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BRANCO
SALVAGE
LIMITED
v.
SHIP "DIMITRIOS"
AND HER CARGO
AND FREIGHT

[JOSEPHIDES, J., sitting with Captain
A. C. Kantounas, Master Mariner, appointed as Assessor by
the Court]

BRANCO SALVAGE LIMITED,

Plaintiffs,

v.

THE SHIP "DIMITRIOS" AND HER CARGO
AND FREIGHT,

Defendant.

(Admiralty Action No. 16/67).

Admiralty—Salvage—Salvage services—Reward—Reward not fixed by agreement is a matter for the discretion of the Court—English law in force on the 15th August 1960, applicable, as may be modified by any law of the Republic—Section 29(2)(a) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960)—The relevant statutory provisions in Cyprus are to be found in sections 24 and 34 of the Wrecks Law, Cap. 298—Salvage—Reward—Assessment—Principles applicable—Factors to be considered—Inter alia, the Court, in assessing the reward, endeavours to combine liberality to the salvor with justice to the owner of the salvaged property—It will also regard the general interests of navigation and commerce—Value of the salvaged property as well as of the craft and equipment of the salvor—Risks incurred by the salvor .tc. etc. — Expenses properly incurred—Claim in this respect must be closely scrutinized and strictly proved.

Salvage—Reward—Assessment—Principles applicable—Expenses properly incurred—See above.

Shipping—Salvage—Reward—Assessment—See above.

Wrecks—The Wrecks Law, Cap. 298, sections 24 and 34 relating to salvage reward, expenses properly incurred by the salvor—See above under Admiralty.

Admiralty—Practice—Appointment by the Court of an assessor to advise the Court on any matters requiring nautical or other professional knowledge—The Admiralty Rules, rule 132.

Assessor—Assessor to advise the Court—See immediately above.

Practice—Admiralty—Assessor—See above.

Evidence—Admiralty—Salvage—Reward—Expenses properly incurred by the salvor—Must be closely scrutinized and strictly proved—See, also, above under Admiralty.

The plaintiffs' claim in this case is for £18,000 remuneration for salvage services rendered to the m.v. "Dimitrios", her cargo and freight. The m.v. "Demetrios" is registered at Piraeus Greece and is of a tonnage of 462 tons gross and 183 net. On the 21st February, 1967, she ran aground off the coast of Paphos, while on a voyage from Haifa to Piraeus with a cargo of about 460 tons of refractory bricks. On the 31st March, 1967, a salvage agreement in Lloyd's standard form was signed between the plaintiffs and the ship-owners for the salvage of the said ship and her cargo upon the principle of "no cure-no pay", the plaintiffs undertaking to use their best endeavours to save the ship and cargo and take them into "the safe port of Famagusta". No remuneration was fixed under the agreement, as it was not possible to decide upon the amount. The matter is, thus, in the discretion of the Court. In order to save the ship and her cargo the plaintiffs' craft m.v. "Nora"—a twinscrew motor craft of 232 tons gross—with a regular crew and several items of equipment were dispatched from Famagusta to Paphos.

In the course of the hearing the learned Judge found it necessary to appoint Captain A.C. Kantounas, Master Mariner, as assessor, under the provisions of rule 132 of the Admiralty Rules, to advise him on matters requiring nautical or other professional knowledge.

Reducing considerably the amount claimed, the Court awarded to the plaintiffs the sum of £9,463 as salvage services, plus costs of the proceedings (including the sum of £90 paid as Assessor's fees in this case).

Held, (1)(a). Under section 29(2)(a) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) the English law in force on the 15th August, 1960, *i.e.* on the eve of Independence Day, is applicable, as may be modified by any Cyprus law. The relevant statutory provisions in Cyprus are to be found in sections 24 and 34 of the Wrecks Law, Cap. 298. (Note: *The material part of section 24 and the full text of section 34 are quoted in the Judgment, post*).

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(b) In applying the law and determining this case I found great assistance and guidance in the Judgment of Vassiliades J., as he then was, in the case of *The Attorney-General of the Republic v. M/T. Keisserswaard and Another* (1965) 1 C.L.R. 433, at pp. 446-448 and 449-450. In that Judgment reference was made to the following cases regarding the nature of a salvage service and the principles applicable in the assessment of the reward for such service: *Branco Salvage Ltd., v. Photos Photiades and Co.* 1962 C.L.R. 325; *The New Australia* (1958) 2 Lloyd's List Law Reports 35, at p. 39.

(2)(a) The general principles are that the amount of the reward, unless it is fixed by agreement, is in the discretion of the Court.

(b) The Court, in assessing the reward, endeavours to combine liberality to the salvor with justice to the owner of the salvaged property. It regards not merely the work done in the performance of the salvage service, but the general interests of navigation and commerce. Thus it looks with favour on salvage services rendered by steamships built and maintained for salvage services (Halsbury's Laws of England 3rd edition, Vol. 35, p. 749, paragraph 1139). The Court takes, also, into account the danger to life, whether on board the salvaging or the salvaged vessel, and the danger to property. The value of the salvaged property is an important consideration in the assessment of reward. Likewise the value of the property employed is also an important element in the assessment of the reward.

