

~~CHH C O~~
IN THE PRIVY COUNCIL

No. 8 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

ADMIRALTY JURISDICTION F.S.C. 219/1962

B E T W E E N

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT

(Plaintiffs) Appellants - 78632

- and -

COMPANIA MARITIMA DE ISOLA SPETSAI LIMITADA

(The Owners of the Steamship or Vessel
"SPETSAI PATRIOT")

(Defendants) Respondents

RECORD OF PROCEEDINGS

WILLIAM A. CRUMP & SON,
2/3 Crosby Square,
Bishopsgate London E.C.3

Solicitors for the Appellants

T. L. WILSON & CO.
6, Westminster Palace Gardens,
Victoria Street,
London S.W.1.

Solicitors for the Respondents

IN THE PRIVY COUNCIL

No. 8 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

ADMIRALTY JURISDICTION F.S.C. 219/1962

B E T W E E N

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT

(Plaintiffs) Appellants

- and -

COMPANIA MARITIMA DE ISOLA SPETSAI LIMITADA

The Owners of the Steamship or Vessel

"SPETSAI PATRIOT"

(Defendants) Respondents

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 8 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

ADMIRALTY JURISDICTION F.S.C. 219/1962

B E T W E E N

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT

(Plaintiffs) Appellants

- and -

COMPANIA MARITIMA DE ISOLA SPETSAI LIMITADA

10 (The Owner of the Steamship or Vessel
"SPETSAI PATRIOT")

(Defendants) Respondents

RECORD OF PROCEEDINGS

No. 1

Writ of Summons

IN THE FEDERAL SUPREME COURT
(ADMIRALTY)

SUIT NO.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 1

BETWEEN:-

Writ of Summons
30th June 1962

20 BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
..... Plaintiffs

- AND -

CIA. MAR. DI ISOLA SPETSAI
(The Owners of the Steamship or vessel
"SPETSAI PATRIOT") Defendants.

30 ELIZABETH THE SECOND by the Grace of God,
of Great Britain Ireland and the British Dominions
beyond the Seas, Queen, Defender of the Faith, To
the Owners and parties interested in the Ship or
Vessel "SPETSAI PATRIOT" of the Port of
Monrovia.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 1

Writ of Summons
30th June 1962
(Continued)

WE COMMAND you that within eight days after the service of this writ, inclusive of the day of such service, you do cause an appearance to be entered for you in our Federal Supreme Court of Nigeria in an action at the Suit of the above named Plaintiffs, and take Notice than in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS (Sgd) A. Ade. Ademola
The Chief Justice of the Federal Supreme Court, 10
this 30th day of June in the year of our Lord
One Thousand Nine Hundred and Sixty-two.

N.B. - This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards.

The Defendants may appear hereto by entering an appearance either personally or by Solicitor, at the Registry of the Federal Supreme Court, Race 20 Course Road, Lagos.

The Plaintiffs as Mortgagees of the said vessel claim £292,790 together with interest thereon at 6½% from the 22nd July 1958 being principal and interest due and payable under a Deed of Mortgage dated 22nd July, 1958.

The writ was issued by Messrs. Gerald Impey & Co. whose address for service is 130, Broad Street, Lagos, Solicitors for the said Plaintiff whose Office is situate at - 30

Geneva,
Switzerland.

The writ was served by
on the day of 1962.

B A I L I F F.

No. 2

Affidavit of Plaintiffs' Solicitor

In the Federal
Supreme Court
Admiralty
Jurisdiction

IN THE FEDERAL SUPREME COURT SUIT NO.F.S.C.
(ADMIRALTY) 219/1962.

No. 2

B E T W E E N :-

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
Plaintiffs

Affidavit of
Plaintiffs'
Solicitor 5th
July 1962

- a n d -

CIA. MAR. DI ISOLA SPETSAI
(The Owners of the steamship or vessel
"SPETSAI PATRIOT")
Defendants

10

A F F I D A V I T

I, GERALD LAWRENCE IMPEY, British Subject of
130, Broad Street, Lagos, Barrister and Solicitor
of the Federal Supreme Court, make oath and say as
follows:-

1. I am the solicitor instructed by the
Plaintiffs through their London solicitors,
Messrs. William A. Crump and Son of 2, Crosby
Square, Bishopsgate, London, England in these
20 proceedings.
2. At approximately 1 p.m. on Monday, the 2nd
day of July, 1962 I spoke by radio telephone from
my chambers at 40, Marina, Lagos to Mr. P.A.
Fugeman, a partner in the said firm of solicitors
of William A. Crump and Son.
3. My telephone conversation with him was recorded
on an electric recording machine and he read over
to me the contents of the Power of Attorney
granted to me by the Plaintiffs herein which I now
30 believe to be in course of post to me from Geneva,
Switzerland. The paper writing now shown to me
and marked "GLI" is a typescript copy of the
transcription of the contents of the said Power of
Attorney taken from the electrical recording
machine by my secretary, Mrs. Russell.
4. The said Mr. P.A. Fugeman also read over to me
the contents of an Affidavit by Georges Terrard the

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 2

Affidavit of
Plaintiffs'
Solicitor
5th July 1962
(Continued)

Manager and a Director of the Plaintiffs herein
which said Affidavit I believe to be in course of
post to me from Geneva, Switzerland.

5. The paper writing now shown to me and marked
"GLI 2" is a typescript of the transcription
which was electrically recorded of the contents
of the said Affidavit as read over to me by the
said Mr. Fugeman and typed by my said secretary.

SWORN to at the Registry of the Federal Supreme
Court, this 5th day of July, 1962.

10

BEFORE ME (Sgd) G.L. IMPEY
D E P O N E N T

(Sgd) E.O.H. OKWUSOGU
COMMISSIONER FOR OATHS

These are the papers referred to in
paragraphs 3 and 5 of the Affidavit of GERALD
LAWRENCE IMPEY and marked "GLI" and "GLI2"
respectively.

SWORN to at the Registry
of the Federal Supreme
Court, Lagos this 5th day of
JULY, 1962.

20

BEFORE ME

(Sgd) E.O.H. OKWUSOGU
COMMISSIONER FOR OATHS.

No. 2a

No. 2a

Exhibit to
Affidavit of
Plaintiffs
Solicitor
5th July 1962

Exhibit to Affidavit of Plaintiffs Solicitor

"GLI"

POWER OF ATTORNEY

KNOW all men by these presents that Gerald
Lawrence Impey, Esq., of 130, Broad Street, Lagos,
Nigeria, Barrister-at-Law, is hereby nominated
constituted and appointed to be our true and
lawful attorney in any cause or matter regarding
our claim against the owners and persons
interested in the Liberian ship SPETSAI PATRIOT

30

and Compagnia Maritima di Isola Spetsai Limitada of Costa Rica under a registered ship Mortgage dated 22nd July, 1958 or otherwise and against others to whom the said cause or matter might concern. The Attorney is entitled with full power and authority in our name and in our honour and on our behalf to bring and defend every kind of legal action before all courts and authorities in Nigeria and in case of counter claim to receive and accept service of Writs of Summons or other process and to defend. The Attorney is further entitled to adjust compromise settle and agree in the cause or matter as to him may be expedient, to demand collect sue for and otherwise generally to do all those things necessary in relation to our said claim as we might could or ought to do if we were actually present. We hereby ratify allow and confirm all whatsoever lawfully done or permitted by the said Attorney by virtue of this Power.

