

1981 June 19

[TRIANTAFYLIDES, P.]

TRADE DEVELOPMENT BANK,

*Plaintiffs,*

v.

THE SHIP "ARIADNI PA",

*Defendant.*

(Admiralty Action No. 198/79).

*Judgment—Judgment by default—Foreign currency—Jurisdiction to order payment of sum expressed in foreign currency—Claim under a mortgage—Mortgage governed by foreign law and providing that payment will be made in foreign currency—*  
5 *Judgment expressed in foreign currency.*

*Costs—Costs for two advocates—In view of the many complexities of the case.*

The plaintiffs in this action, by means of which they claimed various sums due to them by the defendant by virtue of a mortgage, applied for judgment against the defendant because of default to file an answer to the petition.

*Held*, that from the material before it this Court is satisfied that the amounts claimed are due and payable to the plaintiffs by the defendant on the basis of, and as a result of the application and operation of the relevant terms of the mortgage; that the plaintiffs are entitled to obtain a judgment payable in U.S.A. dollars, especially, as the mortgage is governed by Greek Law and it is provided by clause 6(A) of the mortgage that payment will be made in U.S.A. dollars; accordingly judgment will be given in favour of the plaintiffs and against the defendant for the amount of 591,534.99 U.S.A. dollars plus interest at 20.875% per annum.

*Held*, further, that the claim of the plaintiffs for costs for two advocates is justified, in the circumstances of this case, in view of its complexities; and an order for costs for two advo-

cates is made accordingly (see *Symeonidou v. Michaelides* (1969) 1 C.L.R. 394 at p. 410).

*Judgment for plaintiff for*  
591,534.99 U.S.A. dollars.

Cases referred to: 5

*Miliangos v. George Frank (Textiles) Ltd.*, [1975] 3 All E.R. 801;

*The Despina R.* [1979] 1 All E.R. 421;

*Symeonidou v. Michaelides* (1969) 1 C.L.R. 394 at p. 410.

**Admiralty Action.**

Admiralty action for U.S.A. dollars 591,534.99 due by defendant 10  
to the plaintiffs, by virtue of a mortgage dated 29th July, 1977  
with interest and various payments and expenses incurred by  
plaintiffs by virtue of the terms of the aforesaid mortgage.

*E. Montanios* with *A. Skordis*, for the plaintiffs.

No appearance for the defendants. 15

*E. Lemonaris*, for the interveners, Grand Pale Shipping  
Co. Ltd.

*Cur. adv. vult.*

TRIANFAYLLIDES P. read the following judgment. In this 20  
case the plaintiffs have applied for judgment against the  
defendant because of default to file an Answer to the Petition.

When the application for judgment because of default to 25  
file the Answer was initially fixed to be heard, counsel was still  
appearing for the defendant, but, subsequently, and before the  
hearing of this application, he, definitely ceased to appear  
in this case.

The plaintiffs, in proof of their claim, have called as a witness 30  
their Commercial Manager from Geneva, Mr. Gilles Zimra,  
who has stated that the total of the indebtedness of the defendants  
is shown in a bank statement which has been produced by him;  
such indebtedness amounts to 607,482.99 U.S.A. dollars. He  
added, however, that from the said indebtedness there should  
be deducted in favour of the defendant an amount of 15,948  
U.S.A. dollars, and, thus, what is claimed by the plaintiffs  
are 591,534.99 U.S.A. dollars. 35

According to the evidence of Mr. Zimra the indebtedness of the defendant comprises, in fact, the following three items:

- 5 (a) An amount of 386,863.24 U.S.A. dollars due to the plaintiffs by the defendant by virtue of a mortgage which is dated July 27, 1977, and was registered in Greece on July 29, 1977. It may be mentioned, at this stage, that the defendant ship is, also, registered in Greece but it belongs to the Lambroklis Shipping Company S.A., which is registered in Panama.
- 10 (b) An amount of 20,084.41 U.S.A. dollars, being interest payable to the plaintiffs on the debt due to them by the defendant; such interest was calculated from September 15, 1979, to November 30, 1979.
- 15 (c) An amount of 184,587.42 U.S.A. dollars which is claimed by the plaintiffs as the total of various payments and expenses incurred by the plaintiffs by virtue of the terms of the aforesaid mortgage.

20 Between the grand total of the above three amounts, namely 591,535.07 U.S.A. dollars, and the amount of 591,534.99 U.S.A. dollars, which is the balance shown in the aforementioned bank statement, there is an insignificant, really, difference of only eight cents, but because of it the claim of the plaintiffs has been limited by them to the lesser of the above two amounts, that is 591,534.99 U.S.A. dollars.

25 I do not have to go at length, into the terms of the mortgage in question. I am satisfied, from all the material before me, that the aforementioned amounts are due and payable to the plaintiffs by the defendant on the basis of, and as a result of the application and operation of, the various relevant terms of  
30 the mortgage.

Also, on the strength of case-law such as *Mihangos v. George Frank (Textiles) Ltd.*, [1975] 3 All E.R. 801, and *The Despina R.*, [1979] 1 All E.R. 421, I am of the opinion that the plaintiffs are  
35 entitled to obtain a judgment payable in U.S.A. dollars, especially, as the mortgage—as it is stated in its clause 15—is governed by Greek Law and it is provided by clause 6(A) of the mortgage that payment will be made in U.S.A. dollars.

Judgment is, therefore, given in favour of the plaintiffs and

against defendant for the aforementioned amount of 591,534.99 U.S.A. dollars, plus, according to the evidence of Mr. Zimra, interest at 20.875% per annum as from December 1, 1979.

As regards the claim of the plaintiffs for costs for two advocates, on the basis of what has been stated in *Symeonidou v. Michaelides*, (1969) 1 C.L.R. 394, 410, I find that such claim is justified, in the circumstances of this case, in view of its many complexities; and I make an order for such costs, to be assessed by the Registrar, subject to the approval of the Court, if necessary.

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*Judgment for plaintiffs for U.S.A. dollars 591,534.99. Order for costs as above.*