(c) In assessing the amount of the salvage reward the expenses and losses properly incurred by the salvor in the performance of the salvage services are taken into account (section 24 of our Cap. 298, *supra*; and Halsbury's *ibid.* p. 752, paragraph 1149). Those losses and expenses may be given in the form of a separate award, but the common practice is to include it in the general award. The losses and expenses which are dealt with in this manner include expenses reasonably incurred in bringing the salvaged property into a place of safety; and expenses, such as the cost of repairing damage, and depreciation in value of the salvaging vessel, caused by the performance of the salvage service (Halsbury's *ibid.* at p. 752, paragraph 1149). The above principles are also to be found summarized in Kennedy's

Civil Salvage, 1958, 4th edition, at pp. 210 to 218.

(3) It may be taken that, at the present time, the Court will be careful to award a sufficient sum to salvors to cover the expenses properly incurred by them (section 24 of our Cap. 298, *supra*) and to give them a reasonable additional amount as compensation for their services, bearing always in mind that claims for such expenses should be closely scrutinized by the Court and strictly proved.

(4) In determining this case I have adopted and applied the above principles.

(5)(a) Taking into account: The time employed in rendering the services; the danger to which the salvaged property was exposed; the risks involved in the operation for the plaintiffs and their men; the difficulties which the salvors promptly undertook; the cost of maintaining a service capable of rendering assistance to ships in difficulties, in addition to its normal towage work; the value of the ship before it was stranded (£52,000) and after it was salvaged (£20,000); the value of the plaintiffs' z-craft "Nora" and the equipment which they have used in the salvage operations (£25,000 in the aggregate); and

(b) considering the various items of the particulars with regard to alleged expenses and losses properly incurred by the plaintiffs in the performance of the salvage service:-

I award to the plaintiffs the sum of £9,463 as salvage services, (*i.e.* £5,463 expenses properly incurred by them, plus £4,000 as compensation for their services, including the use of the craft "Nora" and other equipment), plus costs (including the sum of £90 paid as Assessor's fees).

Judgment accordingly.

Cases referred to:

"The Pinna" (1886) 6 Asp. 313, at p. 315;

The Attorney-General of the Republic v. M/Tanker Keissersward and Another (1965) 1 C.L.R. 433 at pp. 446-448 and 449-450;

Branco Salvage Ltd. v. Photos Photiades and Co. 1962 C.L.R. 325;

The New Australia (1958) 2 Lloyd's List Law Reports 35, at p. 39.

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Admiralty Action.

Admiralty Action for £18,000 remuneration for salvage services rendered to the m.v. "Dimitrios" her cargo and freight.

G.A. Michaelides, for the plaintiffs.

The owners of the ship were not represented.

Cur. adv. vult.

The following judgment was delivered by:-

JOSEPHIDES, J.: The plaintiffs' claim in this case is for £18,000 remuneration for salvage services rendered to the m.v. "DIMITRIOS", her cargo and freight.

In the course of the hearing I found it necessary to appoint Captain A. C. Kantounas, Master Mariner, as Assessor, under the provisions of rule 132 of the Admiralty Rules, to advise me on any matters requiring nautical or other professional knowledge.

The ship is registered in Greece and, although originally the owners entered an appearance, they eventually did not file a defence and they were not represented at the hearing. This, coupled with the exaggerated items of claim put in by the plaintiffs, made the task of the Court in determining this case very difficult, and I would like to reiterate what Sir James Hannen said in "*The Pinnas*" (1886) 6 Asp. 313, at page 315, that is, that this salvage case was treated "as I am afraid salvage cases very frequently are, as an opportunity of extracting as much money as possible from the pockets of the owners and underwriters".

Of the witnesses called on behalf of the plaintiffs I was very badly impressed with Antonio Branco, one of the directors of the plaintiff company, who did his best to exaggerate all items of claim for the purpose of extracting as much money as possible from the owners. With these preliminary observations I now proceed to consider the facts of the present case.

The plaintiffs run a salvage business and they own a Z-craft, called "NORA", and equipment for salvage and other purposes. The m.v. "DIMITRIOS" is registered at Piraeus

Greece and is of a tonnage of 462 tons gross and 183 net. She is owned by four Greek nationals. On or about the 21st February, 1967, the m.v. "DIMITRIOS" ran aground off the coast of Paphos, about a mile from the port of Paphos, while on a voyage from Haifa to Piraeus. Her cargo consisted of about 460 tons of refractory bricks in pallets of approximately three-quarter ton each.

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On the 31st March, 1967, a salvage agreement in Lloyd's standard form was signed between the plaintiffs and the ship-owners for the salvage of the said ship and her cargo upon the principle of "no cure—no pay", the plaintiffs undertaking to use their best endeavours to save the ship and her cargo and take them into "the safe port of Famagusta" (see *exhibit 1*, clause 1). No remuneration was fixed under the said agreement, as it was not possible to decide upon the figure to be inserted in clause 1 of the agreement, and the space was left blank. The matter was left to be governed by clause 4 of the agreement, but as the ship-owners failed to provide the required security, the matter did not go to arbitration in London, with the result that the plaintiffs instituted the present action. As the amount of the remuneration is not fixed by agreement, it is in the discretion of the Court and I shall be dealing with the legal aspect of the matter at a later stage of this judgment.