10
20

In the Federal Supreme Court Admiralty Jurisdiction

No. 2a

Exhibit to Affidavit of Plaintiffs Solicitor 5th July 1962 (Continued)

IN WITNESS

No. 2b

No. 2b

Exhibit to Affidavit of Plaintiffs' Solicitor

Exhibit to Affidavit of Plaintiffs' Solicitor 5th July 1962

IN THE FEDERAL SUPREME COURT SUIT NO. FSC/219/1962
(ADMIRALTY) "GLI2"

BETWEEN:-

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT ...
Plaintiffs

-- AND --

30 CIA. MAR. DI ISOLA SPETSAI
(The owners of the Steamship or vessel)
"SPETSAI PATRIOT".) ...
Defendants

A F F I D A V I T

I, GEORGES TERRARD, Director and Manager of Banque Genevoise De Commerce Et de Credit, Geneva make oath and say as follows:-

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 2b

Exhibit to
Affidavit of
Plaintiffs'
Solicitor
5th July 1962
(Continued)

1. The above named Plaintiffs are a corporate body of limited liability incorporated according to the laws of Switzerland with its established place of business at 2, Rue Didai, Geneva and I am duly authorised to make this Affidavit on behalf of the said Plaintiffs.
2. The facts herein deposed are within my own knowledge true.
3. On the 22nd July, 1958 acting by their Attorney of fact one Harvey Leon Constant of London the registered owners of the Liberian ship Spetsai Patriot Compagnia Maritima di Isola Spetsai Limitada of Costa Rica executed a Legal Mortgage on the said ship in favour of the above named Plaintiffs as mortgagees to secure the due repayment of a loan of £292,790 and interest thereon at $6\frac{1}{2}\%$ per annum and a Bank Charge of 1% per annum both from the said date until repayment of the said loan. 10
The said legal mortgage was duly registered with the Commission of Maritime Affairs of the Republic of Liberia at 10.30 hours on the 4th August, 1958 and is recorded in Book EN 10 at Page 331. 20
4. No part of the said loan has been repaid nor has any payment of interest or Bank Charge ever been paid and there is now due and owing to the Plaintiffs under the said Mortgage the following sums - 30
 1. Principal loan - £292,790. 0. 0.
 2. Four years interest at $6\frac{1}{2}\%$ per annum - 67,125. 8. 0.
 3. Four years Bank Charge @ 1% p.a. - 11,711.12. 0.

Total = £ 381,627. 0. 0.
5. The said Mortgage also provides that inter alia (by Section 5) that the ship owner will not cause or permit the vessel to be operated in any manner contrary to law and will not do or suffer or permit to be done anything which can or may injuriously affect the registration or enrollment of the vessel under the law and 40

at all times keep the vessel duly documented thereunder. By Section 11 that the ship owner will at the time and without cost or expense to the mortgage maintain and preserve or cause to be maintained and preserved the vessel in good running order and repair so tight and water strong and well and sufficiently tackled appavelled, furnished equipped and in every respect seaworthy and in good operating condition and will keep the vessel or will cause her to be kept in such condition as will entitle her to the highest specification obtaining for vessels of the same age and type in Lloyds Register of Shipping and that she will at all times comply with the applicable Liberian Laws treaties conventions and rules regulations issued thereunder and shall have on board as and when required thereby valid certificates showing compliance therewith.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 2b

Exhibit to
Affidavit of
Plaintiffs'
Solicitor
5th July 1962
(Continued)

10

20 6. On or about 21st June, 1962 I received from the Deputy Commissioner of Marine Affairs of the Liberian Republic a letter addressed to the Plaintiffs dated 18th June, 1962 which states that because of the constant disregard by the ship owners of the legal requirements of the Republic of Liberia the registration of the ship will be discontinued and notice is given to the mortgagees of that fact.

30

7. I caused enquiries to be made of the said Deputy Commissioner through the Plaintiffs' lawyers in London and I am informed by them and verily believe that the said Deputy Commissioner contends that the said ship is without or without proper certification of surveys lifeboats radio apparatus and the vessel is improperly or insufficiently manned and it is for that reason it is proposed to strike the said ship from the Register.

40

8. The owners of the Liberian ship Spetsai Patriot are justly and truly indebted to the above named Plaintiffs in the sum of £581,627. 0. 0. under the provisions of the said registered mortgage dated 22nd July, 1958 and in breach of expressed provisions of the said mortgage have imperilled the Plaintiffs' security for the said debt and in protection of the said security the aid and process of

In the Federal
Supreme Court
Admiralty
Jurisdiction

this Honourable Court is invoked.

DEPONENT

No. 2b
Exhibit to
Affidavit of
Plaintiffs'
Solicitor
5th July 1962
(Continued)

SWORN to at the Registry of
the Federal Supreme Court,
Lagos this day of JULY, 1962.

BEFORE ME

COMMISSIONER FOR OATHS.

No. 3

No. 3

Court Notes
5th July 1962

Court Notes

IN THE FEDERAL SUPREME COURT OF NIGERIA

10

HOLDEN AT LAGOS

ON THURSDAY THE 5TH DAY OF JULY, 1962

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA, CHIEF JUSTICE OF THE
FEDERATION

SIR LIONEL BRETT, K.T. FEDERAL JUSTICE

JOHN IDOWU CONRAD TAYLOR FEDERAL JUSTICE

SIR VAHE ROBERT BAIRAMIAN FEDERAL JUSTICE

F.S.C. 219/1962

IN THE MATTER OF

20

BANQUE GENEVOISE DE COMMERCE - ET DE CREDIT

AND

CIA. MAR. DI. ISOLA SPETSAI
(The Owners of Steamship or Vessel "SPETSAI
PATRIOT")

Impey in Court for the plaintiff.

Asked if he is prepared to enter into a bond says he is prepared to enter into a bond himself: has received guarantees from his clients.

In the Federal Supreme Court Admiralty Jurisdiction

Refers to paragraphs 6 and 7 of the affidavit of Mr. Georges Terrard the Director and Manager of plaintiffs' company which clearly shows the ship is not sea worthy and it is no inconvenience to detain her here.

No. 3

Court Notes 5th July 1962 (Continued)

10 Court would like to know when case will be heard.

Impey: I would like about a week or so, the Representatives of the plaintiff company will be arriving in due course. Service effected on the vessel: not known if the owners are yet aware of it, but I learnt steps were being taken for the ship owners to be represented.

20 Court: Mr. Impey to enter into a bond on his own recognisance in the sum of £5,000 within 5 days.

To be mentioned next week Friday 13/7/62.

(Sgd) A. Ade. Ademola,
CHIEF JUSTICE OF THE FEDERATION.

No. 4

No. 4

Plaintiffs' Affidavit of Debt

Plaintiffs' Affidavit of Debt 4th July, 1962

IN THE FEDERAL SUPREME COURT FSC.219/62
(ADMIRALTY)

BETWEEN:

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
Plaintiffs

30 - and -

COMPAGNIA MARITIMA DI ISOLA SPETSAL LIMITADA
THE OWNERS OF THE LIBERIAN SHIP "SPETSAL PATRIOT"
Defendants

We Marcel DUBUIS and Francis CORDELIER, 2,

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 4

Plaintiffs'
Affidavit of Debt
4th July 1962
(Continued)

rue Diday, Geneva, Switzerland, Managers of the above named Plaintiffs make oath and say as follows:-

1. The above named Plaintiffs are a corporate body of limited liability incorporated according to the laws of Switzerland with its established place of business at 2, rue Diday, Geneva and we are duly authorised to make this affidavit on behalf of the said Plaintiffs.

2. The facts herein deposed are within our own knowledge true. 10

3. On the 22nd July 1958 acting by their Attorney of Fact one Harvey Leon Constant of London the registered owners of the Liberian ship "Spetsai Patriot" Compania Maritima di Isola Spetsai Limitada of Costa Rica executed a legal mortgage of the said ship in favour of the above named Plaintiffs as mortgagees to secure the due repayment of a loan of £292,790 and interest thereon at 6½ per cent per annum and a bank charge of 1 per cent per annum both from the said date until repayment of the said loan. The said legal mortgage was duly registered with the Commission of Maritime Affairs of the Republic of Liberia at 10.30 hours on the 4th August 1958 and is recorded in book P.M. 10 at page 331. 20

4. No part of the said loan has been repaid nor has any payment for interest or bank charge ever been paid and there is now due and owing to the Plaintiffs under the said mortgage the following sums:- 30

(1) Principal loan	£ 292,790. 0. 0.
(2) 4 years interest at 6½ per cent per annum	76,125. 8. 0.
(3) 4 years bank charge at 1 per cent per annum	<u>11,711.12. 0.</u>
	£ 380,627. 0. 0.

