

1987 October 27

[KOURRIS J]

1 SCHIFFSHYPOTHEKENBANK ZU LUBECK ACTIENGESELLSCHAFT  
2 DEUTSCHE SCHIFFSBELEIHUNGS-BANK AKTIEN-  
GESELLSCHAFT

Plaintiffs,

v

THE SHIP «PIGASSIOS»,

Defendant

(Admiralty Action 7/87)

*Admiralty — Proceeds of sale of ship by public auction pendente lite — Order of priorities of payments to be made therefrom — Whether special circumstances can justify deviation from the general order of priorities — Contract to sell manne diesel and fuel oil to ship providing that the property therein shall remain with sellers until payment of price — The said term does not amount vis-a-vis the mortgagees of the ship to «special circumstances»* 5

The applicants filed an action in rem against the ship «Pigassios» as mortgagees under two mortgages on the said vessel

The ship was sold pendente lite and the proceeds lodged into Court

On 13 2 87 the applicants obtained judgment against the ship On 22 5 87 10  
Tramp Oil and Manne Ltd obtained judgment in another action for the value  
of 731 120 m t of manne diesel and fuel oil IF-180 (hereafter called the  
bunkers) which had been sold and delivered to the defendant ship at  
Mombassa on 15 11 86 These bunkers went at Mombassa into the fuel tanks  
of the defendant ship and were mixed with fuels then in tanks and the mixture 15  
was being used and consumed in the operation of the defendant-ship till she  
arrived at Limassol when she was arrested on 14th January, 1987 by the  
mortgagee bankers upon their mortgages' claim At the time of her arrest the  
defendant-ship had in her fuel tanks approximately 170 tons of bunkers

This is an application based on rules 111, 112 and 113 of the Cyprus 20  
Admiralty Jurisdiction Order, 1893 for determining the order of priority  
between the mortgagees and Tramp Oil and Manne Ltd

Both counsel agreed that the order of priorities for the payment out of the  
proceeds of sale of a res by public auction are (a) Marshal's expenses, (b) Costs

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5 of the producer of the fund, (c) damage done by a ship, (d) Salvage, (e) Seamen's wages, (f) master's wages and disbursements, (g) bottomry and respondentia, (h) mortgages and (j) statutory lien and contractual claims, but counsel for Tramp Oil and Manne Ltd argued that the determination of priorities do not depend upon any rigid rules, but on the principle that equity must be done in the circumstances of each particular case and that a general order of priority is followed when there are no special circumstances

10 The special circumstances invoked by counsel for Tramp Oil were (a) The fact that the contract for the sale of the bunkers provided that ownership of the product shall pass to the customer only after the price has been received by the sellers and until such time as the price is received by them the person in possession of the product delivered shall hold the product for them as a mere bailee, and (b) the fact that the mortgagee bankers allowed the defendant-ship to incur this debt

15 Held, that there are no special circumstances in the present case so as to deviate from the general rule and order payment. The mortgagee bankers were not parties to the said agreement and they had no means of knowing of the said agreement. The contractual provision hereinabove referred to does not amount to special circumstances

20 *Order accordingly*  
*Costs in favour of applicant*

*Cases referred to*

*Commercial Bank of the Near East Ltd v PIGASSIOS III* (1978) 1 C L R 597,

25 *Pilefs Ltd and Others v The Commercial Bank of the Near East Ltd* (1983) 1 C L R 376

*Stylianou v The Fishing Trawler «Arkissos»* (1965) 1 C L R 291

**Application.**

30 Application by judgment creditors for an order determining the priorities of claims against the defendant ship and for an order directing that applicants are entitled to the payment of the sum of U.S. \$55,720.29 which is lodged into Court and which is the balance of the proceeds of the sale of the defendant ship «Pigassios».

35 *St. McBnde*, for the applicant.

*X. Xenopoulos*, for judgment creditor in Action No 32/87

*Cur adv. vult.*

KOURRIS J. read the following judgment. The applicants, judgment creditors, by the present application pray for:-

(a) An order of the Court determining the priorities of the claims against the defendant-ship «Pigassios»,

(b) An order of the Court directing that the applicants are entitled to the payment of the sum of U S \$55,720 29 which is lodged into Court and which is the balance of the proceeds of the sale of the defendant-ship «Pigassios» 5

The application is based on the Admiralty Jurisdiction Order, 1893, rules 111, 112 and 113

The said applicants filed on the 14th January, 1987, this admiralty action in rem against the defendant-ship «Pigassios» as mortgagees under two mortgages on the said vessel. The first mortgage is a preferred mortgage on the defendant-ship dated 23rd May, 1984, and duly registered at Panama and they claimed S F 8,165,281 92 being the amount of principal and interest outstanding and due as on 9th January, 1987. The second mortgage is a preferred mortgage on the defendant-ship dated 17th July, 1984 and duly registered at Panama and the claim is for Deutchmarks 640,510 94 being the amount of principal and interest outstanding and due as on 9th January, 1987. The applicants-plaintiffs also claimed various sums of money with regard to expenses and disbursements 10 15 20

On 6th February, 1987, an order was made for the appraisalment and sale of the defendant-ship by private auction or private treaty pendente lite