The plaintiffs' case was that the salvage operations lasted from the 6th April to the 6th June, 1967, that is, for 62 days, but they only boarded the ship at Paphos on the 13th April, 1967 and they started lifting and floating operations at once. The ship was floated and towed to Paphos harbour on the 21st May, and unloading continued until the 25th May when the ship left Paphos at 11 p.m. and was towed to Limassol where she arrived on the following day, 26th May at 8.30 a.m. Very little, if any, work was done while the ship was in Limassol (see diary, *exhibit 3*), and it seems that a Lloyd's Hull Survey examination was carried out on the 31st May, 1967, while the ship was at Limassol by Master Mariner A. G. Woolley, Surveyor, appointed by the Lloyd's Agency in Cyprus (see *Exhibits 16(a)* and *16(b)*). The ship left Limassol in the night of the 1st June and it was towed into Famagusta harbour on the 2nd June, 1967 at 6 p.m. To sum up, the ship was boarded by the plaintiffs on the 13th April and it was towed from Paphos on the 25th May, that is to say, a period of 43 days. To that period another 4 days should be added

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for the trip of the craft "NORA" from Famagusta to Paphos and back; and about 5 days should be deducted for the Easter-holidays 1967 as the plaintiffs' diary, (*Exhibit 3*) does not give the names of any crew or workmen having worked on the m.v. "DIMITRIOS" between the 28th April and the 5th May, 1967 (8 days). The net result is that I find that the plaintiffs were actually engaged on necessary salvage work for a period of about six weeks and not 62 days as claimed by them.

Although it was the plaintiffs' case that salvage operations continued until the 6th June, 1967, inclusive (see paragraph 8 of the petition; and the further particulars of claim, item 1 for the wages of the crew, and item 5 for the provisions for subsistence of the crew), the entry in the diary (*Exhibit 3*) for the 6th June reads "all men on strike". Nevertheless, the plaintiffs claim the wages and the provisions for the crew for the 6th June. On the evidence before me I find that the salvage operations ended on the 2nd June, 1967, when the ship was towed into the safe port of Famagusta (cf. clause 1 of the agreement—*Exhibit 1*).

At this stage I might as well refer to another item in the further particulars of claim, that is, item 14, "overseas travelling" by Antonio Branco, one of the plaintiff company's directors, for which he originally claimed £619 (para. 10 of petition), and which he reduced to £520.- in the course of the hearing, as follows:-

- (a) He charged for a trip which he made from the 21st to 23rd March, 1967, to Athens to see the ship-owners there. Although this was before the signing of the salvage agreement he put forward this item as a necessary expense for the salvage of the ship. He stayed at the "King's Palace Hotel" in Athens and incurred other expenses in restaurants and he originally claimed in his evidence £94 which he later reduced to £85;
- (b) he charged for another trip to Athens and London between the 12th and 19th April, 1967, while the salvage operations were being carried on at Paphos. He stated in evidence (page 10) that he went there to "get some equipment and information in respect of the salvage" and to confer with his lawyer for the arrangement of "the security by the owners". He did not say what equipment he got. He stayed at the "May-

fair Hotel" in London. He charged for taxis, restaurant bills, meals at various expensive restaurants in London, originally a sum of £377, which he eventually reduced to £305. It is interesting to note in this account (*exhibit 18*) an item referring to "luncheon at Prunier's London" £46, and another item for "tips, phone calls and minor expenses" £12 odd. After I had made some observations on these and other items in the course of the hearing, they were withdrawn from the account.

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- (c) After the salvage operations were completed, Mr. Antonio Branco again went to Athens between the 18th and 24th July, 1967, to see the owners to persuade them to provide security under the salvage agreement and to pursue the plaintiffs' rights. He claimed £146 for this trip which he reduced to £129.

Needless to say that these expenses were neither properly incurred by the salvor in the performance of the salvage service, and before the vessel assisted had been placed in a position of safety, nor were they expenses directly occasioned by the performance of the salvage service.

In order to salve the ship and her cargo the plaintiffs' craft, m.v. "NORA", with a regular crew of 7-8 men under the orders of Edmondo Branco (plus a few casual hands when required) and the following equipment were despatched from Famagusta to Paphos: 1 R.B. crane, 3 air pumps of 3 ins., 3 petrol pumps of 4 ins., 2 petrol pumps of 2 ins., 1 diesel pump of 6 ins. underwater welding machinery and other equipment.

The m/v "NORA" is a twin-screw motor craft of 232 tons gross. It was built in 1946 for the British Army in Alexandria, Egypt, and it was bought secondhand by the plaintiffs in 1961. It has two Gray marine 6-cylinder two-stroke diesel engines, which are stated to develop 200 B.H.P. each. Her speed is 8 knots, and the overall length is 130 ft., breadth 30 ft. 3 ins., depth 6 ft 6 ins.

