

1984 March 2

[SAVVIDES, J.]

LOUIS CONSTANTINIDES CO. LTD.,

Plaintiffs.

v.

THE SHIP "MIGHTY SPIRIT", NOW LYING
IN THE PORT OF LIMASSOL.

Defendants.

(Admiralty Action No. 388/83).

*Admiralty—Practice—Judgment against ship—Cargo on board—
Owners thereof, who could be traced, notified of intended sale of
ship and given reasonable notice to discharge their cargo—Un-
loading of part of the cargo by these owners creating problems to
stability of the ship—Cargo consisting of perishable goods—Di-
rections to Marshal authorising him to discharge cargo whose
owners could not be traced.*

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On the 27th January, 1984 the plaintiff in this action obtained
judgment against the defendant ship for £4,080.-. A cargo of
6.584 M/T of thick peas and lentils was loaded on the ship and
when this action was brought the said cargo was still laden on
her. As the judgment remained unsatisfied the plaintiff filed an
application praying for

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- (a) an order for the appraisalment and sale of the defendant
ship, and,
- (b) directions to the Marshal as to the discharge of the
cargo.

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Such application was granted in respect of part (a) only but
was dismissed in so far as part (b) was concerned in view of the
fact that the Marshal could not be directed to unload the cargo
once there was no order for the sale of the ship till that date and
without the cargo owners being notified of his intention to sell
the ship and give them reasonable time to discharge their cargo
before applying for directions for its discharge and probable

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sale for reimbursing the costs of discharge, transportation and storage.

5 Following such decision, the Marshal notified by telex those of the owners whom he could trace as there were some owners whose addresses he could not secure and, therefore, he could not notify them. Until 24.2.84 a quantity of 2,700 tons of cargo had been unloaded and collected by order of the Court on the application of its owners and there still remained on the ship the rest of the cargo, the owners of part of which have authorized agents in
10 Cyprus to unload such part. The unloading of part of the cargo has created problems to the stability of the ship which had to be removed out of the port and anchored out in the open sea.

Upon an application by the Marshal whereby he applied for directions:

15 "(a) authorizing him to discharge the remaining cargo on the defendant ship;

(b) for securing such expenses and that such expenses be treated as Marshal's expenses, and;

20 (c) as to the manner of dealing with the aforesaid cargo on board the defendant ship".

Held, that if cargo interests do not take delivery of their cargo within the time specified in a direction to the Marshal, the Marshal should discharge and sell the cargo reimbursing himself from the proceeds of sale of the cargo; that in the special circumstances of this case, where the cargo consists of perishable goods and the unloading of part of the cargo has affected its stability and has exposed the ship to perils, this Court is satisfied that the Marshal has exhausted all possible efforts to protect the cargo owners, whose addresses could not be traced, and he has made his intention known to all those cargo owners whom he could trace about his intention to unload the cargo, and the fact that some of the owners could not be traced, is not a matter which may be the cause of further delay at the risk of the ship and increase indefinitely the Marshal's expenses on the ship by the delay of her sale; that it was proper for the Marshal to have applied for directions in this case both in respect of the unloading of the
25 cargo and for the recovery of the expenses for any action he may
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be instructed to take; accordingly the application must be granted subject to terms—pp. 277-278 post.

Application granted.

Cases referred to:

Unity [1909] *Sh. Gaz.*: 5

Baring Shipping Co. v. Ship "Eurotrader" (1978) 1 C.L.R. 93.

Application.

Application by the Marshal of this Court for an order authorizing him to discharge the remaining cargo on board the defendant ship. 10

Applicant, Marshal of this Court, present.

A. Georghadjis for *A. Neocleous*, for plaintiffs judgment-creditors.

A. Georghadjis for *J. Mavronicolas*, for some of the cargo owners. 15

St. McBride, for the mortgagees of the defendant ship.

Cur. adv. vult.

SAVVIDES J. read the following decision. This is an application by the Marshal of this Court whereby he applies for directions: 20

- (a) authorizing him to discharge the remaining cargo on the defendant ship,
- (b) for securing such expenses and that such expenses be treated as Marshal's expenses, and,
- (c) as to the manner of dealing with the aforesaid cargo on board the defendant ship. 25

The facts material to the present application, as they appear from the record of the proceedings, are as follows:

The plaintiff in this action obtained judgment on 27.1.1984 against the defendant ship for £4,080.00. A cargo of about 6,584 M/T of chick peas and lentils were loaded on the said ship before its departure from Mersin of Turkey and at the material time when the action was brought and a warrant of arrest was issued against the defendant ship, the said cargo was still laden on her. The judgment remained unsatisfied 30 35

and the plaintiff judgment-creditor filed an application on 2.2.1984 praying for:

- (a) an order for the appraisalment and sale of the defendant ship, and,
- 5 (b) directions to the Admiralty Marshal as to the discharge of the cargo laden on board the defendant ship.