5. The said mortgage also provides (inter alia) by Section 5 that the Shipowner will not cause or permit the vessel to be operated in any manner contrary to law and will not do or suffer or permit to be done anything which can or may injuriously affect the registration or enrolment 40

of the vessel under the laws and regulations of Liberia and will at all times keep the vessel duly documented thereunder and by Section 11 that the Shipowner will at the times and without cost or expense to the Mortgagee maintain and preserve or cause to be maintained and preserved the vessel in good running order and repair so that the vessel shall be in so far as due diligence can make her so tight staunch strong and well and sufficiently tackled apparelled furnished equipped and in every respect seaworthy and in good operating condition and will keep the vessel or cause her to be kept in such condition as will entitle her to the highest classification and rating for vessels of the same age and type in Lloyd's Register of Shipping and that she will at all times comply with all applicable Liberian Laws treaties and conventions and rules and regulations issued thereunder and shall have on board as and when required thereby valid certificates showing compliance therewith.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 4

Plaintiffs'
Affidavit of Debt
4th July 1962
(Continued)

6. On or about the 21st June 1962 we received from the Deputy Commissioner of Marine Affairs of the Republic of Liberia a letter addressed to the Plaintiffs dated the 18th June 1962 which reads as follows:-

"Because of constant disregard to Liberian Laws and Regulations, this office had notified the registered owners of the vessel that, unless all such outstanding items were taken care of on or before June 30, 1962, the vessel would be automatically stricken from Liberian Registry. Although the said date is only two weeks off, no word has been heard from the owners. This office is putting you, as mortgagee of record, on notice that if all outstanding items are not taken care of by June 30, 1962 the vessel will be automatically stricken from Liberian Registry".

7. We caused enquiries to be made of the said Deputy Commissioner through the Plaintiffs' Lawyers in London and we are informed by them and verily believe that the said Deputy Commissioner contends that the said ship is without or without proper certificates of Survey, Lifeboats, Radio

In the Federal
Supreme Court
Admiralty
Jurisdiction

Apparatus and vessel is improperly or
insufficiently manned and it is for that reason
it is proposed to strike the said ship from the
Liberian Register of Ships.

No. 4

Plaintiffs'
Affidavit of Debt
4th July 1962
(Continued)

8. The owners of the Liberian Ship Spetsai
Patriot are justly and truly indebted to the above
named Plaintiffs in the sum of £380.627. 0. 0.
under the provisions of the said registered
mortgage dated 22nd July 1958 and in breach of the
express provisions of the said mortgage have
imperilled the Plaintiffs' security for the said
debt and in protection of the said security the
aid and process of this Honourable Court is
invoked. 10

Sworn this 4th)
day of July 1962) BANQUE GENEVOISE
at 11.00 hours.) DE COMMERCE ET DE CREDIT
(Sgd) ? ? ?

Vu pour legalisation

Vu pour legalisation des signatures
apposees ci - contre par Monsieur
Marcel Dubuis, directeur et Monsieur
Francis Cordelier, lesquels engagent
la Banque Genevoise de Commerce et de
Credit, societe anonyme ayant son
siege a Geneve, par leur signature
collective a deux. ----- 20

Geneve, le 4 juillet 1962. -----

(Sgd) ? ? ?

Vu pour legalisation de la signature
Me Rene GENCY, notaire,
apposee ci-dessous
Geneve le - 4 JUIL.1962 30

pr la Chancellerie d'Etat:

(Sgd) ? ? ?

Roger BLANC
CHEF DE Bureau

No. 5

Bond, Security for Defendants' Costs

IN THE FEDERAL SUPREME COURT. SUIT NO.FSC.219/
(ADMIRALTY) 1962

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 5

B E T W E E N:-

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
Plaintiffs

Bond, Security
for Defendants'
Costs 10th July
1962

- and -

CIA.MAR. DI ISOLA SPETSAI

10 (The Owners of the Steamship or vessel
"SPETSAI PATRIOT".)
Defendants

B O N D

20 WHEREAS it is alleged that the owners of the
ship "Spetsai Patriot" are liable as such owners
to pay the principal and interest under a Mortgage
dated the 22nd day of July, 1958 and registered
with the Commissioner of Maritime Affairs of the
Republic of Liberia on the 4th day of August,
1958 and recorded in Book P.M. 10 at Page 331

30 AND WHEREAS the Honourable Chief Justice of
the Federation of Nigeria Sir Adetokunbo Ademola
on the 30th day of June, 1962 made an Order
directed to the Admiralty Marshal requiring him
to detain the said ship until such time as the
owners, agent, master, or consignee thereof have
paid the said principal and interest or have given
security in the sum of £381,627. 0. 0. to be
approved by the Judge, to abide the event of any
proceedings which may be instituted to recover
such principal and interest, and to pay such
damages and costs as may be awarded, thereon, or
until the said ship shall be otherwise released
by due course of law:

40 NOW THEREFOR, I GERALD LAWRENCE IMPEY of 130,
Broad Street, Lagos, Barrister and Solicitor of the
Federal Supreme Court, submit myself to the
jurisdiction of this Court and consent that if the
owners, agent, master or consignee of the said
ship shall not be found liable as to payment of
the said principal or interest or liable in

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 5

Bond, Security
for Defendants'
Costs 10th July
1962 (Continued)

respect of any of the matters alleged against the owner of the vessel in this Suit execution may issue forthwith against me, my heirs, executors and administrators, goods and chattels for such sum not exceeding FIVE THOUSAND POUNDS (£5,000) as this Honourable Court may order as constituting the damage and loss sustained by the owners of the said ship "Spetsai Patriot" by reason of such detention as aforesaid.

IN WITNESS whereof I have hereunto set my hand and seal this 10th day of July in the year of our Lord one thousand nine hundred and sixty two.

10

SIGNED SEALED AND DELIVERED
by the within named GERALD LAWRENCE IMPEY in the presence of :- (Sgd) G.L. IMPEY

(Sgd) J.A. Adefarasin
Chief Registrar, Federal Supreme Court, Lagos.

No. 6

Court Notes
13th July 1962

No. 6

Court Notes

20

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

ON FRIDAY, THE 13TH DAY OF JULY, 1962

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA CHIEF JUSTICE OF THE
FEDERATION

SIR M. CLEMENT E.C. NAGEON DE LESTANG
CHIEF JUSTICE LAGOS

JOHN IDOWU CONRAD TAYLOR FEDERAL JUSTICE

30

F.S.C. 219/1962

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT

AND

CIA. MAR. DI ISOLA SPETSAI
(The owners of Steamship or Vessel "SPETSAI
PATRIOT")

Impey (Coker and Sagoe with him) for plaintiffs.
No appearance has been entered for the defendants.

In the Federal
Supreme Court
Admiralty
Jurisdiction

Agbobi holds watching brief for Nigerian
Ports Authorities.

No. 6

Impey: I am aware that the owners of the
ship have been notified.

Court Notes
13th July 1962
(Continued)

I have representatives of the
plaintiffs' company here.

10

The Scandinavian shipping Company
are the agents of the defendants in
Nigeria: They are aware of all these.

Ready to call plaintiffs' Represent-
atives.

Witness will be taken on Monday 15th
July 1962.

(Sgd) A. Ade. Ademola,
CHIEF JUSTICE OF THE FEDERATION.

