

1989 February 9

(A. LOIZOU, P.)

SEA ISLAND TRAVEL & TOURS LIMITED,

Plaintiffs.

AND

- 1. M.T. GALAXIAS, NOW LYING AT THE PORT OF LIMASSOL,
- 2. UNITED BROTHERS SHIPPING CO. INC.,

Defendants.

(Admiralty Action No. 86/88).

Admiralty — Sale of ship under arrest pendente lite — It should not be ordered as a matter of course merely for relieving the arresting party of expenses — Ship valued at a few million dollars, whilst the claim is for £30,000 — In the absence of other pressing grounds, the ship should not be sold.

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The facts of this case sufficiently appear in the hereinabove headnote.

Application dismissed. Costs against applicants and in favour of defendants 1. No order as to costs as regards defendant 2.

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Cases referred to:

Almyr Maritime S.A. v. The cargo on board the Ship «Almyra» (1975) 1 C.L.R. 116;

Kyrmizoudes v. The Ship Philipoupolis (1978) 1 C.L.R. 526.

Application.

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Application by plaintiffs for the sale of the defendant ship pendente lite.

A. *Theofilou*, for applicants-plaintiffs.

C. *Velaris* with A. *Paschalides*, for respondents 1 - defendants 1.

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L. Papaphilippou, for respondents 2 - defendants 2.

Cur. adv. vult.

5 A. LOIZOUP read the following judgment. Soon after the filing of the action and the issue of a warrant of arrest of the defendant ship, an application for the sale of the ship *pendente lite* was filed by the plaintiffs which was opposed by the owners of defendant 1, whereas defendants 2, the charterers of the defendant ship filed a notice «intending to support the application of the plaintiffs for the sale of the ship 'Galaxias' *pendente lite*».

10 The main ground of opposition to the sale is that the defendant Ship and its owners owed nothing to the plaintiffs and that any claim they have should be directed to others and not against them, and that it is too early for the Court to deal with such an issue.

15 The application was based mainly on the fact that the expenses for the maintenance of the ship were mounting because of its thirty-five member crew. That, however, has been resolved by the repatriation of the crew of the ship at the expense of her owners and indeed that should be the proper course to be followed in the case of the arrest of a ship in which there is no likelihood of
20 speedily resolving the dispute between the claimants and an arrested ship, and not bailed out. In fact the expenses for the maintenance of the ship and those left aboard as skeleton crew were, until recently, born by the owners, who for reasons beyond their power, however, and in particular because of the issue of a
25 *Mareva* injunction, were forced to stop paying such expenses amounting to about two-thousand five-hundred pound per month.

30 No doubt a person arresting a ship has to bear the costs of the arrest and the issue of an order for sale *pendente lite* should not be taken as a matter of course for the sake of relieving the arresting party of the expenses it undertakes to incur when seeking the issue of a warrant of arrest.

35 Moreover the claim of the plaintiffs against the owner is so strongly contested that it would be unfair to direct the sale of a ship of a value of over a few million dollars for the sake of a claim in the region of thirty-thousand pounds, there being no other pressing grounds, such as the disproportionate costing of the daily expenses of keeping the ship under arrest or her deteriorating owing to being under arrest for a long period or that the cargo is
40 perishing. (See *inter alia Almyr Maritime S.A., v. The Cargo on*

Board the Ship «Almyrta» (1975) 1 C.L.R. 116; and Kyrnizoudes v. The Ship Philipoupolis (1978) 1 C.L.R. 526).

For all the above reasons the application for sale pendente lite is dismissed with costs against the applicants-plaintiffs, in favour of respondents 1 - defendants 1, and with no order as to costs in 5
favour of respondents 2 - defendants 2.

Application dismissed.

Order for costs as above.