

20th December 1985

85/141

**In the matter of the Representation of the Viscount with regard
to the claim of Goldman Sachs Limited in the desastre of Intersub Limited.**

**Before: P.L. Crill, C.B.E., - Deputy Bailiff
Solicitor General for the Viscount
Advocate M.L. Sinel for Goldman Sachs Limited**

This matter comes before the Court arising out of the failure of a company called Northern Offshore Limited ("NOL") and its subsidiaries, amongst which was the company, Intersub Limited, a Jersey company ("ISL"). NOL owned the share capital in ISSA Panama, which in turn owned the whole of the share capital in ISL. NOL's Group offered a service to companies operating in offshore oil-fields. In a most useful document entitled "Agreed Statement of Facts" which the parties very kindly made available to the Court, the operations of some of the Group's companies is set out in paragraphs 3.2, 3.3 and 3.4, which are as follows:

3.2 Each of Intersub One SA/Intersub Five SA owned a specially equipped sea going vessel which was called a mothership. The motherships were designed to be the offshore base for submersible operations. They had capacity to house and launch one or more submersibles and they carried all necessary equipment to support the submersibles e.g. breathing gas and diving equipment.

3.3 ISSA Panama owned all the submersibles used by the sub group together with certain sophisticated equipment such as video cameras, computer systems, trench profilers and pipetrackers which were needed to provide the service which the offshore operators required.

3.4 The vessel owning companies and ISSA Panama entered into arrangements with Intersub Limited under which Intersub Limited chartered the motherships, submersibles and equipment. Samples of the relevant charter parties comprise item 2".

There was a second agreement between ISL and ISSA Marseille and a number of inter-related agency agreements between ISL and other group companies which are not relevant to the present proceedings. The charter parties between the vessel owning companies and ISSA Panama with ISL were what are termed bare boat charters. These are defined in paragraph 403 of the Fourth Edition of Halsbury volume 43, as follows:

"Charterparty by demise. Charterparties by way of demise are of two kinds: (1) charter without master or crew, or "bareboat charter", where the hull is the subject matter of the charterparty, and (2) charter with master and crew, under which the ship passes to the charterer in a state fit for the purposes of mercantile adventure. In both cases the charterer becomes for the time being the owner of the ship; the master and crew are, or become to all intents and purposes, his employees, and through them the possession of the ship is in him. The owner, on the other hand, has divested himself of all control either over the ship or over the master and crew, his sole right being to receive the stipulated hire and to take back the ship when the charterparty comes to an end. During the currency of the charterparty, therefore, the owner is under no liability to third persons whose goods may have been conveyed upon the demised ship or who may have done work or supplied stores for her, and those persons must look only to the charterer who has taken his place".

In the course of its business the NOL Group borrowed twenty million pounds from the bank, either alone or through a syndicate, and under the banks earlier names. The 'agreed facts' document relates how the loans were secured upon the earnings of the vessels' motherships, on the submersibles and on certain specified equipment. The earnings in each case of the motherships and of the submersibles are represented by the hire charges in respect of the charter parties and other charges due by ISL. Unfortunately, the NOL Group collapsed in 1980 and went into liquidation. ISL was declared "en desastre" on the 13th June, 1980. On that date ISL was indebted to the vessel owning companies and ISSA

Panama for charter and other hire charges. GSL has been permitted to claim as a debtor in the desastre as assignee of a number of companies to which ISL was so indebted. This agreement was arrived at following an action in the High Court and has been embodied in an Order of the High Court, of the 31st January, 1983, slightly amended subsequently by further correspondence. The total amount so admitted was £2,877,301.50. GSL has lodged a further claim for £3,104,150.88 for which it claims preference. The Viscount accepted that the desastre in his opinion was a maritime desastre and following the Jersey case of *in re Bird (1885) 2110 Ex. 343*, rejected GSL's claim for preference. He also rejected the additional claim. By agreement of the parties the Court today has to consider only two questions. These are:

1. Whether the Viscount was correct in his determination that Goldman Sachs' original claim should not be given the status of preferential debts, as being exclusive for charter hire, and -
2. In the event of this Court upholding the Viscount's said determination whether the Viscount was correct in treating the desastre of Intersub Limited as a "desastre maritime".