As the plaintiffs' petition did not give sufficient particulars of their claim with regard to the expenses and losses claimed by them, after I began hearing the case I directed that they should file further and better particulars, which they did on the 9th April, 1968. I have considered and determined the

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plaintiffs' claim on the basis of these particulars. The list of further particulars consists of 29 items which may be subdivided as follows:-

- (a) expenses and losses incurred by the plaintiffs, covered by items 1 to 16 and items 28 and 29, amounting to £8,045.370 *mils*; and
- (b) use of their craft "NORA", R.B. crane and other equipment belonging to them, all covered by items 17 to 27, amounting to £9,250.637 *mils*.

In addition to these sums the plaintiffs also claim reasonable compensation for their services.

On the evidence of Edmondo Branco, the second director of the plaintiff company, who was actively engaged in all the salvage work and supervised all the operations, diving underwater etc., and whose evidence I found more reliable than that of his brother Antonio, I find that the water was over the gangways of the ship covering the whole of the two holds and that the engine room as well as the officer and crew accommodation cabins were flooded. The holds and crew accommodation were filled with sand and sea-weed and covered with oil so that the floors were slippery. The salvage operations carried out by Edmondo Branco and his men were the following: They unloaded all the cargo, which was under water and a big quantity of which was in loose condition, and they carried and discharged it at Paphos harbour; they plugged and sealed all apertures of the hull and on bulk heads; they air-lifted all sea-weed and sand from both holds; they pumped out the water from the holds, engine room and other places; and they lifted and refloated the ship. The lifting and floating operations lasted from the 13th April to the 21st May 1967. The ship was then towed into Paphos harbour where unloading took place between the 22nd and 25th of May. It was then towed to Limassol on the 26th May, 1967 and to Famagusta on the 22nd June, 1967.

The Admiralty chart produced (*Exhibit 4*) shows that the place where the "DIMITRIOS" ran aground was relatively protected by reef. The position where the ship was stranded was 12 to 14 ft. maximum depth (see chart, *Exhibit 4*); and the survey report (*Exhibit 16(b)* "Depth to Main Deck 11'6"). On the evidence before me, I find that the salvors had to work at a maximum depth of about two fathoms; that there

was a limited risk to the divers in the course of the salvage operations; that the risk to the salvaging property was negligible, and that the salvage operations lasted for about six weeks.

Before I proceed to examine the plaintiffs' claim, as shown in their list of further particulars, I think I should refer to the law applicable in salvage cases. Under section 29(2) (a) of the Courts of Justice Law, 1960, the English law in force on the 15th August, 1960, is applicable, as may be modified by any law of the Republic. The relevant statutory provisions in Cyprus are to be found in sections 24 and 34 of the Wrecks Law, Cap. 298. The material part of section 24 reads as follows:

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"24. In the following cases that is to say-

- (a) whenever any ship or boat is stranded
on the shore of any sea or tidal water situate within
the limits of Cyprus, and services are rendered by
any person;
 - (i) in assisting her;
 - (ii)
 - (iii) in saving her cargo or apparel, or any por-
tion thereof; and
- (b) whenever any wreck is saved by any person other
than a Receiver within Cyprus,

there shall be payable by the owners of the ship or boat, cargo, apparel, or wreck, to the person by whom the services or any of them are rendered or by whom the wreck is saved, a *reasonable amount of salvage, together with all expenses properly incurred by him in the performance of the services or the saving of the wreck*, the amount of such salvage and expenses (which expenses are hereinafter included under the term 'salvage') to be determined in case of dispute in manner hereinafter mentioned".

Section 34 reads as follows:

"34. In determining any dispute as to the amount of salvage to be paid to any salvor, the Court or Judge determining it shall award such sum as appears just and reasonable in the circumstances of the case, having regard to-

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- (a) the enterprise and promptitude of the salvors in rendering assistance;
- (b) the degree of damage and distress from which the property is rescued;
- (c) the degree of labour and skill displayed and the danger incurred by the salvors;
- (d) the value of the property salvaged;
- (e) the time employed in rendering the services;
- (f) the success of the effort to save the property:

Provided that no salvage shall be awarded unless the property in respect of which salvage is claimed shall have been exposed to actual peril threatening its destruction save for the assistance rendered by the salvor".

In applying the law and determining this case I found great assistance and guidance in the judgment of Vassiliades J., as he then was, in the case of *The Attorney-General of the Republic v. M.T. Keisserswaard and Another* (1965) 1 C.L.R. 433 at pp. 446-448 and 449-450. I need not here quote any passage from the judgment, in which reference is also made to the following cases regarding the nature of a salvage service and the principles applicable in the assessment of the reward for such service: *Branco Salvage Ltd. v. Photos Photiades & Co.* 1962 C.L.R. at page 325; *The New Australia* (1958) 2 Lloyd's List Law Reports 35, at page 39.

