

1980 November 19

[DEMETRIADES, J.]

SCHEEPSWERF BODEWES-GRUNO,

Plaintiffs,

v.

THE SHIP "ALGAZERA",

Defendants.

(Admiralty Action No. 271/79).

Civil Procedure—Appeal—Stay of execution pending appeal—Principles applicable—Discretion of the Court—Order for sale of ship pendente lite—Stayed pending determination of appeal.

5 On September 23, 1980, this Court ordered* the sale of the defendant ship pendente lite after an appraisal of its value. Following the filing of a notice under rule 165 of the Cyprus Admiralty Jurisdiction Order, 1893 for a review of the above order and of an appeal against the said order the defendants filed an application for the stay of such order pending the determination of the application for review.

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Held, (after stating the principles governing a stay of execution pending an appeal—vide p. 598 post) that in granting or refusing a stay the Court has a discretion depending on the particular circumstances of each case; that having in mind the grounds of appeal, the fact that the Court of Appeal will be asked to give a ruling as to the mode an appeal on interlocutory matters in Admiralty Actions should be made, this is a proper case for the Court to exercise its discretion and grant a stay; accordingly an order for stay of execution will be made subject to the furnishing of a security by the applicant for the sum of £100,000.

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20 *Application granted.*

Cases referred to:

Polini v. Gray, Sturla v. Freccia [1879] 12 Ch. D. 438;
Wilson v. Church (No. 2) 12 Ch. D. 454;
25 *Orion Property Trust and Others v. Du Cane Court Ltd. and Others* [1962] 3 All E.R. 466;

* See (1980) 1 C.L.R. 404.

Erinford properties Ltd. v. Cheshire County Council [1974] 2 All E.R. 448;

London and Overseas (Sugar) Co. and Another v. Tempest Bay Shipping Co. Ltd and Others (1978) 1 C.L.R. 367;

Tafco (No. 2) v. Ship "Lambros L" (1977) 1 C.L.R. 159; 5

The Myrto [1977] 2 Lloyd's Rep. 243.

Application.

Application for stay of execution of the order for the sale of the defendant ship *pendente lite*, which was made by the Court on September 23, 1980, pending the determination of an application for review of the said order. 10

D. HadjiChambis with P. Panayi (Miss), for E. Montanios, for the applicants.

E. Vrahimi (Mrs.), for L. Papaphilippou, for the respondents. 15

Cur. adv. vult.

DEMETRIADES J. read the following ruling. This is an application by the applicants-defendants, by which they pray—

- (a) For a stay of execution of the order of this Court, dated 23rd September, 1980, by which the sale of the defendant ship *pendente lite* was ordered pending the determination of the application for review of the said order. 20
- (b) For an order staying the execution of the said order until such time as the Court may deem proper. 25
- (c) For an order postponing, until such time as the Court may deem proper or until further order of the Court, the said sale by public auction of the defendant ship.

The application is relied upon facts that are set out in an accompanying affidavit sworn by Mr. Adam Montanios, a pupil advocate in the firm of counsel appearing for the defendants-applicants. The facts are, in brief, the following: 30

On the 23rd September, 1980, this Court ordered, after a hearing, the sale of the ship *pendente lite*, after an appraisal of its value. The Marshal, complying with this order, fixed the sale for the 27th October, 1980. As a result of an application made *ex-parte* by the present applicants, the sale was postponed till the 31st October, 1980 when the present applica- 35

tion was fixed for hearing. As no other application for stay of execution till the determination of this application was filed, the Marshal fixed the sale for the 21st November, 1980. The present application was hotly contested by the respondents—
5 plaintiffs.

On the 30th September, 1980, the defendants gave notice, under rule 165 of the Rules of the Supreme Court in its Admiralty Jurisdiction, for a review of the order for the sale of the ship *pendente lite* and on the 7th October, 1980 an appeal
10 was filed by the applicants—defendants against the said order. The grounds of appeal, as these appear in the affidavit of Mr. Montanios, are the following:—

“A. The trial Court was wrong in law in ordering the sale *pendente lite* of the Defendant ship in that the Court had no
15 jurisdiction to and/or should not order a sale *pendente lite* of a ship under arrest when the arrest is disputed on jurisdictional grounds before the determination of the question of the validity of the arrest.

