1986 December 17

[A. LOIZOU, MALACHTOS, LORIS, STYLIANIDES & PIKIS, JJ.]

WILLIAMS & GLYN'S BANK PLC.,

Applicants-Interveners,

v.

PANAYIOTIS KOULOUMBIS,

Respondent-Plaintiff,

and

THE SHIP "MARIA" NOW LYING AT THE PORT OF LIMASSOL,

Respondent-Defendant

(Applications for review in Admiralty Actions 73/82 etc.)

Judgments and orders—Judgments in foreign currency—Execution of—Can only be levied in local currency—Writ of fieri facias—Conversion of foreign currency into local currency, a condition precedent to its issue—Practice to be followed.

The trial Judge gave judgment in this case in the currency of the contract between the parties, namely Drachmas, but the ship in question was sold with approval of the Court and the concurrence of all concerned for U.S. $150,000, that was deposited in Court, in an external dollar account.

The matter in issue in these applications for review is not whether there is jurisdiction to give judgment in a foreign currency, but the implications of such judgment and particularly those associated with its execution.

Held: (1) Though judgment may be given in foreign currency, execution can only be levied for the recovery of an equivalent amount in the local currency *(Miliangos*

v. *George Frank (Textiles) Ltd.* [1975] 3 All E. R. 801). The time of payment coincides with the time of issuance of the writ of execution. Need for conversion of the foreign currency into local currency only arises if the defendant fails to heed the command embodied in the judgment to pay in a foreign currency.

(2) That leave was given to sell the ship in dollars makes no difference in this case as the claims of all concerned to the money derive from writs of fi fa. The quantification of the judgment debt in Cyprus currency was a condition precedent .to the issue of such writs.

(3) The relevant directions of the trial Judge were consonant with the relevant principles of law and the practice that ought to be followed. It was a just solution in the sense of Rule 113 of the Cyprus Admiralty Jurisdiction Order, 1893.

Applications dismissed.
No order as to costs.

Observations by the Court: The practice direction issued out of the Supreme Court of England [1976] 1 All E.R. 669 to give effect to the decision in *Milliangos*, supra, may be adopted with equal benefit by the Supreme Court of Cyprus.

Cases referred to:

Williams and Glyn's Bank v. *Kouloumbis* (1984) 1 C.L.R. 569;

Williams and Glyn's Bank v. *Kouloumbis* (1984) 1 C.L.R. 674;

Re United Railways of the Havana and Regla Warehouses Ltd. [1960] 2 All E. R. 332;

Jugoslavenska Oceanka Plovidba v. *Castle Investment Co. Inc.* [1973] 3 All E. R. 498:

Barclays Bank v. *Levin Bros.* [1976] 3 All E. R. 900;

Jean Kraut A.G. v. *Albany Fabrics* [1977] 2 All E.R. 116;

Federal Commerce v. *Tradex Export* [1977] 2 All E.R. 41;

The Despina R. (1977) 3 All E.R. 874 and on appeal [1979] 1 All E. R. 421;

The Folias [1978] 2 All E.R. 764 and on appeal (1979) 1 All E.R. 421;

George Veflings Rederi A/S v. *President of India* [1979] 1 All E. R. 380;

Papavassiliou and Tsangarides and Others v. *East Mediterranean Line and Another* (1974) 1 C.L.R. 183;

Lamaignere v. *Selene Shipping* (1982) 1 C.L.R. 227;

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

Applications.

Applications by interveners for the review of an order by the trial Judge in an Admiralty Action.

M. Montanios, for applicants-interveners.

P. Pavlou, for respondent-plaintiff.

M. Eliades with *A. Skordis*, for respondent-defendant.

Cur. adv. vult.

PIKIS J.: In the course of reviewing the order of Savvides, J., it became necessary to decide two matters relevant to the nature of the proceedings and the jurisdiction of the Court under rules 165 - 167 of the Admiralty Rules. In the first ruling of 6th December, 1984(1), it was decided that the order under review made in exercise of the powers vested in the Court by Rules 111 - 113 (Admiralty Rules) for the payment of money out of Court, is neither a final order nor a judgment and as such not subject to appeal. Consequently the appeals taken against the order were ill-founded and for that reason dismissed. The order, it was pointed out, could only be reviewed under Rules 165-167.

(1) Williams & Glyn's Bank v Kouloumbis (1984) 1 C.L.R 569

The scope and compass of the powers of the Court under rules 165 - 167 was the subject of the second ruling given on 20th December, 1984(1). It was held that "review" in the context of rule 165 means "reconsider," that is reflect anew on matters pondered by the trial Court. With this in mind we heard rival submissions on the correctness of the order under review. Primarily the trial Court was asked to determine the quantification in Cyprus currency of money judgments given against the ship "MARIA" expressed in drachmas simpliciter or its equivalent in Cyprus pounds. The ship it must be said had been sold with the concurrence of all concerned and the approval of the Court for U. S. $150,000.- that was deposited in Court, in an external dollar account.

