

1984 February 14

[SAVVIDES, J.]

LOUIS CONSTANTINIDES CO LTD.

*Plaintiff*

v.

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

*Defendant.*

*(Admiralty Action No. 388/83)*

*Admiralty—Ship—Appraisement and sale in execution of judgment against her—Can be ordered provided ship is under arrest in the action in which application therefor is made as is the case in these proceedings—Application granted—Rule 74 of the Cyprus Admiralty Jurisdiction Order, 1893.*

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*Admiralty—Arrest of Ship—Cargo on board—Unloading of, possible only when there is an order for the sale of the ship.*

After obtaining judgment against the defendant ship in the sum of £4,080 the plaintiffs applied for an order directing

- (a) The appraisement and sale of the ship and 10
- (b) The unloading of the cargo laden on her.

The ship was under arrest by an order made in this action and the warrant of arrest was still in force

*Held.* (1) that an order for the appraisement and sale of a ship can be made, provided that the ship is under arrest in the action in which the application is made; that since in the present case the ship has been arrested by a warrant of arrest issued by plaintiffs in this action they are entitled to an order for the appraisement and sale of the ship in execution of their judgment; accordingly prayer (a) of the application will be granted (see 20 rule 74 of the Cyprus Admiralty Jurisdiction Order, 1893).

(2) That where there is an order to sell only the vessel the cargo-owners will be advised by the Marshal to have the cargo discharged within reasonable time; that since in the present case till to-day there is no order for the sale of the ship, in the  
 5 absence of any such order the Marshal could not have notified the cargo-owners of his intention to sell the ship and give them reasonable time to discharge their cargo before applying for directions for its discharge; accordingly prayer (b) cannot be granted.

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*Application partly granted.*

Cases referred to:

*Panayiotis v. Ship "Maria"* (1983) 1 C.L.R. 497 at pp. 503, 504;*Baring Shipping Co. v. The Ship Eurotrader* (1978) 1 C.L.R. 93.**Application.**

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Application by plaintiffs for the appraisalment and sale of the defendant ship.

*A. Neocleous with A. Georghadjis, for the applicants-plaintiffs.**J. Mavronicolas, for the cargo owners.*

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*Cur. adv. vult.*

SAVVIDES J. read the following decision. This is an application for the appraisalment and sale of the defendant ship and for directions for the unloading of the cargo laden on her.

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The applicant is the plaintiff judgment-creditor in the above action in which judgment was entered in his favour for £4,080.-, plus interest and costs. By his petition in the action the applicant was also praying for an order of appraisalment and sale of the said ship but such matter was left open by the Court with directions that it would be decided on a separate application by  
 30 the plaintiff in consequence of which the present application was filed.

The defendant ship is under arrest in the above action and the warrant of arrest is still in force by an order of this Court.

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According to the contents of the affidavit in support of the application, the defendant ship is loaded with a cargo of 6,584

M/T of chick peas and lentils loaded at Mersin of Turkey with destination Karachi of Pakistan and Bombay of India, the freight of which has been prepaid. It is contended that the presence of cargo aboard has an adverse effect on the sale to the detriment of all parties who have an interest, claim or lien in the ship and that the discharging of the cargo will confer a benefit both on the res by enhancing its value and on the cargo itself which being of perishable nature will be better looked after, if unloaded. 5

Counsel for applicant brought to the notice of the Court that orders have already been made by this Court for the unloading of part of the cargo belonging to some of the owners and submitted that if the whole cargo is unloaded, the expenses will be much less than by unloading individual parts of the cargo. Counsel for applicant together with Mr. Mavronicolas, counsel for some of the cargo owners who joined the application, offered to provide the Marshal with sufficient funds for the unloading of the cargo and its storing in a licensed warehouse. 10 15

I shall deal first with the question of appraisalment and sale of the defendant ship. 20

