

## Litigation - Cyprus

### Salvage claims in Admiralty Court

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#### Facts

#### Law of salvage

#### Decision

In a decision issued on July 13 2015 the Cyprus Admiralty Court took the opportunity to reaffirm the main principles of the law on marine salvage in a case which also highlighted aspects of the illegal human trafficking that frequently occurs in the Mediterranean Sea.<sup>(1)</sup>

#### Facts

The case concerned a fishing vessel that was used for the transportation of illegal immigrants from Syria across the Mediterranean Sea in September 2014. The vessel was heavily overloaded, got into difficulty due to bad weather and consequently was forced to transmit an SOS signal. The passengers were rescued by a nearby passenger ship, leaving the fishing vessel drifting with no one on board. The claimants organised a salvage expedition on the same day and the trawler was towed to port in Cyprus.

#### Law of salvage

The general law of salvage is based on equitable principles. According to Lord Stowell, a salvor is "one who, without particular relation to the ship in distress, proffers useful service and gives it as a volunteer adventurer without any pre-existing covenant that connected him with the duty of employing himself for the preservation of that ship".<sup>(2)</sup> Further:

*"the principles on which the Court of Admiralty proceeds, lead to a liberal remuneration in salvage cases; for they look not merely to the exact quantum of service performed in the case itself but to the general interests of the navigation and commerce of the country, which are greatly protected by exertions of this nature."*<sup>(3)</sup>

Cyprus law on salvage follows the same principles. Section 24 of the Wrecks Law establishes the right (and corresponding obligation on owners) of salvage and Section 34 sets out the factors that should be considered by the court in determining the award.<sup>(4)</sup> The courts have examined these provisions in a number of cases over the years.

#### **Brasal Offshore Services Ltd v The Ship June**

In *Brasal Offshore Services Ltd v The Ship June* (1980) 1 CLR 231, it was held that:

*"The question of what is the position of the law in Cyprus regarding salvage (and by this I refer to what is termed 'civil salvage') was considered in a number of cases that came up before this Court... suffice it to refer only to the proviso to section 34 of the Wrecks Law, Cap. 298, which reads: 'Provided that no salvage shall be awarded unless the property in respect of which salvage is claimed shall have been exposed to actual peril threatening its destruction save for the assistance rendered by the salvors'."*

The judge quoted Halsbury's Laws of England,<sup>(5)</sup> under the heading "Danger to Property or Life":

*"The essence of a salvage service is that it is a service rendered to property or life in danger. The requisite degree of danger is a real and appreciable danger. It must not be merely fanciful, but it need not be immediate or absolute. It is sufficient if at the time of the service the situation of the subject of the service is such as to cause reasonable apprehension on the part of the person in charge of it. The danger may arise from the condition of the salvaged vessel, or of her crew, from her position, or from the master's want of skill or his ignorance of the locality or of local conditions."*

'Salvage service' in this sense is defined in Halsbury's Laws of England (supra), paragraph 1109 and on the basis of the authorities referred to therein:

*"... is that service which saves or contributes to the ultimate safety of a vessel, her apparel, cargo, or wreck, or to the lives of persons belonging to a vessel when in danger at sea, or in tidal waters, or on the shore of the sea or tidal waters, provided that the service is rendered voluntarily and not in the performance of any legal or official duty or merely in the interests of self-preservation. The person who renders the service, that is the salvor, becomes entitled to remuneration termed 'salvage reward.*

*Any services rendered in assisting, or in saving life from, or in saving the cargo or apparel of, an aircraft in, on or over the sea or any tidal water, or on or over the shores of the sea or any tidal water, are deemed to be salvage services in all cases in which they would have been salvage services if they had been rendered in relation to a vessel.*

*It is obvious that the presence of danger is an essential element of salvage and the burden of proving the presence of danger rests upon those who claim as salvors."*

### **Branco Salvage Ltd v The Ship 'DEMETRIOS'**

*Branco Salvage Ltd v The Ship 'DEMETRIOS'* considered how the principles set out in Sections 24 and 34 of the Wrecks Law should be applied in practice.<sup>(6)</sup>