Such application was granted in respect of part (a) only but was dismissed in so far as part (b) was concerned in view of the fact that the Marshal could not be directed to unload the cargo
10 once there was no order for the sale of the ship till that date and without the cargo owners being notified of his intention to sell the ship and give them reasonable time to discharge their cargo before applying for directions for its discharge and probable sale for reimbursing the costs of discharge, transportation and storage.
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Following such decision, the Marshal notified by telex those of the owners whom he could trace as there were some owners whose addresses he could not secure and, therefore, he could not notify them. According to the facts set out in his application,
20 till 24.2.1984 a quantity of 2,700 tons of cargo had been unloaded and collected by order of the Court on the application of its owners and there still remains on the ship the rest of the cargo, the owners of part of which have authorized agents in Cyprus to unload such part. The unloading of part of the cargo
25 has created problems to the stability of the ship which had to be removed out of the port and anchored out in the open sea.

Counsel appearing for the judgment-creditors in the above action and for the owners of part of the cargo, did not object to the application and, in fact, joined the application, stressing
30 the fact that the further delay in the unloading of the vessel would, on the one hand, imperil the ship and on the other hand, the sale of the ship would be delayed with the result that the costs of the crew and maintenance of the ship till the date of the sale will considerably increase. Counsel also submitted
35 that the costs of the unloading and storing of the cargo, which will not be claimed, may be covered by the sale of such cargo, in the first place, and, if any amount so incurred is not covered, then they may be considered as Marshal's expenses and be paid out of the proceeds of the sale of the ship.

Counsel appearing for the mortgagees of the ship stated that, though he was intending to raise an objection to an order being made to the effect that in case the proceeds of the sale of the cargo do not cover the expenses of the Marshal for unloading and storing same till the date of the sale, then any balance should be considered as Marshal's expenses and be paid out of the proceeds of the sale of the ship, nevertheless, having taken into consideration the fact that by opposing this application on this ground a delay would have been caused to the unloading of the ship and its subsequent sale and, also, for the purpose of expediting its sale, he shall raise no objection to an order being made in the terms applied for.

There is authority that, if cargo interests do not take delivery of their cargo within the time specified in a direction to the Marshal, the Marshal should discharge and sell the cargo reimbursing himself from the proceeds of sale of the cargo. (See the *Unity* (1909) Sh. Gaz.) This proposition has been adopted by this Court in *Baring Shipping Co. v. Ship "Eurotrader"* (1978) 1 C.L.R. 93.

The present application has not been contested and, from what appears from the statements made by all Counsel concerned, there is no objection to the proposition that, if the proceeds of the sale will not cover the Marshal's expenses for unloading transportation and storage, then the balance may be treated as Marshal's expenses payable out of the proceeds of the sale of the ship. As already mentioned, directions have been made for the unloading of part of the cargo which should not be affected by the outcome of this application.

In the special circumstances of this case, where the cargo consists of perishable goods and the unloading of part of the cargo has affected its stability and has exposed the ship to perils, I am satisfied that the Marshal has exhausted all possible efforts to protect the cargo owners, whose addresses could not be traced, and he has made his intention known to all those cargo owners whom he could trace about his intention to unload the cargo, and the fact that some of the owners could not be traced, is not a matter which may be the cause of further delay at the risk of the ship and increase indefinitely the Marshal's expenses

on the ship by the delay of her sale. It was proper for the Marshal to have applied for directions in this case both in respect of the unloading of the cargo and for the recovery of the expenses for any action he may be instructed to take.

5 For the above reasons the following directions are given to the Marshal:

- 10 (a) That the remaining cargo on board the defendant ship—other than cargo belonging to owners for which orders have already been made for its unloading and which should be complied with irrespective of this direction—be discharged, surveyed, stored, appraised the sold by the Marshal.
- 15 (b) The Marshal at his discretion, and provided such course is possible, to allow cargo owners who in compliance with the telexes sent to them by him have authorized agents to unload their cargo and store it at their expense, to proceed accordingly, provided that any expenses likely to be incurred by the Marshal will be paid by them in proportion to the value of their cargo to the remaining of the unloaded cargo.
- 20 (c) That the costs to be incurred by the Marshal under paragraph (a) hereinabove to be paid, in the first place, out of the proceeds of the sale of the cargo and that any amount so incurred and not covered by the sale, to be considered as Marshal's expenses and be paid out of the proceeds of the sale of the ship.
- 25 (d) With regard to the discharge and storage sale of the cargo hereinabove ordered, the Marshal should secure the lowest and most favourable terms, and, if any problem arises in relation thereto, the Marshal may apply to this Court for further directions.
- 30 (e) The sale of the cargo to be effected by public auction or private treaty but in the latter case the sanction of the Court is necessary and directions should be applied for.
- 35 (f) The sale of the cargo to be postponed for 21 days to give a chance to the owners of any unclaimed part thereof to collect same provided that before the

Marshal allows them to do so, they must produce to him, in addition to the Bill of Lading, mate's certificates indicating the actual quantity loaded for their account on the defendant ship, and also by reimbursing the Marshal of their share in the expenses of unloading, storing and any other expenses incurred by the Marshal in such respect.

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Order accordingly.