No. 7

No. 7

Affidavit of P.A. Fugeman

Affidavit of
P.A. Fugeman
14th July 1962

20 IN THE FEDERAL SUPREME COURT
(ADMIRALTY)

SUIT NO. FSC.
219/1962

B E T W E E N :-

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
Plaintiffs

- and -

CIA. MAR. DI ISOLA SPETSAI
(The owners of the Steamship or vessel
"SPETSAI PATRIOT").
Defendants

30

A F F I D A V I T

I, PERCY ARTHUR FUGEMAN, British Subject of
2/3, Crosby Square in the City of London, England,
Solicitor, make oath and say as follows:-

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 7

Affidavit of
P.A. Fugeman
14th July 1962
(Continued)

1. I am a Solicitor of the Supreme Court in England and practice at the above address in partnership under the name of William A. Crump and Son and I am instructed by the above named Plaintiffs in relation to their claim as Mortgagees of the S.S. "Spetsai Patriot" against the Defendants the owners of that vessel.
2. To my knowledge the owners of the said ship are well aware of these proceedings 10
instituted in the Federal Supreme Court and of the arrest of the ship by warrant of this Court and have been so aware since Tuesday, the 3rd day of July, 1962.
3. The grounds for my knowledge are that I have seen copies of telex messages sent on that day by or on behalf of the Defendants and Capt. C.A. Petroutsis, who is the owner and sole shareholder of the Defendant Company to the Plaintiffs. One of the said messages is from 20
the office in Trieste from which the business of the Defendant Company is managed. The second is from Dr. Valsmakis who is the Lawyer representing the Defendants in Athens and the third is from Mr. Alexander S. Seferiades who is the Lawyer representing the Defendants in London. All three messages protest at the action taken by the Plaintiffs before this Honourable Court.
4. On the 5th July, 1962 I received by hand at 30
my office in London a letter from the said Alexander S. Seferiades in which he writes:-
"Spetsai Patriot". The owners, as also myself, are astonished to hear by cable from the Master that the vessel was arrested in Lagos for complaints of the Mortgagees".
5. Further, there is now produced and shown to me marked Exhibit "P.A.F." a letter dated the 7th July, 1962 from Scandinavian Shipping Agencies Limited of Lagos to the Plaintiffs' solicitor 40
in Lagos and the reply of the said solicitor which I submit confirms that the Defendants have full knowledge of these proceedings and of the arrest of the ship.

SWORN to at the Federal Supreme Court Registry
Lagos the 14th day of July, 1962.

BEFORE ME (Sgd) P.A. FUGEMAN
D E P O N E N T

(Sgd) E.O.H. OKWUSOGU
COMMISSIONER FOR OATHS

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 7

No. 7a

Exhibit to Affidavit of P.A. Fugeman

Affidavit of
P.A. Fugeman
14th July, 1962
(Continued)

No. 7a

THESE are the papers referred to in
paragraph 5 of the Affidavit of Mr. PERCY ARTHUR
FUGEMAN and marked "P.A.F."

Exhibit to
Affidavit of
P.A. Fugeman
14th July 1962

10 SWORN to at the Federal Supreme
Court Registry; Lagos this 14th
day of J U L Y, 1962

BEFORE ME,
(Sgd) E.O.H. OKWUSOGU
COMMISSIONER FOR OATHS.

SCANDINAVIAN SHIPPING AGENCIES LTD.
(INCORPORATED IN NIGERIA)

SHIPPING AGENTS & BROKERS IMPORTERS & EXPORTERS
AGENCIES

20 THE BALTIC & INTERNATIONAL MARITIME CONFERENCE
HB/CB LAGOS NIGERIA
16/666

7th July, 1962

" P. A. F. "

Mr. GERALD IMPEY
40, Marina,
LAGOS

R E G I S T E R E D

Dear Sirs,

30 "SEESAI PATRIOT"

As agents for the above vessel and in your
quality of Representative of the party having
ordered the seizure of the above vessel in Lagos
Harbour, we have to formally protest against this
decision.

Please note that the Shipowners consider that
you are fully responsible for the demurrage incurred

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 7a

Exhibit to
Affidavit of
P.A. Fugeman
14th July 1962
(Continued)

to the vessel and for the eventual damage to the cargo.

We remind you that this ship has 2,400 tons of sugar on board, which is considered as perishable cargo in tropical climate.

Yours faithfully,
(Sgd) H. de BRETTVILLE
Manager.

c.c. Messrs. Adria Lines, Trieste.
Master "Spetsai Patriot".
Messrs. Irving & Bonnar, Lagos.

10

No. 7b

Exhibit to
Affidavit of
P.A. Fugeman
14th July 1962

No. 7b

Exhibit to Affidavit of P.A. Fugeman

GERALD IMPEY & Co. 130, Broad Street
BARRISTERS AND SOLICITORS Post Office Box 2879
GERALD L. IMPEY. Lagos.

BARRISTER-AT-LAW

PHONE: 25706

RECEIVED BY:- O.S. COKER

YOUR REFERENCE NO.

OUR REFERENCE NO.

For and on behalf of
Scandinavian Shipping Agencies
Ltd. 13th July 1962.

20

FSC/219/62

The Manager,
Scandinavian Shipping Agencies Ltd.,
P.M. Bag 2269,
LAGOS.

13th July, 1962

Dear Sir,

"SPETSAI PATRIOT"

We thank you for your letter of the 7th July.

We attach herewith a copy of the Writ of Summons which was served on the above named vessel on the 30th June, 1962. The Order for Arrest of the vessel was made by the Federal Supreme Court and it is to the Federal Supreme Court that any protest as to the Arrest should be directed and not to us.

30

We have to confirm that the writer's

telephoned advice this morning that the case was Listed for mention today and proceedings were adjourned to 10.0 a.m. on Monday the 16th July for the evidence of Mr. Dubuis to be taken de bene esse.

In the Federal Supreme Court Admiralty Jurisdiction

No. 7b

We should be glad of your confirmation in writing that the Owners of the vessel have been notified of the proceedings and the arrest.

Exhibit to Affidavit of P.A. Fugeman 14th July 1962 (Continued)

10

Yours faithfully,
(Sgd) GERALD IMPEY & CO.

P.S. As agreed by telephone we attach the copies of the letters dated the 18th and 28th June from the Deputy Commissioner of Maritime Affairs to our Clients together with a copy of our clients reply dated the 23rd June, 1962.

No. 8

No. 8

Statement of Claim

Statement of Claim 12th July 1962

20

IN THE FEDERAL SUPREME COURT SUIT NO. FSC.219/62
(ADMIRALTY)

B E T W E E N :-

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
Plaintiffs

- and -

COMPANIA MARITIMA DI ISOLA SPEESAI LIMITADA
Defendants
(The owners of the Liberian ship "SPETSAI PATRIOT")

STATEMENT OF CLAIM

30

1. The Plaintiffs are Bankers having their principal place of business in Geneva at 2, Rue Diday, Geneva, Switzerland and the Defendants are the owners of the ship "Spetsai Patriot".
2. By a Deed of Mortgage dated 22nd July, 1958 made between the Defendants of the one part as mortgagors and the Plaintiffs of the other part as mortgagees the Defendants mortgaged

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 8

Statement of
Claim 12th
July 1962
(Continued)

