 He also made extensive reference to the judgments delivered in *Anglo-Saxon Petroleum Co. Ltd. & Others v. Damant* [1947] 2 All E.R. 465; *The Tojo Maru Owners of Motor Tanker Tojo Maru (her cargo and freight) v. N. V. Bureau Wijsmuller* [1971] 1 All E.R. 1110; *The "St. Blane"* [1974] 1 Lloyd's Law Reports, 557. Passages are quoted from the judgment of Mr. Justice Brandon in the *St. Blane* with regard to the leniency shown by Courts to a negligent salvor. The following is said at p. 560:

30 "It is well established that the Court takes a lenient view of the conduct of salvors or would be salvors, and is slow to find that those who try their best, in good faith, to save life or property in peril at sea, and make mistakes, or errors of judgment in doing so, have been guilty of negligence. Nevertheless, it is not in doubt that the Court may, in a proper case, after making all allowances, find negligence against salvors and, having done so, award damages against them in respect of it.....

35 In deciding such matters the Court looks at all the circumstances of the case, including the status of the salvors—whether amateur or professional—and the question whether

they have acted at request or on their own initiative. The Principle of the lenient approach to mistakes is an important one. It derives from the basic policy of the law relating to salvage services, which is always to encourage rather than discourage, the rendering of such services". 5

We respectfully adopt the Law so elaborately stated and leave the matter at that.

The learned trial Judge guided by the aforesaid authorities turned to the circumstances of the case in order to answer the question, he posed, whether the salvors had been guilty of negligence. It dealt with this issue in this way: 10

"Having considered very carefully the able contentions of both counsel, as well as the totality of the evidence in this case, I have no doubt at all, that the captain of the "HERMIA"—having conferred with his crew, they had decided on their own initiative, and without consulting or informing the captain of the burning ship of their decision to render salvage services to the latter's ship. Indeed this finding of mine is fully supported and accepted by Mr. Nietzil, the consulting engineer. With that in mind and in the light of the whole evidence which was before me, it became apparent that it was realized at an early stage that the ship "HERMIA" had no suitable equipment to such an extent as was reasonable; and indeed without, as Mr. Nietzil clearly admitted, a member or members of the crew had any previous experience. In my view, therefore, the salvors have failed to discharge the duty in showing that they have used such skill and care as was reasonable in those circumstances. I would reiterate once again that the whole of the evidence clearly shows that their only aim was to try and save the remaining part of the cargo of timber and nothing else. But there is another reason why the conduct of the salvors was a negligent one once the captain of "HERMIA" was aware that tugboats stationed in the neighbouring islands in Greece would be coming to render professional services to the burning ship in question. There is no doubt that the captain and his crew knew or they ought to have known about the tugboats when the captain left their own ship 15 20 25 30 35

without asking them for any help except than to take the sailors in the boat to a nearby Greek island".

Learned counsel for the appellant has questioned the finding of the learned trial Judge that the respondent-plaintiff  
5 Company at the trial were the registered owners of "ALE-  
XANDRA K". He based his contention on a number of cables  
and telexes exchanged which were produced as exhibits and in  
which Modina Maritime, of Piraeus, refers to the vessel "ALE-  
10 XANDRA K" as their vessel and that no proper proof of  
ownership had been made. A perusal of the record shows  
that the said Company were the ship's managing Company  
and not her owners and their concern arose because of that  
relationship only as it was abundantly clear from, the evidence;  
therefore this ground fails.

15 The second ground upon which this appeal was argued, on  
behalf of the appellants, was directed against the conclusions  
of the learned trial Judge regarding the negligence of the appel-  
lants.

Having listened carefully to his arguments we find that this  
20 ground must likewise fail as the learned trial Judge directed  
himself properly on the Law and did not overlook the attitude  
that Courts take a lenient view of the conduct of salvors or  
would be salvors, and how slow they are to find those who  
25 try their best in good faith in their effort for salvage guilty of  
negligence for mistakes or errors of judgment in their effort  
to save life or property in peril at sea. His conclusions based  
on the evidence as accepted by him duly warranted the findings  
that in the circumstances and making the allowances just referred  
to, the appellants were negligent.

30 Finally we find no merit in the contention that there was room  
for a reduction of the amount of damages awarded by the learned  
trial Judge in respect of which there had been an agreement by  
the parties in the course of the hearing.

For all the above reasons the appeal is dismissed with costs.

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*Appeal dismissed with costs.*