

MOTOKOV

THE HIGH COURT . -

ADMIRALTY

BETWEEN:-

MOTOKOV FOREIGN TRADE CORPORATION

Plaintiffs

and

FERMOYLE INVESTMENTS LIMITED  
THE OWNERS OF AND ALL PERSONS  
CLAIMING AN INTEREST IN THE  
m.v. "O'SHEA EXPRESS"

Defendants

Judgment of Mr. Justice McMahon delivered the 25th day of  
January 1985

This ship was arrested on the 27th March 1984 in the port of Cork at the instance of the Plaintiffs claiming as mortgagees under a Statutory Mortgage dated the 9th February 1979 registered in the port of Liverpool.

On the 13th April 1984 the Plaintiffs recovered Judgment on their mortgage for the sum of £4,149,215.84.

On the 22nd May 1984 the ship was sold by the Admiralty Marshal for the sum of £210,000. The vessel was a specialist ship, constructed for the carriage of motor cars from the Continent and because of the depression in the motor trade had to be sold for a sum considerably less than the estimated value.

The Admiralty Marshal's expenses, including wages paid to a skeleton crew (£9,950.72), and stamp duty to the Revenue Commissioners on the sale price of the vessel

(£21,000) amounted to a total of £40,657.11 and this amount has been paid out of the proceeds of sale. A number of claims were made on the funds in Court for necessaries supplied to the ship and for payments due by the owners under a contract for technical management services for the ship. These claims were withdrawn when it was apparent that they would rank after the mortgagees' claim and no funds would be available to meet them.

The present application is concerned with two claims. Condor Shipping Limited recovered Judgment in this matter on the 6th November 1984 for a sum of £104,374.67. This sum had become due under a contract with the shipowners dated the 18th February 1983, under which Condor acted as operating agents for the vessel in return for a management fee calculated as a percentage of the gross operating and technical costs. Condor as operating agents undertook to have all repairs and maintenance carried out and to purchase all necessary materials for that purpose "on behalf and for the account of the owner", and to employ sufficient qualified and experienced personnel to man the vessel. Condor Shipping Limited claimed to be entitled to a maritime lien in respect of the different outlays making up the Judgment for £104,347.67. These outlays represent money spent by Condor Shipping Limited as operating agent for the owners for necessaries and repairs and wages and are sums for which Condor is entitled to be indemnified by the owners. It is clear that any claims for the supply of necessaries or the carrying out of repairs must rank after the mortgagees' claim and the claim by Condor Shipping Limited for outlay made in discharging claims for repairs and necessaries on behalf-

of the owners must also give way to the mortgagees' claim. Part of the amount for which Condor Shipping Limited recovered Judgment against the owners represented sums paid on behalf of the owners to the crew as wages. Counsel for Condor Shipping Limited contended that his clients were entitled to a maritime lien in priority to the mortgagees' claim in respect of payment of crews' wages on the grounds of subrogation. I am satisfied that no subrogation arises in relation to crews' wages discharged by Condor Shipping Limited. An agent who, on behalf of a principal, pays a creditor of the principal is not subrogated to any rights the creditor might have against the principal. There is no maritime lien to which Condor Shipping Limited could be subrogated. The wages discharged by them on behalf of the owners extinguished any lien in respect of such wages and the maritime lien now claimed by the crew is in relation to wages which were not discharged by the owners or by Condor Shipping Limited. For these reasons any claim by Condor Shipping Limited must take rank after the mortgagees' claim and there are no funds to meet it.

On behalf of the mortgagees, it was claimed that the crews claim for wages after the date of arrest (27th March 1984) is postponed to the mortgagees' claim. The argument put forward in support of this contention was that on arrest the mortgagees' claim fastened on the ship and they became entitled to the equivalent of a possessory lien, and a possessory lien takes priority over subsequent liens, whether maritime or not. I am satisfied that the arrest of the ship did not alter the nature of the mortgagees' claim so far as

priority is concerned in relation to maritime liens. A maritime lien might have fastened on the ship after arrest if the ship incurred liability for salvage services or if it was a cause of damage. I am satisfied that in either case the maritime lien so arising would take priority over the mortgage. The crew were in the service of the vessel until discharged by the Admiralty Marshal on the 13th April 1984. Under their contract of service to which I refer hereafter, they were entitled to a week's notice and therefore were entitled to be paid up to the 21st April, 1984. The maritime lien for wages therefore extends to all wages due up to that date.

Counsel for the mortgagees raised a further issue in relation to the claim by the crew, that is whether the maritime lien for wages extends to sums due by the owners as employer's contributions to the pension scheme under which the crew were employed and sums deducted by the owners as the employees' contribution to that scheme but not in fact paid into the fund. The conditions of service of the seamen whether officers or ratings is regulated by collective agreements known as the National Maritime Board Agreements which were entered into between representatives of shipowning interests and representatives of officers and ratings. Under the Ship's Articles in this case these collective agreements apply subject to the terms of agreements dated the 14th March 1984 made between Condor Shipping Limited and the National Union of Seamen and an agreement of the same date between Condor Shipping Limited and the Merchant Navy and Airline Officers' Association. As a result of these agreements, contributory pension schemes are part of the

terms of employment of crew, whether officers or ratings. The employer is liable to pay a weekly contribution to the relevant pension fund and to deduct from the wages of each member of the crew an appropriate pension contribution which the employer is to forward to the appropriate pension fund. The employer becomes liable for interest if he fails to pay the contribution into the appropriate fund. In this case pension deductions were made from the wages of the crew but from the beginning of 1984 the employer failed to pay his own contributions and the amounts deducted from the crew into the relevant pension funds. In the "Halcyon Skies" (1976 1 A.E.R. 856) Brandon J. decided that the Plaintiff, a deck officer, was entitled to a maritime lien in respect of both employee's and employer's contributions. The Judgment in that case includes an extensive review of previous decisions in England and a statement of the principles underlying the decision which appear to me equally applicable in this jurisdiction. The contract of employments which arise in the present case are contracts made in England in relation to a British registered ship and clearly English law is the proper law of the contract and for that reason the decision of Brandon J. is directly in point but I am satisfied that the same principles are valid in this jurisdiction.

I therefore hold that the amounts due as employer's contributions and crews' contributions to the relevant pension funds constitute a maritime lien in priority to the claim of the mortgagees. I refer to the Examiner to take an account of the amounts due for pension contributions and interest on arrears.

The order of priority for distribution of the funds in

Court therefore is as follows.

Admiralty Marshal's expenses. The Plaintiffs' costs of arrest up to and including appraisal of sale. Wages due to the crew on the 21st April 1984, together with the arrears of both employer's and employees' contributions under the National Maritime Board Agreements and interest on such arrears. Lastly, the mortgagees' claim.

D. Byrne B.L.  
for Interveniants

B. McGovern B.L.  
for Plaintiff

$\frac{19}{12}$   
 $\frac{85}{85}$  Approved  
J.M.C.M.