- the said vessel "Spetsai Patriot" (hereinafter called the "said ship") to the Plaintiffs to secure the due repayment of a loan of £292,790. 0. 0. made by the Plaintiffs to the Defendants together with interest thereon at $6\frac{1}{2}\%$ per annum and a Bank Charge of 1% per annum both from the said date until repayment of the said loan.
3. The said Legal Mortgage was only registered with the Commission of Maritime Affairs of the Republic of Liberia at 10.30. hours on the 4th August, 1958 and is recorded in Book P.M. 10 at page 331. 10
4. No part of the said loan has been repaid nor has any payment for interest or Bank Charge ever been made and there is now due and owing to the Plaintiffs under the said Mortgage the following sums:-
- | | | |
|---|------------------|----|
| 1) Principal loan | £ 292,790. 0. 0. | |
| 2) 4 years interest at $6\frac{1}{2}\%$ per annum | 76,125. 8. 0. | 20 |
| 3) 4 years Bank Charge at 1% per annum | 11,711.12. 0. | |
| | <hr/> | |
| Total | £ 380,627. 0. 0. | |
5. By Clause 5 of the said Deed of Mortgage the Defendants covenanted that they would not cause or permit the vessel to be operated in any manner contrary to law and would not do or suffer or permit to be done anything which could or might injuriously affect the registration or 30 enrollment of the vessel under the laws and regulations of Liberia and would at all times keep the vessel duly documented thereunder and by Clause 11 that they would at the times and without cost or expense to the Plaintiffs maintain and preserve or cause to be maintained and preserved the vessel in good running order and repair so that the vessel should be insofar as due diligence could make her so tight staunch 40 strong and well and sufficiently tackled appavelled furnished equipped and in every respect sea worthy and in good operating condition and would keep the vessel or cause her to be kept in such condition as would

entitle her to the highest classification and rating for vessels of the same type in Lloyds Register of Shipping and that she would at all times comply with all applicable Liberian laws treaties conventions rules and regulations issued thereunder and should have on board as and when required thereby valid certificates showing compliance therewith.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 8

Statement of
Claim 12th July
1962 (Continued)

10 On or about the 21st day of June, 1962 the Deputy Commissioner of Maritime Affairs of the Republic of Liberia by letter dated the 18th June, 1962 informed the Plaintiffs that as a result of constant disregard to Liberian laws and regulations the said Deputy Commissioner had notified the Defendants that unless all such outstanding items were taken care of on or before the 30th day of June, 1962 the vessel would be automatically stricken from the Liberian Registry.

20 In breach of the aforementioned covenants in the said Deed of Mortgage the Defendants have failed and neglected to maintain the said ship in such manner as to comply with all applicable Liberian laws treaties and conventions and rules and regulations and the Plaintiffs' said Mortgage is thereby imperilled.

And the Plaintiffs' claim:-

- (1) Payment of the said sum of £292,790.0.0. being the principal loan due under the said Deed of Mortgage.
- 30 (2) £76,125.8.0. being 4 years interest at $6\frac{1}{2}\%$ per annum under the said Mortgage.
- (3) £11,711.12.0. being 4 years Bank Charge at 1% per annum under the said Deed of Mortgage.
- (4) Such further or other relief as to this Honourable Court may seem just.

Dated at Lagos this 12th day of July, 1962.

(Sgd) Gerald Impey & Co.
Solicitors to the Plaintiffs

40 Filed by Messrs. Gerald Impey & Co., 130, Broad Street, Lagos, Solicitors to the plaintiffs in default of appearance the 12th day of July, 1962.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 9

Court Notes

No. 9

Court Notes
16th July 1962

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

ON MONDAY, THE 16TH DAY OF JULY, 1962

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA CHIEF JUSTICE OF THE
FEDERATION

SIR M. CLEMENT E.C. NAGEON DE LESTANG
CHIEF JUSTICE LAGOS

10

JOHN IDOWU CONRAD TAYLOR FEDERAL JUSTICE
F.S.C. 219/1962

BANQUE GENEVOISE DE COMMERCE - ET DE CREDIT

AND

CIA. MAR. DI. ISOLA SPETSAI
(The owners of Steamship or vessel "SPETSAI
PATRIOT").

Impey for the plaintiffs (H.T.O. Coker with him)
for the plaintiffs.

Moore Q.C. (Agusto and Agbebi with him) for the
Nigerian Ports Authority - watching brief.

20

Impey: Affidavit had been filed by Mr. Fugeman
regarding knowledge of the defendant
about this action.

Percy Arthur Fugeman: I live at 22 Warren Road
Shenfield, Essex, England. My office is 2 and 3
Crosby Sq. in the City of London, a Solicitor of
the Supreme Court of England. I am instructed by
plaintiffs in this matter. I know of the
defendants and I know the Director of the Company. 30
I have filed an affidavit last Saturday concerning
the defendants knowledge. I had a telephone
conversation with one Mr. Bretteville. I asked
him about the captain of the ship detained. He
(Captain) as arranged was to meet in Court this
morning according to arrangement. Bretteville
is the agent of the ship. He was surprised the
Captain had not come to court as arranged. I
know of the mortgage the subject matter of this
claim. It is a mortgage in the Liberian form 40

but in English.

This is it - I had custody of it in course of my business from the firm of Solicitors who were the plaintiffs previous Solicitor. I am now plaintiffs' Solicitor.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 9

Court Notes
16th July 1962
(Continued)

10 Tendered in Evidence admitted and marked Exh. 1. I would not say I am a Liberian Lawyer. I have read the Liberian Maritime Code. I have a copy here as certified by the Liberian Ambassador in Nigeria. I produce it.

- Tendered in Evidence.

Impey refers to Section 112 (h) Evidence Ordinance and section 57. Submit There must be a question of foreign Law before it becomes necessary to call an expert.

20 Section 112 (h) does not say extract from foreign law must be tendered by a lawyer from that country. On the face of the book itself, it is submitted, should be sufficient to render the Document admissable. Unless a question as to foreign law arises, no need to call a foreign lawyer.

Code tendered as evidence of Liberian Law: Admitted in evidence and marked Exh. 2.

30 Witness continues: I refer to page 17 of Exh. 2: Section 112 (2) is relevant. I have dealt with Liberian Ship mortgages before, on three occasions. The original mortgage Exh. 1 is undoubtedly registered. The registration is recorded on the mortgage itself - an endorsement made on the book of the Exh. 4 in August 1958 by the Deputy Commissioner, New York. The department of Maritime Affairs is in Monrovia, but the Deputy Commissioner's office where Registration of Ships are carried out is in New York.

I know the owners of the ship know about the present proceedings. I have letters of protests from their Solicitors in England.

40 Letter dated 5th July 1962 from Alexander S. Seferiades to Messrs. William A. Crump and Son, tendered, admitted and marked Exh. 3.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 9

Court Notes
16th July 1962
(Continued)

Mr. Pischon sworn to interpret French into English and English into French.

Marcel Dubuis (m) s/s in French:
Nationality: Swiss, living in Geneva at 36 Quai
Gustave Ador. I am a Bank Director; a
director of the plaintiff's bank. I have here
a power of Attorney from the bank for me to
represent the Bank. - This is it - Tendered,
admitted and marked Exh. 4. I have here a
translation of Exh. 4, certified by the inter- 10
preter - put in and marked Exh. 4A. The
principal place of business of the plaintiff is
at Rue Diday, Geneva. I know the owners of the
Ship "Spetsai Patriot". The defendants are the
owners. The plaintiffs made case advances to the
defendants on a guarantee of the ship in Spetsai
Patriot. I identify Exh. 1 as the mortgage deed
between my Company, and the defendant Company.
The total amount advanced is £292,790. 0. 0.
Nothing has been repaid. There are provisions 20
for interest at 6½% per annum and Bank charges at
1%. It all amounts to £76,125. 8. 0. and
£11,711. 12. 0. respectively. Total amount due
is a total of £380,627. 0. 0. as nothing has been
paid out of the principal or interest. I
received certain letters from Liberia: They were
written to my bank (plaintiffs). I have not the
original letters here. They were sent by post to
1st witness in London. He left without getting
them in - Here are the photostat copies - Tendered: 30
Refused by the Court. In consequence of these
letters received the plaintiffs realised that the
ship "Spetsai Patriot" was in danger of being
struck off the Liberian Register for not conform-
ing with Liberian Laws. We therefore took steps
to recover our money. Our Solicitors were
instructed to arrest the ship. I am a Director
of the Bank. I supervise the whole work of the
Bank including the correspondence. I received
the original of these documents I now handle: I 40
received them on 21st June: Letters were dated in
New York on 18th June, and 28th June received on
2nd July 1962. I gave instructions for photostatic
copies to be made of the two letters. I
didn't compare the photostat copies with the
original but I can certify the photostat copies as
correct because I made notes on the original and
all show on the photostat copies - These are the
photostat copies -

Letter dated 18th June - tendered, admitted and marked Exh. 5. My reply to Exh. 5 is attached: marked Exh. 6. Letter dated 28th June tendered: admitted and marked Exh. 7. This is the certificate of ownership of the ship with encumbrance marked on it by the Republic of Liberia. - Tendered, admitted and marked Exh. 8.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 9

Court Notes
16th July 1962
(Continued)

10 I know the owners of the vessel are aware the vessel has been arrested and that these proceedings have started in Nigeria: I received 3 Cablegrams of protests.