The Marshal of the Court sold the defendant-ship and lodged the amount into Court. On 13th February, 1987, the applicants-plaintiffs obtained judgment by default for Deutchmarks and Swiss Francs for approximately U S \$5,782 000 upon their mortgages and master and crew claims 25

On 27th March, 1987, the Court ordered payment out of the proceeds of the sale of the ship to the judgment creditors except for the sum of U S \$55,720 29 to meet the claim of Tramp Oil and Manne Ltd in the event of it being shown that the claim of Tramp Oil enjoyed priority in the payment out of the proceeds of sale greater than the applicant-judgment creditors 30 35

On 22nd May, 1987, Tramp Oil and Manne Ltd obtained a judgment in Admiralty Action 32/87 for U S \$55,720 29 for the value of 731 120 m t of manne diesel and fuel oil IF-180 (hereinafter called bunkers) sold and delivered to the defendant-ship «PIGASSIOS» at Mombassa on the 15th November, 1986 40

When Tramp Oil and Manne Ltd obtained judgment against

the defendant-ship it was on the understanding and agreement between Tramp Oil and Manne Ltd and the applicants-mortgagees bankers that the judgment could not of itself create in favour of Tramp Oil a priority to payment out of the proceeds in  
 5 Court resulting from the sale of the defendant-ship greater than the mortgagee bankers. The claims made by Tramp Oil in their action 32/87 to such priority would be left in this application for determination of priorities

The 731,120 tons of bunkers were

10 (a) Fuel Oil IF180 701 130 m t @ 72 50 U S \$50 831 92

(b) Manne diesel oil 29 990 m t @ 163 4,888 37

So, there is a total of 731 180 m t valued at U S \$55,720 20. These bunkers went at Mombassa into the fuel tanks of the defendant-ship and were mixed with the fuels then in the tanks  
 15 and the mixture was being used and consumed in the operation of the defendant-ship till she arrived at Limassol when she was arrested on 14th January, 1987 by the mortgagee bankers upon their mortgages' claims. At the time of her arrest the defendant-ship had in her fuel tanks approximately 170 tons of bunkers  
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Consequently, there are two claims to the sum of U S \$55,720 29 in Court the balance of the proceeds of sale of the defendant-ship «PIGASSIOS» and the Court has to determine which of the two judgment creditors is entitled to be paid this sum

25 Counsel for the applicants argued that the relevant law is the Cyprus Law and was expounded in the case of *Commercial Bank of the Near East Ltd v «PIGASSIOS III»* (1978) 1 C L R 597, confirmed on appeal in the case of *Pilefs Ltd and Others v The Commercial Bank of the Near East Ltd*, (1983) 1 C L R 376 and  
 30 he said that the mortgages have priority over the claim of Tramp Oil and Manne Ltd. which has a contractual lien. He contended that under the Cyprus Law the order of priorities for the payment out of the proceeds of sale of a res by public auction are

(a) Marshal's expenses, (b) Costs of the producer of the fund, (c)  
 35 damage done by a ship, (d) Salvage, (e) Seamen's wages, (f) master's wages and disbursements, (g) bottomry and respondentia, (h) mortgage and (j) statutory lien and contractual claims

40 Counsel for Tramp Oil and Manne Ltd agreed with the statement of law and the order of priorities set out by counsel for

the mortgagee bankers. He argued, however, that the determination of priorities do not depend upon any rigid rules but on the principle that equity must be done in the circumstances of each particular case and that a general order of priority is followed when there are no special circumstances. In support of his proposition he referred me to Halsbury's Laws of England, 3rd ed. vol. 35, para. 1213. He also referred me to the case of *Stylianou v. The Fishing Trawler «Arkissos»* (1965) 1 C.L.R. 291, in which case first priority was given to necessities over a mortgage debt. 5

Counsel contended that there are special circumstances in this case so as to give priority to the claim of Tramp Oil and Marine Ltd. and that these special circumstances, he went on to say, is the contract entered into between Tramp Oil and Marine Ltd. and the defendant-ship when they sold to her the said bunker fuels which provided under paragraph 8.06 that ownership of the product shall pass to the customer only after the price has been received by them, and until such time as the price is received by them the person in possession of the product delivered shall hold the product for them as a mere bailee. He also contended that the fact that the mortgagee bankers allowed the defendant-ship to incur this debt is another instance of special circumstances. 10 15 20

I have considered the arguments of both counsel and I am of the opinion that there are no special circumstances in the present case so as to deviate from the general rule and order payment of the aforesaid amount to Tramp Oil and Marine Ltd. The mortgagee bankers were not parties to the said agreement and they had no means of knowing of the said agreement. The fact that the agreement provided that the defendant-ship shall hold the bunkers as bailee until payment of the price thus creating a contractual lien in favour of Tramp Oil and Marine Ltd. does not in my opinion amount to special circumstances. 25 30

For all the above reasons I have come to the conclusion that the applicants, mortgagee bankers, have priority in the present case and I order and direct that payment be made by the Registrar of this Court of the sum of U.S.\$55,720.29 in his hands to them. Costs of these proceedings in favour of the applicants, to be assessed by the Registrar. 35

*Order accordingly.*