

CREW OF THE SHIP “TANYA I” v. OWNERS OF THE SHIP “TANYA I”

SUPREME COURT (Pizzarello, A.J.): June 12th, 1998

Shipping—arrest of ship—wages and repatriation of crew—ship’s owner liable for crew’s wages up to date of arrest—thereafter and until further notice arresting party liable through Admiralty Marshal for wages and repatriation even if expenses exceed sale price of ship—inclusion of ship’s beneficial owners in crew irrelevant

The plaintiffs applied for the payment of outstanding wages by the defendant and, from the date of their ship’s arrest, by the Admiralty Marshal and for repatriation at her expense.

They submitted that (a) the defendant company was liable for their wages for the period prior to the ship’s arrest notwithstanding that the master and chief officer of the ship were both crew members and beneficial owners of the company; and (b) the Admiralty Marshal was responsible for the repatriation and payment of wages of all members of the crew following the arrest even if the sale of the ship did not fully cover these costs.

Held, giving judgment for the plaintiffs:

(1) Even though the relationship between the crew and the ship’s owner was not at arm’s length due to the beneficial interests of the master and chief officer in the owner company, there was *prima facie* no reason to assume that the claim for wages was fraudulent and therefore no reason to look behind the corporate façade. Accordingly, the defendant would be ordered to pay the wages of all members of the crew up to the date of the ship’s arrest (page 341, lines 17–26).

(2) Similarly, the Admiralty Marshal would be ordered to pay the wages of the entire crew from the date of arrest until further notice and to repatriate them. Although it rarely happened that the sale price of the ship did not cover these expenses, the risk should be borne by the arresting party and the expenditure would be treated as part of the Admiralty Marshal’s expenses (page 341, lines 31–44).

N.P. Cruz for the crew;

G. Ramagge for the owners;

M.X. Ellul for the arresting party.

PIZZARELLO, A.J.: There are two matters to address: (a) the claim by the crew for their wages against the owner of the “Tanya I”; and (b) an

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application by the crew for repatriation by the Admiralty Marshal at her expense and the Marshal to pay outstanding wages as Marshal’s expenses.

5 The first thing I have to say is that there has been no *viva voce* evidence and cross-examination of witnesses. Mr. Cruz has offered his clients for examination but I have not accepted this for two reasons; one is time—the court has no time to offer in the near future to hear a full-blown trial to which the plaintiffs will want to bring their witnesses to refute what may be said by the master and owner; and the second, allied to this, is that 10 to do so would merely cause costs to escalate. In this case the Admiralty Marshal’s expenses already almost completely consume the sale price.

As for the crew’s claim for wages, it seems to me that the amount that is claimed is not excessive. Is Mr. Ellul right to suggest that I ought not to accept the claim because the evidence is sparse and the owner and master 15 of the vessel may have conspired to put forward a fabricated account together with that of the crew?

It does not seem to me to go to the root of the claim that the beneficial owner and master are, in respect of their claim, also members of the crew. The ship is owned by a company and one ought not to look behind the 20 corporate veil unless there is fraud. Clearly there is an unhealthy relationship between the crew and the owner. They are not at arm’s length in so far as the master and chief officer are concerned, but that does not make it fraudulent and their behaviour, bad as it might be (as outlined by Mr. Ellul), does not alter that position. I think that the claim by the master and crew for wages against the owner of the Tanya must be admitted and 25 judgment is given in their favour against the defendant.

As for the second application—that the crew be repatriated by the Admiralty Marshal with payment of wages—I do not think this is the usual case where this is done. It is the first occasion that I know of in 30 Gibraltar where the sale price does not cover the Admiralty Marshal’s expenses and crew’s wages. I believe the Admiralty Marshal is responsible for repatriating the crew. I believe the Admiralty Marshal is responsible for the wages of an arrested ship’s crew until such time as she gives notice otherwise. So wages due from the time of arrest to repatriation will form part of the Admiralty Marshal’s expenses. 35

With regard to the master and owner, is the position different? In this case their relationship is closely inter-linked and it does seem to me that to ask the arresting party to pay that which ought to be paid by the owner of the vessel may be inequitable. But what principle can there be to 40 differentiate between ordinary crew members and the master and chief officer, even if they do have other relationships with the owner of the vessel? I cannot see any and, hard although it is for the party intervening, I consider that logically he has to meet that requirement and he suffers the loss upon his undertaking. Any party arresting a vessel must take the 45 chance that this cause of action may have a scorpion’s tail to it. Though it

does not happen frequently, it has in this case, so I shall accede to the defendant's request to this extent. Wages will be paid from the date of arrest. No interest is payable.

Last week I ordered the sale to be stopped until this action was finalized. It now is and the Admiralty Marshal may issue the bill of sale forthwith.

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Order accordingly.