My company claims an amount of £380,627. 0. 0. which is due to it.

Case for plaintiffs.

Under the rule 21 days must expire before I can apply for judgment: that will expire on Saturday 21st:

Proposed to ask for judgment later:
proposed to file a motion in accordance with the Rules.

20 Adjourned till 25/7/62.

(Sgd) A. Ade. Ademola,
C.J.F.

No. 10

No. 10

Plaintiffs' Notice of Motion

Plaintiffs'
Notice of Motion
21st July 1962

IN THE FEDERAL SUPREME COURT
(ADMIRALTY)

SUIT NO. FSC/219/
62.

B E T W E E N :-

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
Plaintiffs

30 - and -

CIA. MAR. DI ISOLA SPETSAI
(The owners of the Steamship or vessel
"SPETSAI PATRIOT")
Defendants

NOTION ON NOTICE

TAKE NOTICE that this Honourable Court will

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 10

Plaintiffs'
Notice of Motion
21st July 1962
(Continued)

be moved on Wednesday, the 25th July, 1962 at nine o'clock in the forenoon or so soon thereafter as Counsel on behalf of the above named Plaintiffs can be heard for Judgment in this action and for an Order for appraisalment and sale of the vessel, no appearance having been entered by the owners of the vessel.

Or for such other or further relief as to this Honourable Court may seem just.

Dated this 21st day of July, 1962.

10

(Sgd) Gerald Impey & Co.
Solicitors to the Plaintiffs

To the Master of the "Spetsai Patriot" and her Owners.
On Notice to the Scandinavian Shipping Agencies Ltd., 38, Warehouse Road, APAPA.

No. 11

Certificate of
Non-Appearance
25th July 1962

No. 11

Certificate of Non-Appearance

IN THE FEDERAL SUPREME COURT. SUIT NO. FSC/219/62 20
(ADMIRALTY)

B E T W E E N :-

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT ...
Plaintiffs

- and -

CIA. MAR. DI ISOLA SPETSAI Defendants
(The owners of the steamship or vessel
"SPETSAI PATRIOT")

CERTIFICATE OF NON-APPEARANCE

An Affidavit of Service of the Writ herein on the steamship or vessel "SPETSAI PATRIOT" at Lagos Harbour on the 30th day of June, 1962 having been filed.

30

IT IS HEREBY CERTIFIED that no appearance has been entered.

Dated this 25th day of July 1962.

(Sgd) Gerald Impey & Co.
Solicitors to the Plaintiffs.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 11

Certificate of
Non-Appearance
25th July 1962
(Continued)

No. 12

No. 12

Court Notes

Court Notes
25th July 1962

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS
WEDNESDAY THE 25TH DAY OF JULY, 1962
BEFORE THEIR LORDSHIPS

10 SIR ADETOKUNBO ADEMOLA, CHIEF JUSTICE OF THE
FEDERATION
SIR M.C. NAGEON DE LESTANG CHIEF JUSTICE LAGOS
JOHN IDOWU CONRAD TAYLOR FEDERAL JUSTICE

F.S.C. 219/1962

Banque Genevoise de Commerce et de Credit

v

Cia. Mar. Di Isola Spetsai

Same appearance for plaintiffs.

20 Murray now appears for respondents: says
appearance should have been filed.
Agusto, watching brief for Ports Authority.

Impey: Refers to Order XIII Rules 12A & 13:
writ specified 8 days to enter appearance.
Says strictly speaking no appearance can be
entered now; it is late. Also referred to
Order II, rule 1 F.S.C. Rules which allows
practice and procedure in Admiralty matters as
observed in England. Relying on Order 13 Rule
12A English Rules - 21 days have expired and the
30 writ should be set down for judgment by default.

Refers to Section 17 of the Federal Supreme
Court Ordce. No. 12 of 1960. Until this Court
make its own rules, it is submitted that the
rules in England in respect of Admiralty action

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 12

Court Notes
25th July 1962
(Continued)

must apply. Admiralty action is an action in rem: F.S.C. Rules do not deal with actions in rem:

A motion has been filed for judgment. It is submitted that matter must proceed to judgment. After judgment it is open to the defendants to make application for judgment obtained in default to be set aside.

Court: Up till now no appearance has been entered.

10

Murray: I am sorry this has not been filed because we do not really know the names of the parties to the action. My instructions to appear are vague. I am told someone is on the way to arrive on Friday. Different nationalities are involved. I cannot validly oppose judgment. There is also motion for order for appraisalment and sale.

Will agree appraisalment may continue but not sale. Motion may be filed to set aside judgment obtained in default.

20

Court: Mr. Impey for plaintiffs has done all he need do in this matter; the defendant has not entered appearance. Plaintiff is entitled to judgment. Judgment is entered for the plaintiffs for £380,627. 0. 0. £2,500 costs.

Motion for an order for appraisalment and sale before the Court.

30

The Court orders an appraisalment. Sale not to take place earlier than the 31st August, 1962.

(Sgd) A. Ade. Ademola
Chief Justice of the Federation

(Sgd) M.C. Nageon de Lestang,
Chief Justice, High Court of Lagos.

(Sgd) John Taylor
Federal Justice.

No. 13

JUDGMENT

In the Federal
Supreme Court
Admiralty
Jurisdiction

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDIEN AT LAGOS

No. 13

Suit No. F.S.C.219/1962

Judgment 25th
July 1962

10

Application for an Order
for the recovery of £292,790
together with the interest
thereon at 6 $\frac{1}{2}$ % per annum from
the 22nd day of July, 1958,
under a Deed of Mortgage dated
22nd July, 1958

Between:

Banque Genevoise Et De Credit
... .. Plaintiffs

And

20

Cia Mar Di Isola Spetsai
(The Owners of the Steamship
or vessel "SPETSAI PATRIOT")
... .. Respondents

A. Ade. Wednesday the 25th day of July, 1962.

Ademola
JUSTICE
OF THE
FEDERA-
TION

UPON READING the application herein
and the affidavit sworn to on the 30th
day of June, 1962, and after hearing
Mr. G.L. Impey of counsel for the
Applicants and the Respondents not
being present or represented:

30

IT IS ORDERED that the Plaintiffs
be entitled to £380,627 with costs
assessed at £2,500 against the
Defendants.

(Sgd) ? ? ?
CHIEF REGISTRAR

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 14

Order for Appraisement

No. 14

Order for
Appraisement
25th July 1962

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

FSC.219/1962

Application for an order
for the enforcement of the
payment of £290,790 together
with the 6½% interest thereon
under a Deed of Mortgage dated
22nd July, 1958

10

Between:

Banque Genevoise De Commerce)
Et De Credit) Plaintiffs

And

Cia Mar Di Isola Spetsai
(The Owners of Steamship
or vessel "SPETSAI PATRIOT")
... .. Respondents

(Sgd) A. Ade.Ademola
CHIEF JUSTICE OF THE
FEDERATION

20

Wednesday the 25th day of July, 1962

UPON READING the Application herein,
the affidavit sworn to on the 30th day
of June, 1962, the affidavit sworn to
on the 5th day of July, 1962, and the
affidavit sworn to on the 14th day of
July, 1962, and filed on behalf of the
Plaintiffs, and the Certificate of Non-
Appearance of the Defendants:

30

IT IS ORDERED that the ship named
"Spetsai Patriot" be appraised and
that the sale doth not take place
earlier than the 31st day of August,
1962.