B. The trial Court was wrong in law in ordering the sale
20 *pendente lite* of the Defendant ship in that the said order could not be sustained in law.

C. The trial Court was wrong in fact in ordering the sale *pendente lite* of the Defendant ship in that the said order could not be supported on the evidence and/or was contrary to the
25 weight of the evidence.

D. The trial Court failed to exercise its discretion or was wrong in the exercise of its discretion in ordering a sale *pendente lite* of the Defendant ship.”

In the affidavit of Mr. Montanios it is further alleged that
30 the order made by this Court on the 23rd September, 1980 is vague and uncertain as it does not comply with rules 74 to 76 of the Cyprus Admiralty Jurisdiction Order 1893, in that it failed—

- (a) to state by whom the sale would be effected,
- 35 (b) to state how the sale would be effected,
- (c) to state by whom the appraisal of the value of the ship had to be effected, and

- (d) to nominate the person or persons who had to bring the proceeds of the sale into Court.

The principles governing a stay of execution pending an appeal can be summarised as follows (see *Polini v. Gray, Sturla v. Freccia*, [1879] 12 Ch. D. 438; *Wilson v. Church (No. 2)* 12 Ch. D. 454; *Orion Property Trust and others v. Du Cane Court Ltd. and others*, [1962] 3 All E.R. 466; *Erinford Properties Ltd. v. Cheshire County Council*, [1974] 2 All E.R. 448; *London and Overseas (Sugar) Co. and another v. Tempest Bay Shipping Co. Ltd. and others*, (1978) 1 C.L.R. 367; *Tafco (Foreign Trade Organization for Chemicals and Food-stuffs) of Syria (No. 2) v. The Ship "Lambros L." and her cargo*, (1977) 1 C.L.R. 159):-

(a) The Court, in granting or refusing a stay, has a discretion, depending on the particular circumstances of each case.

(b) The Court should not deprive a successful litigant of the fruits of his litigation pending an appeal.

(c) That when there is an appeal about to be prosecuted, the litigation is to be considered as not at an end, and that being so, if there is a reasonable ground of appeal, and if by not making the order to stay the execution of the order, it would make the appeal nugatory, not to deprive the appellant of the results of the appeal, and that if such is the case, it is the duty of the Court not to interfere and suspend the rights of the party who has established his rights for a stay of execution.

Going through the Law Reports, it appears that there is no reported case in Cyprus in which it was considered under what circumstances it would be right, in a defended application for the sale of a ship *pendente lite*, to make an order for appraisal and sale. The only guidance that I could trace on this matter is the judgment of Brandon J. in the *Myrto*, [1977] 2 Lloyd's Rep. 243, and, in the circumstances of the case and having in mind the grounds of appeal, the fact that the Court of Appeal will be asked to give a Ruling as to the mode an appeal on interlocutory matters in Admiralty Actions should be made, and applying the above principles governing a stay of execution pending an appeal, to the present case, I find that this is a proper case for the Court to exercise its discretion and grant a stay.

The next question that arises for determination is whether I should make this order subject to certain conditions. Having in mind the grounds on which I found that it was proper to order the appraisal and sale of the ship, i.e. the unsatisfactory condition of the vessel, its continuous deterioration, that her value diminishes from day to day, the risk to which the vessel is exposed (especially now that the weather conditions are changing), the fact, as I note from the file of the case, that it is unguarded and valuable articles have been stolen from it (see the report of the Director, the Department of Customs and Excise dated 21st October, 1980), I direct that the stay of execution shall not be enforced unless the applicants furnish a security bond in the form of a bank guarantee for the sum of £100,000.- (One Hundred Thousand Pounds) to cover the claim of the plaintiffs in the present action, and/or insure the vessel for the same amount in favour of the Marshal against all risks until the final determination of the appeal.

I further direct that the applicants, in view of their delay in filing the present application, pay to the Marshal all costs that he has incurred for advertising the sale of the vessel.

The applicants-defendants have to comply with the above conditions on or before the 4th December, 1980, otherwise the Marshal to proceed with the sale.

As regards costs, I find that in view of the nature of the application, there should be no order as to costs.

The sale fixed for the 21st November, 1980 is, in the circumstances, stayed.

Application granted. No order as to costs.