

1980 May 10

[A. LOIZOU, J.]

BRASAL OFFSHORE SERVICES LTD.,

*Plaintiffs,*

v.

THE SHIP "JUNE" AND ANOTHER,

*Defendants.*

(Admiralty Action No. 48/79).

5 *Salvage—Salvage services—Essence of—Presence of danger to life or property—Burden of proving presence of danger rests upon the salvors—Defendant's vessel grounded—Refloated by plaintiffs' vessel—Services rendered by plaintiffs not amounting to salvage—*  
*Plaintiffs awarded remuneration for services rendered.*

10 Whilst the defendant ship was anchored by the entrance of the new Port of Limassol she was seen being dragged, whilst still on her anchors, towards the shore due to a heavy swell; it covered a distance of about 200 meters, the chain of her anchor  
15 was broken, she went towards the shore and was grounded at the north-western part of the Port. The owner of the defendant ship asked for the help of the plaintiff company—a company carrying out, *inter alia*, the business of professional salvors—in order to pull the defendant ship off. It was eventually agreed  
20 between the plaintiff company and the owner of the defendant ship that the company would give him its craft, the "DICKY BONZO", on an hourly or daily basis which was estimated between £500 to £1000. The defendants made fruitless efforts to pull the ship off, with the help of the "DICKY BONZO" and finally they agreed that the operation would be carried out by the plaintiffs the way they knew best and be paid for their services, which they did.

15 *In an action by the plaintiffs for C£5,000 remuneration for salvage services or, alternatively, for the same amount as agreed remuneration for services rendered:*

*Held*, that the essence of a salvage service is that it is a service

rendered to property or life in danger (see Halsbury's Laws of England, 3rd ed., Vol. 35 paras. 1109 and 1118 and section 34 of the Wrecks Law, Cap. 298); that the burden of proving the presence of danger rests upon those who claim as salvors; that, on the totality of the evidence in this case, the services rendered do not amount to salvage; that the plaintiffs are entitled to remuneration for the services they rendered for the refloating of the defendant ship which, on the uncontradicted evidence of the Director of the plaintiff company, is assessed at C£2,664; and that, accordingly, judgment will be entered in favour of the plaintiffs and against the defendants for this amount plus an amount of C£276 representing remuneration for three hours of diving and rent for the hire of one anchor.

*Judgment for plaintiffs as above.*

Cases referred to:

*Branco Salvage Ltd. v. The Ship "Demetrios"* (1968) 1 C.L.R. 252;

*Attorney-General of the Republic v. M.T. Keisserswaard and Another* (1965) 1 C.L.R. 433;

*Branco Salvage Ltd. v. Photos Photiades & Co.*, 1962 C.L.R. 325;

*The New Australia* [1958] 2 Lloyd's Rep. 35 at p. 39;

*The Calyx* [1910] 27 T.L.R. 166;

*The "Helsman"*, 84 Ll. L. Rep. 207.

**Admiralty Action.**

Admiralty action for C£5,000.- remuneration for salvage services and/or other services rendered by the plaintiffs to the ship "JUNE".

*G. Michaelides*, for the plaintiffs.

*P. Sarris*, for the defendants.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. The plaintiffs' claim against the defendants is for:

- (a) C£5,000.- remuneration for salvage services and/or other services rendered by the plaintiffs between the 27th February and the 2nd March, 1979, to the defendant ship "JUNE" and her cargo which was grounded at Limassol Harbour on the 26th February, 1979.

(b) Alternatively, the same amount being the agreed and/or reasonable remuneration for services rendered and/or expenses incurred by the plaintiffs for the said ship when grounded at the time and place as above set out.

(c) Interest.

(d) Costs.

The plaintiffs are a company duly registered under the Companies Law and carrying out, *inter alia*, the business of professional salvors. For this purpose they maintain skilled personnel, divers, equipment and crafts. The defendant ship is a steel screw motor vessel registered under the Cyprus register and was on the 26th February, 1979, anchored by the entrance of the New Port of Limassol.

