

1989 January 9

(A. LOIZOU, P., DEMETRIADES, PAPADOPOULLOS HDJITSANGARIS,
CHRYSOSTOMIS, NIKITAS, ARTEMIDES, JJ.)

TRAMP OIL AND MARINE LTD.,

Appellants,

v.

SCHIFFSHYPOTHEKENBANK ZU LUBECK
AKTIENGESELLSCHAFT AND ANOTHER,

Respondents.

AND

THE SHIP «PIGASSIOS»,

Respondents-Plaintiffs.

(Civil Appeal No. 7490).

Admiralty — Proceeds of sale of ship by public auction pendente lite — The order of priorities of payments to be made therefrom — The general order of priorities may be reversed if special circumstances exist — Contract to sell marine diesel and fuel oil to ship providing that the property therein shall remain with the sellers (appellants) until payment of price — Neither this term nor the fact that but for such diesel and fuel oil the ship would not have arrived in Limassol where she was arrested, amount to «special circumstances» vis-a-vis the mortgagees of the ship (respondents).

The facts of this case as well as the legal principles expounded by the Court in this case appear sufficiently from the hereinabove headnote.

Appeal dismissed with costs.

Cases referred to:

Commercial Bank of the Near East Ltd. v. The Ship «PEGASOS III» 15
(1978) 1 C.L.R. 597; .

Pilefs Ltd. & Others v. The Commercial Bank of Near East Ltd.
(1983) 1 C.L.R. 376;

Stylianides v. Narkissos (1965) 1 C.L.R. 291;

«*Silia*» [1981] 2 Lloyd's Law Reports 534.

5 **Appeal.**

Appeal against the judgment of a Judge of the Supreme Court (Kourris, J.) given on the 27th October, 1987 (Admiralty Action No. 7/87) by which he determined, on the application of the appellants, the order of the priorities for payment out of the proceeds of the sale of the ship «Pigassios» on the various claims against the said ship.

X. Xenopoulos, for the appellants.

St. Mc Bride, for the respondents.

Cur. adv. vult.

15 A. LOIZOU, P. read the following judgment of the Court. This is an appeal from the judgment of a Judge of this Court by which he determined, on the application of the appellants, the order of the priorities for payment out of the proceeds of the sale of the ship «PIGASSIOS» of the various claims against her.

20 The said ship was supplied by the present appellants with bunkers at Mombassa, Africa, and she sailed to Limassol where she was arrested on the application of the respondents, her mortgagees, and she was ultimately appraised and sold. The proceeds of the sale, less the amount of U.S.\$55,720.29, being
25 the amount of the claim of the present appellants, were paid over to the judgment-creditors. The amount so reserved in Court was kept there as a security for the present claim in the event of it being shown that it enjoyed priority to that of the respondents.

30 The case for the appellants is that, though in the ordinary circumstances the order of priorities is fixed on principles as same have been enunciated in a series of authorities, including the *Commercial Bank of the Near East Ltd., v. The ship «PEGASOS III»*, (1978) 1 C.L.R. 597, confirmed on appeal by the Case of *Bilefs Ltd. & Others v. The Commercial Bank of Near East Ltd.*,
35 (1983) 1 C.L.R. 376, yet if there are special circumstances on grounds of equity, the order of priorities may be reversed. Reliance for this proposition was based on the relevant statement of the law as appearing in Halsbury's Laws of England, 4th Ed. Vol. 43, paragraph 1142 which in so far as relevant reads:

«It would seem that the determination of the priority of liens over one another rests on no rigid application of any rules but on the principles that equity shall be done to the parties in the circumstances of each particular case. However, there is, a general order of priority, and there are certain general rules which, in the absence of special circumstances, the court tends to apply.» 5

Learned counsel for the appellant also cited the case of *Stylianou v. Narkissos*, (1965) 1 C.L.R. p. 291, in which a Judge of this Court found that in the particular circumstances of that case there was room to change the ordinary order of priorities and referred, inter alia, to the same paragraph hereinabove set out but in the 3rd Edition which is worded in the same way. We need not therefore deal any further with that case. 10

The facts of the present case do not justify the application of this equitable principle as the learned trial Judge directed his attention to this aspect of the case and concluded that - 15

«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.» 20 25

We share with the learned trial Judge the conclusion reached on the facts of the present case.

The argument advanced that the mortgagees benefited by the use of those bunkers for the voyage of the ship from Mombassa to Limassol and that the surplus of that supply of bunkers was sold together with the ship, does not, in our view, change the situation. 30

In conclusion useful reference may also be made to the case of «*Silia*» [1981] 2 Lloyd's Law Reports p. 534, to which Mr. McBride, on behalf of the respondents has drawn our attention. That was a case in which the vessel «*Silia*» was ordered to be appraised and sold by the Admiralty Marshal and in due course the vessel was sold with everything on board belonging to her 35

including unused bunker fuel and lubricants (the oil) remaining on board her, such oil being sold for \$44,753.40.

- 5 The plaintiffs argued that that oil in «Silia» was not part of the ship; that the proceeds of the sale of the oil were not part of the fund available to a plaintiff who had obtained a judgment in rem but that as the oil was the property of Birkdale (her owners) before its sale and the proceeds of sale were within the jurisdiction, any judgment creditor of Birkdale could levy execution thereon, and the plaintiffs were such judgment creditors.
- 10 It was held that the proceeds of sale of the oil were part of the res and as such available to the judgment creditors in rem and the plaintiff's application in that case was refused.

For all the above reasons, the appeal is dismissed with costs.

Appeal dismissed with costs.