The general principles are that the amount of the reward, unless it is fixed by agreement, is in the discretion of the Court. The Court, in assessing the reward, endeavours to combine liberality to the salvor with justice to the owner of the salvaged property. It regards not merely the work done in the performance of the salvage service, but the general interests of navigation and commerce. Thus it looks with favour on salvage services rendered by steamships built and maintained for salvage services (35 Halsbury's Laws of England, 3rd edition, page 749, paragraph 1139). In assessing the reward the Court takes into account the danger to life, whether on board the salvaging or the salvaged vessel, and the danger to property. The value of the salvaged property is an important consideration in the assessment of reward; but it will not raise the reward out of due proportion to the services rendered. If the value is large the amount of the

reward is usually a smaller proportion to the value than if the value is small (*ibid.*, at page 750, paragraph 1142). Likewise, the value of the property employed is also an important element in the assessment of the reward. It is not, however, the measure or limit of the reward. The risk to which the salvaging property is exposed by the performance of the salvage service is also an important consideration. The length of the salvage operations is not in general a very important element for consideration, unless the services are dangerous or invoke protracted exertion; though the additional loss or expense incurred by salvors by reason of the duration of their services is taken into consideration in the assessment of the reward. The labour involved in the salvage service is an important element only so far as it is accompanied by the exercise of skill, or by danger, or responsibility (*ibid.*, at pages 751-2, paragraphs 1146-8). See also section 34 of our Cap. 298.

In assessing the amount of the salvage reward the expenses and losses properly incurred by the salvor in the performance of the salvage services are taken into account (section 24 of our Cap. 298; and 35 Halsbury's Laws, page 752, paragraph 1149). Those losses and expenses may be given in the form of a separate award, but the common practice is to include it in the general award. The losses and expenses which are dealt with in this manner include expenses reasonably incurred in bringing the salvaged property into a place of safety; and expenses, such as the cost of repairing damage, and depreciation in value of the salvaging vessel, caused by the performance of the salvage service (*ibid.*, at page 752, paragraph 1149).

These principles are also to be found summarized in Kennedy's Civil Salvage (1958), 4th edition, at pages 210 to 218, where it is stated (at page 211) that "if the Court gives the amount of the damage, loss or expense specifically, it will take care not to give the amount twice over by again considering them when it comes to fix the amount due for salvage remuneration proper, that is, the remuneration for risk, etc. in the service".

It may be taken that, at the present time, the Court will be careful to award a sufficient sum to salvors to cover the expenses they have "properly incurred" (section 24 of our Cap. 298) and to give them a reasonable additional amount

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as compensation for their services. As stated by Kennedy, at pages 217-8: "The only expenses for which the Court of Admiralty may compensate the salvor in the award are:

"(1) expenses properly incurred by the salvor in the furtherance of the salvage service, and before the vessel assisted has been placed in a position of safety, and

(2) expenses directly occasioned by the performance of the salvage service, as, e.g. the cost of repairing damage which, *without any fault on the part of her officers or crew*, has been caused to the salving vessel (including, of course, her boats, furniture and tackle) or of replacing damaged clothing" (see cases quoted in footnotes 10 and 11, at pages 217-8).

Finally, as stated in Kennedy, "claims under the first head of expense are closely scrutinized by the court, and must be strictly proved" (page 218).

In determining this case I have adopted and applied the above principles.

I have, so far, made findings with regard to certain of the factors which are to be taken into consideration in determining a just and reasonable reward in the present case. Those are: the time employed in rendering the services; the danger to which the salvaged property was exposed; the risks involved in the operation for the plaintiffs and their men; the difficulties which the salvors promptly undertook. I shall now proceed to consider the value of the ship before it was stranded and after it was salvaged; the value of the cargo, and the value of the plaintiffs' Z-craft "NORA" and other equipment.

First, as regards the ship: At the material time immediately before it ran aground, it was insured for £52,000. With regard to its salvaged value, it is the plaintiffs' allegation that it is £30,000 but they have not adduced any reliable evidence from an expert on this matter. In the course of the hearing I made an order for the appraisal of the ship by the Court's Marshal, in connection with the sale of the ship. His appraisal is £20,000, subject to the reservation that an accurate appraisal is practically impossible as the underwater section of the vessel cannot be properly surveyed in Cyprus (see the Marshal's Certificate, dated the 4th July, 1968, and his explanatory memorandum dated the 5th July,

1968). On this material I find that the value of the salvaged ship is £20,000.-

With regard to the value of the cargo before the sinking, although in their petition the plaintiffs stated that it was £1,000, nevertheless, in their evidence they stated that its value was 10,000 U.S. dollars. There is evidence that about 600 pallets of this cargo of furnace bricks was lifted and unloaded at Paphos port. I do not think that I have any evidence as to its value but this is of no importance because, since then, the whole of the salvaged cargo has been sold by the Customs Authorities in Paphos to pay off wharfage and other Customs dues.