It seems to me that question 2 should be answered first. Is, therefore, the desastre a desastre maritime? That is to say, one within the admiralty jurisdiction of the Royal Court. Le Geyt defines a cause maritime as to "tout ce qui regarde la navigation". He also includes charter parties. But at the end of his chapter on "Des causes d'Amiraute", Le Gros says this:

"Nous n'avons pas aborde les questions qui ont rapport aux assurances maritimes, aux connaissements, aux chartesparties, aux contrats a la grosse, aux frais de surestaries; le droit anglais s'est occupe de ces questions d'une maniere toute speciale. C'est une branche d'etude du droit maritime a laquelle les juriconsultes se sont consacres. On peut dire que, dans le silence du droit local, on fait application des principes qui regissent le droit maritime anglais".

The Court therefore is entitled to look at the English authorities for help.

However, it noted that in respect of the cases as reported in Jersey, they all have two matters in common. First, there was at the relevant time when a claim was lodged, a res or a ship in the harbours of the Island. And secondly, the action accepted as being one in rem gave a preference in respect of certain claims (e.g. seaman's wages and supplies, as in *Bird*) against the res itself. Maritime lien is defined in Halsbury, Fourth Edition, volume 43 at paragraph 1131:

"Nature and extent. A maritime lien is a claim or privilege on a maritime res in respect of service done to it or injury caused by it. Such a lien does not import or require possession of the res, for it is a claim or privilege on the res to be carried into effect by legal process. A maritime lien travels with the res into whosoever possession it may come, even though the res may have been purchased without notice of the lien or may have been seized by the sheriff under a writ of fieri facias issued at the instance of execution creditors. A maritime lien is inchoate from the moment the claim or privilege attaches, and, when called into effect by the legal process of a proceeding in rem, relates back to the period when it first attached.

There can be no maritime lien upon a res which is not a ship or her apparel or cargo and, if a lien has attached to a maritime res which is sold by the owner, there is no lien against the proceeds of sale since the lien travels with the res. A maritime lien only attaches to the particular res in respect of which the claim arises and not to any other property of the owner".

It's to be noted also that the clause in the charter parties between the vessel owning companies and ISL and which the Court understands is similar to a copy of a standard charter party supplied to it, does not give the owners any general lien on the motherships on charter to ISL. Moreover, the law appears to be, certainly in England, that the owner of a vessel has no lien on the cargo of a ship on charter, see *Hutton and Others v. Bragg* (1816) 7 Taunton 14.

In this case the owners, that is to say the supplying companies of both motherships and submersibles, have cancelled the charter parties and assigned their rights to claim for the balance of the hire and other charges to GSL. Since the charterers are "en desastre" the claim is not against a ship but against the proceeds of the ship's earnings in the hands of the Viscount. In my opinion, because there is no res in Jersey and the privilege does not extend to the proceeds of sale, or a fortiori to the balance of earnings in the hands of the third party, i.e. the Viscount, there can be no desastre maritime in Jersey. The claim of GSL cannot be equated with the kind of privilege attaching to a res in the cases referred to by the Solicitor General for the Viscount. I would answer the second question in the negative.

As regards the first question, the desastre being now an ordinary one, preferential claims fall to be dealt with in the well-accepted manner. Nevertheless, Mr. Sinel for GSL urged the Court to apply the analogy of landlord and tenant and to treat the hire charges for a ship as if that had been rent due by a tenant to a landlord. To succeed in that argument, he would have to show that a vessel was an immeubles, or at least a form of quasi-immeubles. That it is not an immeubles may be inferred from Article 4 of the "Loi (1880) sur la propriete fonciere", which is as follows:

"Il n'est rien change aux lois, coutumes et pratiques de cette Ile concernant les navires et batiments de mer, en general".

It is true that there are specific ways of obtaining a mortgage or hypothecating a vessel under the Merchant Shipping Acts which apply to Jersey and which are well-known today. The ship remains a meuble for the purposes of a desastre, and except to the extent only that special rules apply if there is a desastre maritime, with different preferences, the ordinary rules cannot be departed from. I would rule therefore, as regards the first question, in the affirmative.