(Sgd) ? ? ?
CHIEF REGISTRAR.

No. 15

Appearance

In the Federal
Supreme Court
Admiralty
Jurisdiction

IN THE FEDERAL SUPREME COURT

(ADMIRALTY)

Suit No. FSC/219/62.

No. 15

BETWEEN:

Appearance 25th
July 1962

Banque Genevoise de Commerce et de Credit ...
Plaintiffs

-- and --

Cia Mar di Isola Spetsai Limitada ...
Defendants

10

MEMORANDUM OF APPEARANCE

Enter an appearance for Cia Mar di Isola
Spetsai Limitada (the owners of the steamship or
vessel "Spetsai Patriot") in this action.

Dated at Lagos this 25th day of July, 1962.

(Sgd) Irving and Bonnar

Irving and Bonnar
Solicitors for the Defendants
11/17, Tinubu Street,
L a g o s.

20

Filing memorandum of appearance £2. paid on
C.R. No. D.461196 of 26/7/62.

No. 16

No. 16

Defendants' Notice of Motion

Defendants Notice
of Motion 30th
July, 1962

IN THE FEDERAL SUPREME COURT.

(ADMIRALTY)

Suit No. FSC/219/62

Between

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT..
Plaintiffs

30

A n d

CIA. MAR. DI ISOLA SPETSAI..Defendants
(The owners of the steamship or
vessel "SPETSAI PATRIOT").

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 16

Defendants Notice
of Motion 30th
July 1962
(Continued)

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will be moved on Wednesday the 15th day of August, 1962 at the hour of nine o'clock in the forenoon or so soon thereafter as Counsel on behalf of the above-named Defendants can be heard that the judgment in default of appearance by the Defendants herein entered on the 25th July, 1962 in favour of the Plaintiffs be set aside to enable the said Defendants to enter appearance and defend the claim or for such other or further order as to this Honourable Court may seem just. 10

Dated at Lagos this 30th day of July, 1962.

(Sgd) J.A. COLE & CO.
Defendants Solicitors,

Plaintiffs'
address:

c/o Their Solicitors
Messrs. Gerald Impey & Co,
130, Broad Street, Lagos.

Defendants'
address:

c/o Their Solicitors,
Messrs. J.A. Cole & Co.;
14/16, Abibu Oki Street,
L a g o s. 20

No. 17

Affidavit in
Support of
Defendants'
Motion 30th
July 1962

No. 17

Affidavit in Support of Defendants' Motion

IN THE FEDERAL SUPREME COURT
(ADMIRALTY)

Suit No.FSC/219/62.

Between

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
... Plaintiffs 30

a n d

CIA. MAR. DI ISOLA SPETSAI..
Defendants
(The owners of the steamship or
vessel "SPETSAI PATRIOT").

AFFIDAVIT IN SUPPORT OF MOTION

I, Constantin Petroutsis, Ship-owner, Male,

Citizen of Greece residing at No. 6 Skoufa Street, Athens, Greece but now temporarily resident at Hotel Bristol, Martins Street, Lagos, Nigeria, Managing Director and owner of above named Defendant Company and I, Joseph Adetunji Cole, Solicitor, Male, Citizen of Nigeria of No.14/16 Abibu Oki Street, Lagos, Nigeria severally make oath and say as follows:-

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 17

Affidavit in
Support of
Defendant's
Motion 30th July
1962 (Continued)

- 10 1. I, the said Constantin Petroutsis for myself say:
- (a) that I am the Managing Director and owner of the above named defendant company, the registered owner of the vessel "Spetsai Patriot";
- (b) that the Plaintiff issued a Writ against the said Defendant claiming the sum of £292,790 with interests thereon from 22nd July, 1958;
- 20 (c) that pursuant to the Plaintiffs' action the Admiralty Marshal took custody or possession of the "Spetsai Patriot" on the 30th June, 1962 by virtue of Warrant from this Honourable Court;
- (d) that the defendant did not enter appearance to the Plaintiffs' Writ;
- (e) that I was in Switzerland on the 3rd July, 1962 when I received cablegram from Mr. Feriani, Master of the "Spetsai Patriot" informing me of the ship's arrest. The cablegram with its English translation is attached hereto and marked Exhibit "CP 1";
- 30 (f) that on the same 3rd July, 1962 I despatched a cablegram to my Lagos Agents, Messrs. Scandinavian Shipping Agencies Ltd. requesting them to secure the services of a Solicitor to protect the interests of the Defendants. Copy of the cablegram is attached hereto and marked Exhibit CP 2.
- 40 (g) the said Lagos agents replied me by a cablegram which I received on the 5th July, 1962 and on the same day I forwarded another cablegram to them. Copies of both cablegrams are attached hereto and marked Exhibit CP 3 and Exhibit CP 4 respectively;

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 17

Affidavit in
Support of
Defendant's
Motion 30th July
1962 (Continued)

(h) the said Lagos agents replied Exhibit CP 3 by a cablegram which I received on the 7th July, 1962. Copy of the said cablegram is attached hereto and marked Exhibit CP 5;

(i) after my receipt of Exhibit CP 2 I made immediate arrangements to collect from London, Geneva and Athens various documents relating to my dealings with Plaintiffs over the subject matter of their claim and it took some time before I could get all the necessary 10 documents;

(j) I thereafter applied to the Government of the Federation of Nigeria for an entry visa but after waiting for ten days without receiving a reply to my application I was obliged to arrive Ikeja Airport on the 28th instant.

2. For the reasons and under the circumstances aforesaid, I, the said Constantin Petroutsis did not appear to the said Writ of summons and I have 20 not yet appeared thereto.

3. That I have a good defence to the Plaintiffs' claim in that by a written agreement dated the 26th October, 1961 to which the Plaintiffs and Defendants are parties there has been a novation of the deed of mortgage on which Plaintiffs' present action is based. Copy of material clauses in the agreement affecting the "Spetsai Patriot" is attached hereto and marked Exhibit "CP 6". 30

4. That the Defendants' liability in respect of the "Spetsai Patriot" is the sum of £50,000 payable in two equal instalments of £25,000 on the 1st November, 1962 and the 1st May, 1963 respectively. The Plaintiffs did not give the Defendant or me a notice of their intention to commence present action.

5. For the reasons and under the circumstances aforesaid I verily believe that I have a defence to this action upon the merits. 40

6. AND I, the said Joseph Adetunji Cole for myself say that judgment was signed in this action against the said Defendant on the 25th day of July

1962 for want of appearance, but execution has not yet issued thereon as I am informed by the Admiralty Marshal and verily believe.

In the Federal
Supreme Court
Admiralty
Jurisdiction

Dated at Lagos this 30th day of July, 1962.

No. 17

(Sgd) ? ? ?
CONSTANTIN PETROUTSIS

Affidavit in
Support of
Defendant's
Motion 30th July
1962 (Continued)

10 Sworn to at the Registry of the
Federal Supreme Court, Lagos
severally by Constantin Petroutsis
and Joseph Adetunji Cole this 30th
day of July, 1962

(Sgd) J.A. Cole
JOSEPH ADETUNJI COLE

BEFORE ME

(Sgd) E.O.H. OKWUSOGU
COMMISSIONER FOR OATHS.

No. 17a

No. 17a

Exhibit to Affidavit in
Support of Defendants' Motion

Exhibit to
Affidavit in
Support of
Defendant's
Motion 30th
July, 1962

20 ITALCABLE

LUE 96 TAG0529 LAGOS 24 2 2028
Date stamped
ITALCABLE TRIESTE
ADRIALINES TRIESTE 3 VII 1962.