With regard to the value of the plaintiffs' Z-craft "NORA" and the equipment which they used in the salvage operations, it was counsel's submission that on the evidence the total value was £46,000. The plaintiffs' witness Antonio Branco stated that they actually paid the sum of £24,000 when they bought it in 1961; and that they paid the sum of £4,000 for the R.B. crane in 1966. They also gave in evidence the value of the other diving equipment, compressors, pumps, etc., used in the operations. I entertain considerable doubts whether the plaintiffs paid for the Z-craft "NORA", which was built in 1946, the sum of £24,000 and I am of the view (having been advised by the Assessor) that both the "NORA" and other equipment have been considerably overvalued by the plaintiffs. We may safely take it that the value of the craft "NORA" and all other equipment is about £25,000.

I shall now proceed to examine the first 16 items of the list of further particulars, stated to cover expenses and losses properly incurred by the plaintiffs in the performance of the salvage service. I shall deal with items 1, 2 and 4 together.

Item 1: The claim is for "crew wages for the period 6.4.67-6.6.67 as in *Exhibit 5*": £991.014 mils.

Item 2: The claim is for "payment of overtime and diving hours to crew as in *Exhibit 6*": £125.115 mils.

Item 4: The claim is for "salvage remuneration paid to crew as in *Exhibit 8*. This remuneration is paid to crew in case of salvage operations by virtue of an agreement with the crew and collective agreement with the Trade Unions": £721.-

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On the material before me I find that-

(a) although the total of the above three figures is £1,837.129 mils, the receipts and vouchers produced by plaintiffs in support thereof amount to only £1,693.090 mils. That is, the plaintiffs claim £144.039 mils in excess;

(b) of the 14 persons shown as employed in *Exhibit 5*, the first 8 seem to belong to the regular crew employed by the plaintiffs. The other 6 were apparently temporary hands, not all employed at the same time. As shown in the plaintiffs' diary practically all the time 8 to 10 men in all were employed daily;

(c) although the salvage operations lasted for 42 days, the plaintiffs charge wages, etc., for a period of 62 days from 6.4.67 to 6.6.67; and they even charge wages for the 6th June, 1967 when their men were on strike (see diary);

(d) the vouchers and receipts produced in support are irregular and some of them doubtful, and at least one pay-sheet (*Exhibit 5A*), showing a sum of £243,775 mils is for the period of 1.4.67 to 30.4.67, that is, for a period of 10 days before the salvage operations began on 11.4.67.

As regards salvage remuneration claimed to have been paid to the crew £721 (item 4), I entertain considerable doubts whether the whole of this sum was actually paid, or was properly paid, to the men; as under the Collective Agreement with the Trade Unions, dated the 16th February, 1966 (*Exhibit 8A*), on which the plaintiffs rely, they were bound to pay salvage remuneration only in respect of ships exceeding 500 gross registered tons, and the "DIMITRIOS" is only 462 tons.

Having regard to the above findings I am of the view that the sum of £1,837.129 mils, claimed in respect of *items 1, 2 and 4*, should be reduced by one-third, that is, by £612. The net result is that I award the sum of £1,225.- in respect of these three items.

Item 3: The claim is for "wages paid to office clerical staff of 5 calculated on a pro-rata basis for each service as in *Exhibit 7*": £189. I think that the sum of £100 is a fair amount and I so award.

Item 5: The claim is for "provisions and subsistence of crew for the period 6.4.67—6.6.67 as in *Exhibit 9*": £504.825

mils. I find that this claim is decidedly exaggerated considering the number of persons employed daily: see paragraph (b) above. As for the sum claimed the plaintiffs' diary with regard to provisions, etc., has, *inter alia*, the following three entries:

15.5.67	"Food and drink	—	£6."
17.5.67	"Food for men	—	£4.500"
18.5.67	"Food all men	—	£6"

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The number of men employed on the 18.5.67 was nine. On the basis of £6 per day for 42 days actually engaged on the salvage operations (including the 4 days' trip from and to Famagusta) I award the sum of £250.

Item 6: The claim is for "consumable stores for the period 4.4.67—4.6.67 as in *Exhibit 10*. These were for fuel and lubricating oils for the Z-craft "NORA", one R.B. crane, winch, pumps, compressors and welding set": £353.655 mils.

(i) In the first place the beginning of the operations is given one week before the actual date, that is the 11th April, 1967.

(ii) Although the statement of expenses (*Exhibit 10*) produced by the plaintiffs shows that they paid to "Petrolina" £204.870 mils and to S.M. Sivitanides £100.060 mils, that is, a total of £304.930 mils, nevertheless, the invoices and statements of account (*Exhibits 10A and 10B*) produced in support of these two items show that the same quantity of fuel (1160 gallons of gas oil, 70 gallons of ordinary petrol and 6 gallons of oil), was shown in the plaintiffs' account twice, but, eventually, instead of £190.840 mils they were debited with £90.780 mils only by the Famagusta office of Petrolina Ltd. Sivitanides is the Petrolina agent in Paphos and he passed his invoices (Nos. 1067, 784, 774 and 758—all marked *Exhibit 10B*) to the Famagusta office of Petrolina Ltd., who debited plaintiffs with £90.780 mils.