In order to shorten proceedings the parties agreed to certain facts and at the commencement of the hearing made the following statement, leaving the rest of the issues in these proceedings to be decided upon the evidence to be adduced:

(1) That the salvaged vessel was bought at a public auction on 22.8.1978 for C£8,000.- but her appraised value before the sale was C£11,000. After the purchase of the vessel her present owners carried out repairs to the vessel valued at C£13,850.- (this amount of repairs is without prejudice to the owners' rights in respect of an action raised by Famalift Shipyard Ltd. against the present owners who have disputed the same).

(2) That on board the said vessel there was a cargo consisting of the following:-

(a) One Mercedes 450 SE automatic car valued at about C£8,600.

(b) One automatic machine suitable for decoiling, valued at about C£13,750.

(c) 225 bags of origan, valued at about C£3,500.

(3) That the gross tonnage of the salvaged ship is 302,38 tons.

(4) That at the time of the salvage the salvaged ship and the cargo were of approximately equal value".

Whilst the defendant ship was so anchored, she was seen by Costas Pericleous (P.W.1), the master of m. v. "DICKY BONZO", the property of the plaintiff company, which was anchored nearby, being dragged whilst still on its anchors, towards the shore due to heavy swell. It covered a distance of about 200 meters, the chain of its anchor was broken and the vessel went towards the shore and was grounded at the north-western part of the Port. There was nobody on board the defendant ship at the time but soon afterwards a motor launch belonging to Cozmar Co., of Limassol, brought on board the ship its engineer and two or three members of its crew who tried to tow it but unsuccessfully.

Mr. Psaras who represented himself as the agent and owner of the ship, according to P.W. 1 Pericleous, telephoned Mr. Edmondo Branco (P.W. 2), the Director of the plaintiff company, and asked for his help to pull the defendant ship off. He explained that she was a poor ship, she had no cargo and asked how much it would cost. Mr. Branco explained that if he would help by way of a salvage operation, then certain papers had to be signed, i.e. either a Lloyd open form of salvage or a special agreement on the basis of such form which is a standard recognized document for this kind of operation, or if Psaras wished, since he said that they wanted to be helped, he could give them his craft, the "DICKY BONZO", on an hourly or daily basis taking into consideration the tariff with which they charged all ships agents when they were engaging it as a lighter or transport craft for the delivery of water or cargo.

They met on the following day on board the "DICKY BONZO" at about 7.30 a.m. Mr. Branco asked Mr. Psaras to get information from the master of the defendant ship if she was in ballast or out of ballast so that he could determine the necessary strength required to pull the craft off the beach as that part of the Port was considered as beach. This information was very significant because depending on the quantity of water in ballast they could calculate the amount of it that had to be pumped out in order to secure the refloating of the vessel considering also the weight of the cargo on board the ship. If the double bottoms of a ship are empty, then her refloating is more difficult than when they contain water, in which case emptying them makes the floating of the vessel

easier because its weight becomes less. An agreement was reached to give to the defendant ship the "DICKY BONZO" to help her out on a daily rate which was estimated between £500 to £1,000.- on the understanding, of course, that the ship was fully ballasted and the emptying of the double bottoms would make the refloating of the bottoms easy.

This operation started immediately. The system used was by utilizing ground lengths which consisted of various anchors and lengths of chain dropped at a distance from the stranded vessel and then with "DICKY BONZO" getting in-between the stranded vessel and this mooring arrangement and by using her powerful winches they could exert a pull of up to 100 tons, if necessary. This operation went on for two days until the Chief Engineer of the defendant company instructed them to stop work for the following day so that he would give them instructions how to proceed further with the work. The defendant ship was left in that position, tied to the "DICKY BONZO" with a steel rope and with the plaintiffs' crew in attendance. A method suggested by a certain Mr. Hadjiandreas on behalf of the defendants was used and it failed. Two new anchors with four lengths of chain, i.e. 90 ft. each length, were laid and further efforts were made until again Mr. Hadjiandreas intervened and suggested another method. Eventually it was agreed with Psaras that the operation would be carried out by the plaintiffs the way they knew best and, of course, be paid for those services.