*"The general principles are that the amount of the reward, unless it is fixed by agreement, is in the discretion of the Court. The Court, in assessing the reward, endeavours to combine liberality to the salvor with justice to the owner of the salvaged property. It regards not merely the work done in the performance of the salvage service, but the general interests of navigation and commerce. Thus it looks with favour on salvage services rendered by steamships built and maintained for salvage services.<sup>(7)</sup> In assessing the reward the Court takes into account the danger to life, whether on board the salvaging or the salvaged vessel, and the danger to property. The value of the salvaged property is an important consideration in the assessment of reward; but it will not raise the reward out of due proportion to the services rendered. If the value is large the amount of the reward is usually a smaller proportion to the value than if the value is small.<sup>(8)</sup> Likewise, the value of the property employed is also an important element in the assessment of the reward. It is not, however, the measure or limit of the reward. The risk to which the salvaging property is exposed by the performance of the salvage service is also an important consideration. The length of the salvage operation is not in general a very important element for consideration, unless the services are dangerous or invoke protracted exertion; though the additional loss or expense incurred by salvors by reason of the duration of their services is taken into consideration in the assessment of the reward. The labour involved in the salvage service is an important element only so far as it is accompanied by the exercise of skill, or by danger, or responsibility.<sup>(9)</sup> See also section 34 of our Cap. 298.*

*In assessing the amount of the salvage reward the expenses and losses properly incurred by the salvor in the performance of the salvage services are taken into account.<sup>(10)</sup> Those losses and expenses may be given in the form of a separate award, but the common practice is to include it in the general award. The losses and expenses which are dealt with in bringing the salvaged property into a place of safety; and expenses, such as the cost of repairing damage, and depreciation in value of the salvaging vessel, caused by the performance of the salvage service."<sup>(11)</sup>*

### **Decision**

In the case at hand, in which the vessel's owner did not appear, the judge reaffirmed that the following conditions must exist for salvage to be earned:

- There must be an element of risk; and
- Salvage services must be rendered:
  - successfully;
  - on a voluntary basis; and
  - for the salvage of property that could constitute a salvage reward, such as a ship or its cargo.

One of the factors that the court considered was the expense incurred by the salvor during the rendering of its services. In that regard, the court adopted precepts from Kennedy, *Law of Salvage* (fifth edition), paragraph 1143, allowing expenses:

- properly incurred by the salvor in the advancement of the salvage service and before the property assisted has been placed in a position of safety; and

- directly occasioned by the performance of the salvage service, such as the cost of repairing damage which, without any fault on the part of the officers or crew, has been caused to the salvaging vessel (including its equipment) or of replacing damaged clothing.

However, this does not necessarily mean that all costs can be fully reimbursed. For example, the value of the salvaged vessel may be so small that it would be unjust or impossible to require its owner to compensate the full cost.<sup>(12)</sup> It was held with reference to Kennedy, *Law of Salvage*, paragraph 1117, that the amount to be awarded as compensation cannot under any circumstances exceed the value of the vessel and that, in practice, salvage awards rarely exceed half the value of the salvaged property.

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## Endnotes

- (1) Admiralty Action 51/2014 *EDT ZENON v The Fishing Trawler 'Abdullah'*.
- (2) *The Neptune* (1824) 1 Hag Adm 227.
- (3) *The William Beckford* (1801) 3 Ch Rob 355, 165 ER 492.
- (4) Cap 298.
- (5) Third edition, Vol 35, paragraph 1118.
- (6) (1968) 1 CLR 252, page 262.
- (7) *35 Halsbury's Laws of England*, third edition, page 749, paragraph 1139.
- (8) *Id*, page 750, paragraph 1142.
- (9) *Id*, pages 751-2, paragraphs 1146-8.
- (10) Section 24 of Cap 298 and *35 Halsbury's Laws*, page 752, paragraph 1149.
- (11) Volume 35 *Halsbury's Laws*, page 752, paragraph 1149.
- (12) *The Erato* (1888) 13 PD 163.

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