(iii) The statement of account No. 03996 (*Exhibit 10C*) for £49.700 mils by the Limassol office of Petrolina Ltd. is in respect of gas oil delivered on 12.6.67, that is, after the salvage operations were over. This sum is disallowed.

(iv) Receipt No. 03270 (*Exhibit 10D*) dated 21.4.67, for £58.284 mils, from the Famagusta office of Petrolina Ltd. states that it is "in settlement of statement of account No.

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332”, but it does not state the *date, quantity or description* of goods supplied. This sum is disallowed.

(v) The other two figures charged in *Exhibit 10*, viz. Nicos Solomonides £23.850 mils (*Exhibit 10E*), and Efstathios Papadakis £24.875 mils (*Exhibit 10F*) are correct and are allowed.

In the result I award a round figure of £140.- in respect of item 6.

Item 7: The claim is for “cost of manufacture of two unloading buckets as in *Exhibit 11*” £20. I allow the whole sum.

Item 8: The claim is for “expenses for repairs of equipment as in *exhibit 12*”: £137: These were claimed to be expenses covering repairs and replacements of equipment damaged during the salvage operations and not normal wear and tear and maintenance expenses. I award the whole sum of £137.

Item 9: The claim is for “telephones, telegrams and postage expenses as in *Exhibit 13*”: £159.554 mils.

Exhibit 13, produced by the plaintiffs, simply states “CITA Telephone and Telegram bills £151.504 mils, Stamps £8.050 mils”. According to the plaintiffs these included telephone charges and cables in Cyprus and abroad with owners and underwriters in connection with the signing of the salvage agreement; telephone charges and cables for informing the owners and underwriters of the progress of the operations and in respect of other steps subsequent to the completion of the salvage in accordance with the provisions of the salvage agreement; for obtaining equipment and arranging facilities in the course of the salvage operations; and stamps for necessary letters to owners, underwriters and others and for despatch of documents.

I do not think that any of these expenses were properly incurred in respect of salvage operations but I am prepared to allow them a sum of £10.

Item 10: The claim is for “local travelling, subsistence and accommodation as in *Exhibit 14*” £208.975 mils. I allow the following sums-

(a) in respect of petrol, for the motor cars used in the course of the salvage operations and transport of

personnel and equipment, £1 per day spent in Paphos, that is 43 days, £43;

- (b) for hire of motor car for 14 days due to breaking down of one of the plaintiffs' vehicles, I allow the whole sum claimed, a round figure of £36;
- (c) accommodation and subsistence of Edmondo Branco and other personnel at hotels in Paphos during the salvage operations. Also for subsistence of personnel during necessary travelling during the salvage operations. I allow the whole sum of £72.

Item 11: The claim is for "cost of transport of equipment and cranes as in *Exhibit 15*" £93,990 mils. I allow the whole sum £94.

Item 12: "Surveyors' fees and expenses as in *Exhibit 16*" £168,017 mils. The sum of £30,875 mils was in respect of a Hull Survey report by Lloyd's Agents and Surveyor in order to ascertain the fitness of the vessel for towage from Paphos to Famagusta. This I find a necessary expense in order to obtain entry into the Famagusta harbour. The other items, £137,142 mils, are fees of a report of a survey which was carried out on the 12th October, 1967, at the request of the ship-owners jointly by a surveyor representing the Vessel's Classification Society, a surveyor representing the owners and a surveyor representing Lloyd's Agents. Strictly speaking this is not a salvage expense but as it was carried out at the request of the ship-owners I allow this expense. In the result I allow the *whole* sum claimed under this item, viz. £168.-

Item 13: The claim is for "cost of replacing equipment as in *Exhibit 17*" £216. I allow the whole cost of replacing the following equipment which was destroyed, damaged, or broken during the salvage operation:

- (a) replacement of wire rope of 2 1/2 ins. by 650 ft.;
- (b) wire ropes for slings which broke in the unloading of cargo; and (c) masks and diving suits torn and broken during the operations.

I do not allow the sum of £48 claimed as value of parts for one water-pump "Lady Godiva", which is alleged to have caught fire during the salvage operations. If the plaintiffs had exercised proper skill in the performance of their work

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such a damage would not have occurred. The net result is that I award £168 on this item.

Item 14: The claim is for "overseas travelling", a total of £520. I have dealt with this item earlier in my judgment and I have given by reasons for finding that it was not an expense properly incurred by the salvors in the performance of the salvage services. I disallow the whole amount.

Item 15: The claim is for "cost of repairs to main engine as in *exhibit 19*" £292.725 mils. The plaintiffs allege that one engine of the Z-craft "NORA" was damaged on 25.4.67 during a gale while engaged alongside the "DIMITRIOS" in the course of the salvage operations, and that the engine was taken to Famagusta and repaired there. The plaintiffs' diary for 25.4.67 stated "Paphos—westerly gales not possible to work on s.s. 'Dimitrios'". No supporting invoice or voucher has been produced by the plaintiffs showing the date and particulars of work done, and I entertain considerable doubts whether NORA'S engine was damaged on the date alleged. It may have been damaged much later in another operation and that is why it was repaired in Famagusta. In any event, if it was damaged as alleged on that day, I hold that this was due to a fault on the part of the plaintiffs' crew (see Kennedy, *ibid.*, at page 218), and I disallow the whole of this claim.

