

1989 June 21

(MALACHTOS J)

MICHAEL MOURTZINOS,

Plaintiff,

v

THE SHIP «GALAXIAS»,

Defendant

(Admiralty Action No 198/88)

Admiralty — Arrest of ship upon ex parte application — Condition as to bailing out the ship by payment into Court of 1.8 million US Dollars — Claims for the refund of 256,000 US Dollars and £15,700 paid under an agreement and for damages for breach of contract — Clause in the contract providing for 200,000 US Dollars as «agreed damages» in case of breach — Amount for bailing out the ship reduced to 500,000 US Dollars 5

The facts of this case sufficiently appear in the hereinabove headnote

Order accordingly 10

Objection.

Objection against the continuance in force of the warrant of arrest against the defendant ship and against the fixing by the Court the amount of 1.8 million US Dollars for bailing out the said ship for the satisfaction of any judgment or order in the present action 15

L. Papaphilippou, for the plaintiff

C. Velans with A. Paschalides, for the defendant ship.

MALACHTOS J read the following judgment The question to be answered in this Admiralty Action at this stage of the proceedings is whether the grounds on which the warrant issued on the 12th April, 1989, for the arrest of the defendant ship was issued on sufficient grounds, and if so, whether the amount of 1.8 20

million US Dollars or its equivalent in Cyprus currency, fixed by the court for bailing out the said ship for the satisfaction of any judgment or order in the present action, is unjustifiable.

The relevant facts are the following:

5 On the 6th December, 1988, the plaintiff instituted legal proceedings against the defendant ship claiming, as stated in the writ of summons, the following remedies:

(a) damages for breach of a written agreement dated 15th September, 1988, in connection with the use, exploitation and
10 chartering of the ship «GALAXIAS»;

(b) 256,260 US Dollars, or its equivalent in Cyprus currency, and C£15,700.-, sums of money paid to the owners and/or their representative in connection with the above ship and/or on the basis of the above agreement;

15 (c) 149,608.90 US Dollars, or its equivalent in Cyprus currency, for costs incurred and payments made by the plaintiff as charterer and/or for the account and at the request of the owner of the ship «GALAXIAS» and/or in connection with the supply of goods and materials and/or in connection with repairs, constructions and
20 equipment of the ship «GALAXIAS»;

(d) damages for fraud and/or misrepresentation and/or deceit committed by and on behalf of the owner of the ship «GALAXIAS» in connection with the agreement for chartering and/or use of the ship in question;

25 (e) any further and/or other remedies;

(f) interest at the rate of 9% per annum from the filing of the present action as damages or otherwise; and

(g) costs.

On the 11th January, 1989, the date fixed for appearance,
30 counsel for the defendant ship appeared and disputed the claim and so the usual directions were made ordering the plaintiff to file his petition within one month as from the 11th January, 1989 and counsel for the defendant ship to file his answer within 15 days thereafter. Any reply to the answer to be filed within seven days
35 from the filing of the answer.

On the 8th February, 1989, counsel for the defendant ship filed an application praying for an order of the court directing the

plaintiff to give security for costs and this application was fixed for the 25th February, 1989.

On the 10th February, 1989, the plaintiff filed his petition.

On the 15th February, 1989, counsel for the plaintiff filed his opposition to the application for security for costs and this 5
opposition as stated therein was based on Law 55/84.

On 25th February, 1989 the application was fixed for hearing for the 6th April, 1989, when Mr. Velaris addressed the court and it was adjourned to 4th May, 1989 for further hearing.

On the 4th May, 1989, Mr. Velaris applied for leave to withdraw 10
the application for security for costs in view of the provisions of Law 55/84. The application was then dismissed with costs in favour of the plaintiff.

In the meantime, the plaintiff on the 12th April, 1989, upon an ex parte application obtained an order for the issue of a warrant of 15
arrest of the defendant ship, which was anchored in the port of Limassol, and was already under arrest in another action. The 24th of April, 1989, was fixed for hearing in case it was decided on behalf of the defendant ship to show cause against the 20
continuance in force of the order. One of the provisions of the order is that the Marshal shall release the ship if she were bailed out in the sum of 1.8 million US Dollars or its equivalent in Cyprus currency.

It should be noted here that this amount is referred to both in the affidavit in support of the application for the issue of a warrant of 25
arrest, on which the contract of the 15th September, 1988, was attached, and in the petition filed on the 10th February, 1988, as damages and loss of earnings of the plaintiff as a result of the loss of the chartering of the defendant ship for the period of one year or 30
loss of earnings.

Counsel for the defendant ship in arguing his case submitted that the order for the issue of the warrant of arrest should be discharged as the plaintiff misled the court by not disclosing 35
material facts. He further submitted that even if we assume that the warrant of arrest was issued on sufficient grounds then taking into consideration the terms of the contract, the amount of 1.8 million US Dollars fixed by the court for bailing out the defendant ship is unjustifiable.

Taking into consideration all the material placed before me I hold the view that it is more than sufficient to justify the order for the issue of the warrant of arrest. There is no dispute, however, as to the amounts of 256,260 US Dollars and C£15,700.- paid by the plaintiff to the owning company of the defendant ship by virtue of the agreement of the 15th September, 1988. According to term 9 of the said agreement, the compensation to be paid by the owning company in case of breach to the plaintiff was fixed at 200,000 US Dollars. This term reads as follows:

«Party A shall sign on demand any necessary documents for the formation of the new company and/or shall duly execute a bill of sale and/or shall execute any further document that should be reasonably required to enable the ship to be legally transferred to the new company and/or enable the ship to be registered with the Greek and/or any other flag. If Party A fails to comply with any of the above demands, party B will have the right to cancel the agreement and thereupon any amount of the price paid shall be returned to it plus an amount of 200,000 US Dollars as agreed damages».

Taking into consideration all the above, and the fact that the plaintiff never took possession, according to his own allegations, of the defendant ship, the amount fixed by the Court on the 12th April, 1989 for bailing out the ship, should be and it is hereby reduced to 500,000 US Dollars, or its equivalent in Cyprus currency, and the order of 12th April, 1989, is amended accordingly.

On the question of costs the Order of the Court is to be costs in the cause.

Order as above.

MR PAPAPHILIPPOU: I apply under Order 203 of the Cyprus Admiralty Jurisdiction Order the fixing 1.8 million Dollars for the bailing out of the ship, to be given 1.8 million Dollars by means of an interim order of Your Honour's court, as I intend to file an application for review under Order 165 as our main argument is that that amount of 200,000 Dollars refers to specific breach of clause 9 of the contract and not to the general damages connected with the use of the vessel and the chartering of the vessel and a breach of all this agreement, as a whole, I submit it is a proper case to have this interim order granted to be in a better position to

administer justice and not to have the door open of the horse to leave the stable until the application for review is dealt with by this court in its Full Bench.

COURT: Having considered the oral application of Mr. Papaphilippou I refuse the order applied for.

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Oral application dismissed.