The provisions empowering the Court to order the appraisalment and sale of ship are to be found in rules 74 - 77 of the Rules of the Supreme Court of Cyprus in its Admiralty jurisdiction. rule 74, reads as follows:

"It shall be lawful for the Court or Judge, either before or after final judgment, on the application of any party and either with or without notice to any other party, by its order to appoint the marshal of the Court or any other person or persons to appraise any property under the arrest of the Court, or to sell any such property either with or without appraisalment, or to remove or inspect and report on any such property or to discharge any cargo under arrest on board ship." 25 30

In a recent decision in the case of *Panayiotis v. Ship "MARIA"* (1983) 1 C.L.R. 497, I had the opportunity of dealing with the provisions of Order 74 and at pages 503, 504, I had this to say: 35

"For the Court to exercise its power under rule 74, the subject-matter property should be under the arrest of the Court.

5 In the *Wexford* [1888] 13 P.D. 10 it was held that for this Rule to be applicable the res must be in the hands of the Court. It has, however, been the practice of the Admiralty Court in England to require that the res be under  
10 arrest in the action in which an order for appraisalment and sale is sought. This practice was approved in *The Ricuna* (1974) Folio 380 (unreported) (see *Annual Practice* 1982, Vol. 1, p. 1238).

10 Therefore, for rule 74 to come into play, the ship should be under the arrest of the Court in the particular action. The fact that the ship is under arrest in another action, is not sufficient."

15 It is clear from the above that an order for the appraisalment and sale of a ship under rule 74 can be made, provided that the ship is under arrest in the action in which the application is made. In the present case the ship has been arrested by a warrant of arrest issued by plaintiffs in this action. Therefore, they are entitled to an order for the appraisalment and sale of the ship in the execution of their judgment.

20 I am coming next to consider the second part of this application by which the applicants apply for direction for the discharge of the cargo laden on the defendant ship. Orders have already been made by this Court on the application of cargo-owners concerned for the unloading of cargo belonging to them  
25 and laden on the defendant ship. As already mentioned Mr. Mavronicolas appearing for some cargo owners in this application joined the application for the unloading of the cargo and offered on their behalf to share with the applicants the expenses of unloading and safe storing of the whole cargo.

30 In the British Shipping Laws, Admiralty Practice para. 389 the proper course to be followed in cases where an arrested vessel in respect of which an order for sale is made is that "the Marshal will advise the cargo owners to have the cargo discharged and will give them reasonable time for this to be done.  
35 If no steps have been taken within the time allowed, the Marshal will apply to the Court for directions." This proposition is based on the authority of *Selina Stanford*, Sh. Gaz. December 8, 1908.

In *Baring Shipping Co. v. Ship "EUROTRADER"* (1978) 1 C.L.R. 93 in which this Court had to deal with an application by the Marshal for an order authorising him to discharge a cargo of about 2,800 tons of foodstuffs on board the ship "EUROTRADER" before proceeding to the appraisalment and sale of the ship in execution of judgment against her, the Court held:

"Where the Marshal has custody of a vessel and there is an order to sell only the vessel the cargo-owners will be advised by the Marshal to have the cargo discharged within reasonable time; and if the cargo owners do not take steps within the time allowed the Marshal may, with the leave of the Court, discharge and sell the cargo reimbursing himself from the proceeds."

In the present case, till to-day, there is no order for the sale of the ship. Therefore, in the absence of any such order the Marshal could not have notified the cargo owners 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 unloading transportation and storage.

For the above reasons, but without prejudice to the orders already made in respect of part of the cargo on the application of some of the owners, I have come to the conclusion that the prayer under part (b) of this application cannot be granted.

In the result, the application in respect of part (a) only is granted with costs in favour of the applicant against the respondent ship and an order is hereby made for the appraisalment and sale by the Marshal of the defendant ship "MIGHTY SPIRIT" by public auction or, subject to the prior approval of the Court, by private treaty. The proceeds of the sale to be brought into Court.

*Order accordingly.*