Item 16: The claim is for "insurance of equipment, craft, personnel, vehicles and stores for two months as in *Exhibit 20*" £344.500 mils. I shall take this figure into account in awarding a global figure for items 17 to 27 in respect of the use of the equipment and the services rendered by the plaintiffs. No separate award is made in respect of this item.

I shall now deal with Items 28 and 29.

The plaintiffs claimed as follows:-

Item 28: "Dismantling, desalting, cleaning, assembling of main engine, lister auxiliary and compressor engines of 'DIMITRIOS'. Payment made to Vartkes Karaoglanian of Larnaca for above work £1,500.-"

Item 29: "Desalting, cleaning and drying of all electric generators and motors and electric installation of 'DIMITRIOS'. Payment made to Karamondani Bros. of Famagusta for above work £1,500.637 mils".

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"NOTE: The work under items 28 and 29 was necessary and formed part of the salvage work. The ship was underwater for over two months and if the desalting and cleaning of the engines and electric motors and generators had not been promptly carried out when the ship was brought into port, they would have been destroyed by rust and would not be considered as having been salvaged. The salvaged value of the engines and electric motors and generators is approximately £15,000.- to £18,000.-"

On the evidence of V. Karaoglanian (item 28) and of S. Karamondanis (item 29), I am satisfied that this work was actually done and that the sum of £3,000.- has been charged by them, and I am further satisfied that this figure is not unreasonable. The question which falls to be determined is whether this sum comes within the category of "expenses properly incurred by the salvor in the furtherance of the salvage service, and before the vessel assisted has been placed in a position of safety" (Kennedy, *ibid.*; at page 217).

I entertain doubts whether this claim falls within the above category of expenses, but the fact remains that the ship-owners did not defend the action nor did they make any arrangements to take delivery of their ship soon after the 2nd June, 1967, when it was towed into the safe port of Famagusta; and, to a great extent, they are to blame for creating the situation in which the plaintiffs proceeded to incur these expenses. This work was carried out between August and October 1967 (item 28—see date of *Exhibit 21*), and between December 1967 and April 1968 (item 29). On the evidence it appears that this work was necessary as the engine had been under water for a long time, and if it had not been cleaned it would have got rusty and it would have probably become a total loss. In the circumstances, and not without great difficulty, I have decided to allow the whole sum of £3,000.- in respect of items 28 and 29.

To sum up: in respect of items 1 to 15, I award the sum of £2,463, and in respect of items 28 and 29 the sum of £3,000, that is, a total of £5,463.-

I now have to deal with items 16, and 17 to 27, and the reasonable compensation to be awarded to plaintiffs for their services. These items concern the use of the plaintiffs

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Z-craft "NORA", the R.B. crane, diving equipment, compressors, welding machine equipment and salvage pumps. Although the plaintiffs claim for 62 days for the use of their craft "NORA", I have already held that the salvage operations, including the trip from Famagusta and back, lasted about six weeks. With regard to the "NORA", it should be noted that the wear and tear during the operations was very little, the main engines mostly lying idle next to the "DIMITRIOS". The R.B. crane was on the craft "NORA" and the cargo was loaded on the craft during the day and carried to the Paphos port at night. The "NORA" was the basis from which the salvage operation was carried out. It also carried the compressors and other equipment. As regards the R.B., crane, considering that its main work was to unload the pallets from the ship to the "NORA" and from the "NORA" on the quay at Paphos harbour, a cargo of 460 tons, the actual use of this crane was about 3 hours a day during the 43 days that the "NORA" was at Paphos, less the Easter holidays (see earlier part of this judgment).

Considering that the plaintiffs properly incurred expenses in the performance of the services rendered by them amounting to £5,463, I award to the plaintiffs an additional sum of £4,000 (four thousand pounds) as compensation for their services, including the use of the craft "NORA" and other equipment, as described under items 16, and 17 to 27. This I do, applying the principles applicable to such cases, stated earlier in this judgment, and taking into account-

- (a) the findings which I have made with regard to the danger into which the salvaged property was exposed, the risks involved in the salvage operation for the plaintiffs' crew and men, the value of the salvaged ship (estimated at £20,000), the value of the plaintiffs' craft and equipment and the risk of damage thereto, the duration of the operations, the difficulties and strain which the salvors promptly undertook, the cost of maintaining a service capable of rendering assistance to ships in difficulties, in addition to its normal towage work etc., and all other relevant factors; and
- (b) that the plaintiffs will be reimbursed all the out-of-pocket expenses properly incurred by them in the performance of the salvage services, i.e. crew wages and

other expenses and losses (£5,463).

In the result, I AWARD to the plaintiffs the sum of £9,463 (nine thousand, four hundred and sixty-three pounds) as salvage services, plus costs (including the sum of £90 paid as Assessor's fees in this case).

Judgment accordingly.

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