In a carefully considered judgment, the Court examined by reference to Engish(2) and Cyprus (3) caselaw the nature of the jurisdiction to give judgment in a foreign currency and its implications. Prominence was given to the leading English case of *Milliangos* v. *George Frank (Textiles) Ltd.* (1) and extracts were cited from the opinions rendered by the law Lords who sat in that case coinciding in their conclusion that there is no obstacle in law to giving judgment in a foreign currency. The practice of the past reflected in the *Havana* case (supra) was fashioned to the realities of days gone, that is, the stability of the pound and lack of inflation. Whereas present reality warrants in appropriate cases giving judgment in a foreign currency in the interest of justice. The learned trial Judge made reference with

(1) Williams & Glyn's Bank v. Kouloumbis (1984) 1 C.L.R. 674.
(2) Re United Railways of the Havana and Regla Warehouses Ltd. [1960] 2 All E.R. 332; Jugoslavenska Oceanska Plovidba v. Castle Investment Co. Inc. [1973] 3 All E.R. 498; Barclays Bank v. Levin Bros. [1976] 3 All E.R. 900; Jean Kraut A.G. v. Albany Fabrics [1977] 2 All E.R. 116; Federal Commerce v. Tradex Export [1977] 2 All E.R. 41; The Despina R. [1977] 3 All E.R. 874 and on appeal [1979] 1 All E.R. 421; The Folias [1978] 2 All E.R. 764 and on appeal [1979] 1 All E.R. 421; and George Veflings Rederi A/S v. President of India [1979] 1 All E.R. 380.
(3) Papavassiliou & Tsangarides and Others v. East Mediterranean Line and Another (1974) 1 C.L.R. 183;
Lamaignere v. Selene Shipping (1982) 1 C.L.R. 227.
(1) [1975] 3 All E.R. 801.

approval to the following passage from the Cyprus case of *Lamaignere*(2) in order to emphasize that similar considerations dictate the adoption of a like practice in Cyprus too:

> "The development of English law along its present lines was dictated not by any problems peculiar to English society but by the need to facilitate international trade and keep the avenues of commerce open, considerations relevant to the policy of the law in every country. The solution is a just one and in the absence of any legislative restrictions, it should be followed in Cyprus with equal benefit".

The issue before us is not whether there is jurisdiction to give judgment in a foreign currency. No appeal was taken against decisions of the Court giving judgment in a foreign currency. At issue are the implications of a judgment in a foreign currency, particularly those associated in the execution of such judgment. Need for conversion of foreign currency into local currency only arises if the defendant fails to heed the command embodied in the judgment to pay in a foreign currency. In the event of obedience by the defendant to the judgment of the Court, no question of payment in any other currency arises. In the case of *Miliangos* (supra) it was decided that though judgment may be given in a foreign currency, execution can only be levied for the recovery of an equivalent amount in the local currency. And the time of payment coincides in practice with the time of the issuance of the writ of execution. It is necessary at that stage to quantify the money debt in a local currency in order to enable the sheriff to know what is necessary to seize in order to satisfy the judgment-debt.

The practice direction issued out of the Supreme Court of England to give effect to the decision in *Miliangos* (supra) reflects the principles, adopted in that case and heeds practical considerations relevant to the evolution of a uniform practice. The same practice direction may be adopted with equal benefit by the Supreme Court of Cy-

(2) (1982) 1 C.L.R. 227.

prus. Of particular relevance is Rule 11 governing the enforcement of judgment-debts in a foreign currency by the issue of a writ of fi fa as indeed was the case before us. It requires the advocate for the judgment-creditor to quantify in local currency the money debt(1). It provides:

"Enforcement of judgment debt in foreign currency

(a) Where the plaintiff desires to proceed to enforce a judgment expressed in foreign currency by the issue of a writ of fieri facias, the praecipe for the issue of the writ must first be indorsed and signed by or on behalf of the solicitor of the plaintiff or by the plaintiff if he is acting in person with the following certificate:

'Sterling equivalent of judgment

I/We certify that the rate current in London for the purpose of (state the unit of the foreign currency in which the judgment is expressed) at the close of business on the .... day of ....19.... (being the date nearest or most nearly preceding the date of the issue of the writ of fi fa) was .... to the sterling and at this rate the sum of (state the amount of the judgment debt in foreign currency) amounts to £.....
Dated the day of 19

signed

(Solicitor for the Plaintiff)'.

(b) The amount so certified will then be entered in the writ of fi fa by adapting RSC Appendix A, Form 53, to meet the circumstances of the case, but substituting the following recital:

'Whereas in the above named action it was on the... day of... 19... adjudged (or ordered) that the defendant CD do pay the plaintiff AB (state the sum of the foreign currency for which judgment was entered) or the sterling equivalent at the

(1) Practice Direction [1976] 1 All E R 669

time of payment, and whereas the sterling equivalent at the date of issue of this writ is £.... as appears by the certificate indorsed and signed by or on behalf of the plaintiff on the praecipe for the issue of this writ' ".

In a subsequent decision of the House of Lords, namely *The Despina R* (1), it is explained that restitutio in integrum undelies the rule in *Milliangos* (supra). Therefore, there is discretion in an appropriate case to select the foreign currency in which judgment should be given in the interest of effective restitution. That need not concern us in this case for judgment was given in this case in the currency of the contract, namely, drachmas. Here we are merely concerned with the implications of failure of the defendants to meet their obligations in drachmas.

That leave was given to sell the ship in a foreign currency in dollars makes no difference to the problem in hand for the claims of all concerned to the money derive from writs of fi fa. The quantification of the judgment debt in Cyprus currency was a condition precedent to their issue as explained above. Consequently, directions given by the learned trial Judge were consonant with the relevant principles of the law and the practice that ought to be followed. It was a just solution in the sense of rule 113 of the Admiralty Rules and one that we affirm upon reconsideration of the matter. A big part of the proceedings on appeal was devoted to disposal of matters raised by respondent-plaintiff in respect of which no order as to costs was made. Consequently, we consider it just at the end of the day to make no order as to costs.

Order accordingly.
No order as to costs.

(1) [1979] 1 All E.R. 421.