The defendants by their answer denied that the plaintiffs rendered salvage services to the defendant ship or that she was in a position of danger when the plaintiffs' 'Z' craft "DICKY BONZO" came up or at any time thereafter. They further denied the alleged or any risk of personal injury or loss of life to the crew of "DICKY BONZO". At the same time they admit that the services the plaintiffs offered to the defendants were ordinary boat-men's services.

The question of what is the position of the law in Cyprus regarding salvage and by this I refer to what is termed "civil salvage" was considered in a number of cases that came up before this Court and reference may be made to *Branco Salvage Ltd. v. The Ship "DEMETRIOS" and her cargo and freight* (1968) 1 C.L.R., p. 252, and those referred to therein at page

262, namely, *The Attorney-General of the Republic v. M. T. Keisserswaard & Another* (1965) 1 C.L.R., 433; *Branco Salvage Ltd. v. Photos Photiades & Co.* 1962 C.L.R., 325; *The New Australia* [1958] 2 *Lloyd's Rep.* 35, p. 39; and I need not quote here any passages from this judgment. Suffice it 5  
to refer only to proviso to section 34 of the Wrecks Law, Cap. 298, which reads: "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". 10

No doubt as stated in Halsbury's Laws of England, 3rd Edition, Vol. 35, para. 1118, under the heading "Danger to Property or Life":

"The essence of a salvage service is that it is a service rendered to property or life in danger. The requisite degree of danger is a real and appreciable danger. It must not be merely fanciful, but it need not be immediate or absolute. It is sufficient if at the time of the service the situation of the subject of the service is such as to cause reasonable apprehension on the part of the person in charge of it. The danger may arise from the condition of the salvaged vessel, or of her crew, from her position, or from the master's want of skill or his ignorance of the locality or of local conditions". 15  
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Salvage service in this sense is defined in Halsbury's Laws of England (*supra*), para. 1109, and on the basis of the authorities referred to therein: 25

".....is that service which saves or contributes to the ultimate safety of a vessel, her apparel, cargo, or wreck, or to the lives of persons belonging to a vessel when in danger at sea, or in tidal waters, or on the shore of the sea or tidal waters, provided that the service is rendered voluntarily and not in the performance of any legal or official duty or merely in the interests of self-preservation. The person who renders the service, that is the salvor, becomes entitled to remuneration termed 'salvage reward'. 30  
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Any services rendered in assisting, or in saving life from, or in saving the cargo or apparel of, an aircraft in, on or over the sea or any tidal water, or on or over the shores

of the sea or any tidal water, are deemed to be salvage services in all cases in which they would have been salvage services if they had been rendered in relation to a vessel”.

5 It is obvious that the presence of danger is an essential element of salvage and the burden of proving the presence of danger rests upon those who claim as salvors (see *Halsbury's Laws of England (supra)* para. 1119 and *The Calyx* [1910] 27 T.L.R. 166; and also *The “Helsman”* 84 Ll. L. Rep., p. 207).

10 In the present case having considered the totality of the evidence and the tenor of the negotiations that took place I have come to the conclusion that the services rendered do not amount to salvage in the sense it has according to the aforesaid statement of the Law.

15 No doubt, however, the plaintiffs are entitled to remuneration for the services they rendered for the refloating of the defendant ship. In that respect I have only the uncontradicted evidence of P.W. 2 Edmondo Branco to the effect that if the whole operation was not a salvage one and the plaintiffs would have charged for the use for 75 hrs. in all of their craft on a hire purchase, the  
20 remuneration would be C£2,664.– To that sum there should be added C£126.– for the three hours of diving for the recovery of the lost anchor of the defendant ship, and C£150.– for the hire of one heavy anchor and 150 ft. of chain for one month, thus making a total of C£2,940.– for which amount there will  
25 be judgment for the plaintiffs against the defendants with legal interest and costs to be assessed by the Registrar on that scale.

*Judgment and order for costs  
as above.*