TRENTA GIUGNO NAVE SEQUESTRATA SUPREME CORTE
NIGERIANA ORDINE BANCA GENEVRA STOP CINQUE
LUGLIO AVRA LUOGO PROCESSO OGGI VISITA LLOYDS
INSTRUTTECI = FERIANI

English translation of above

30 30 JUNE THE SHIP SEIZED SUPREME COURT NIGERIA
BY THE ORDER OF THE BANK OF GENEVA STOP COURT
PROCEEDING FIXED 5 JULY VISITED BY LLOYDS SEND
INSTRUCTIONS = FERIANI

This is the Document referred to as
Exhibit in the Affidavit of Constantin
Petroutsis sworn to this 30 day of July,
1962.

In the Federal
Supreme Court
Admiralty
Jurisdiction

BEFORE ME

(Sgd) E.O.H. OKWUSOGU
COMMISSIONER FOR OATHS

No. 17a

Exhibit to Affi-
davit in Support
of Defendants'
Motion 30th July
1962 (Continued)

No. 17b

Exhibit to Affi-
davit in Support
of Defendants'
Motion 30th July
1962

No. 17b

Exhibit to Affidavit in Support
of Defendants Motion

ITALCABLE

Date stamped
ITALCABLE TRIESTE
3 VII 1962

10

SCANSHIP LAGOS

PLEASE APPOINT SOLICITOR PROTECT OUR INTERESTS
AGAINST SEIZURE PATRIOT BECAUSE BANQUE
GENEVCOISE COMMERCE CREDIT GENEVE HAS NO RIGHT
TO SEIZE VESSEL SAME BEING IN ORDER WITH
LIBERIAN AUTHORITIES IN NEWYORK THANKS STOP
SOLICITOR WILL CONTACT LIBERIAN CONSUL LAGOS
WHO WILL RECEIVE INSTRUCTIONS FROM NEWYORK =
ADRIALINES.

This is the document referred to as Exhibit 20
in the Affidavit of Constantin Petroutsis
sworn to this 30th day of July, 1962.

BEFORE ME

(Sgd) E.O.H. OKWUSOGU
COMMISSIONER FOR OATHS.

No. 17c

Exhibit to Affidavit in Support
of Defendants' Motion

In the Federal
Supreme Court
Admiralty
Jurisdiction

ITALCABLE

No. 17c

ADRIALINES TRIESTE

Date stamped
ITALCABLE TRIESTE
5 VII 1962.

Exhibit to Affi-
davit in Support
of Defendants'
Motion 30th July
1962

10

YOURTELS FIRST CLASS SOLICITOR CANNOT ACT AS
SEIZURE QUITE LEGAL ACCORDING NIGERIAN LAW
ONLY APPLIED HERE STOP REASON ARREST IS MORTGAGE
FAVOUR COSTARICA SHIPOWNERS FOR WHICH NEITHER
CAPITAL NOR INTERESTS PAID STOP RELEASE ONLY
UNDER ANY BANK CAUTION OR FULL PAIEMENT STOP
YOUR TRANSFER STILL NOT RECEIVED = SCANSHIP

This is the document referred to as Exhibit
in the affidavit of Constantin Petroutsis
sworn to this 30th day of July, 1962.

BEFORE ME

COMMISSIONER FOR OATHS.

20

No. 17d

Exhibit to Affidavit in Support
of Defendants' Motion

No. 17d

Exhibit to Affi-
davit in Support
of Defendants'
Motion 30th July
1962

ITALCABLE

SCANSHIP LAGOS

Date stamped
ITALCABLE TRIESTE
5 VII 1962

WE HAVE REMITTED 2500 POUNDS WHICH PLEASE
CONFIRM RECEIVED CABLE URGENTLY = ADRIALINES

30

This is the document referred to as Exhibit
in the Affidavit of Constantin Petroutsis
sworn to this 30th day of July, 1962.

BEFORE ME

(Sgd) E.O.H. OKWUSOGU
COMMISSIONER FOR OATHS.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 17e

Exhibit to Affidavit in Support
of Defendants' Motion

No. 17e

ADRIALINES TRIESTE

Date stamped
ITALCABLE TRIESTE
7 VII 1962.

Exhibit to Affi-
davit in Support
of Defendants'
Motion 30th July
1962

TRANSFER 2,500 RECEIVED STOP HAVE ARRANGED LLOYDS
CERTIFICATE VALID TWO MONTHS STOP CONTACTED
SOLICITOR SWISS BANK MAKING FULL RESERVE
DEMURRAGE AND DAMAGED CARGO STOP GUIDANCE COURT
REPORTED HEARING ONE WEEK ASKING 5,000 STERLING
GUARANTEE DEPOSIT = SCANSHIP

10

This is the document referred to as Exhibit
in the Affidavit of Constantin Petroutsis
sworn to this 30th day of July, 1962.

BEFORE ME

(Sgd) E.O.H. OKWUSOGU
COMMISSIONER FOR OATHS.

No. 17f

No. 17f

20

Exhibit to Affi-
davit in Support
of Defendants'
Motion 30th July
1962

Exhibit to Affidavit in Support
of Defendants' Motion

Exhibit "CP6"

English translation of original Agreement
written in the French language.

Between of the one part:

1. The Banque Genevoise de Commerce et de Credit,
2, Rue Diday at Geneva hereinafter called "BANK"
2. THE SPETSAI ISLAND SHIPPING COMPANY LTD., of
Monrovia, Liberia hereinafter called SISCO. 30
3. The AMERICAN TRADING COMPANY S.A. OF PANAMA,
PANAMA hereinafter called "MORTGAGEE".

and of the other part:

1. THE COMPANIA MARITIME DI ISOLA SPETSAI
LIMITADA of Costa Rica hereinafter called
"CMIS"
2. CONSTANTIN A. PETROUTSIS of Rue Scoufa,
Athens hereinafter called "PETROUTSIS".

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 17f

Exhibit to Affi-
davit in Support
of Defendants'
Motion 30th July
1962 (Continued)

10 Article 1: The parties waive the drawing up of
detailed accounts. CMIS acknowledges that it is
indebted to the BANK in the sum of three hundred
thousand pounds sterling (£300,000) as the
balance of all accounts and of all claims
between the BANK and SISCO of the one part and
CMIS and PETROUTSIS of the other part. It is a
comprehensive figure acknowledged to be a capital
sum but which bears no interest.

Article 2: The recovery by the BANK of the above-
mentioned sum is assured by the realization of the
following assets of CMIS:

- 20 (a) A claim against the hull insurers of the s.s.
"SPETSAI GLORY" estimated at £ sterling 125,000
already assigned to the BANK.
- (b) A claim against the insurers or charterers
of the s.s. SPETSAI GLORY etc. for expenses
disbursed by the Bank for the account of the ship
(included in the sum of £ sterling 300,000) for
general average and "special charges" estimated
at £ sterling 70,000 and for the guarantee in
connection with the collision with the s.s.
"LEONIDAS".
- 30 (c) The s.s. SPETSAI ISLAND registered in the name
of SISCO which is to be sold to Japan at an
estimated £ sterling 80,000.
- (d) Two maritime mortgages also as security are to
be given by CMIS in favour of the AMERICAN TRADING
COMPANY of PANAMA for £ sterling 50,000 each on
the s.s. SPETSAI PATRIOT and the s.s. SPETSAI
NAVIGATOR which is to be transferred by SISCO to
CMIS.

40 Article 5: Promising good and faithful carrying
out of the present settlement the parties
reciprocally discharge each other for the balance
of all accounts and of all claims and waive all
civil or criminal procedure. CMIS and PETROUTSIS

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 17f

Exhibit to Affi-
davit in Support
of Defendants'
Motion 30th July
1962 (Continued)

undertake to eliminate at their own expense and their liability any hindrance which may arise from sequestrations and arrests effected by third parties on the SPETSAI ISLAND and the SPETSAI NAVIGATOR in Greece. The BANK also shall release as soon as this settlement is signed the sequestrations or other measures taken by it on the s.s. SPETSAI PATRIOT and the s.s. SPETSAI FORTUNE in order to facilitate the placing of the said vessels at the free disposition of CMIS and of PETROUTSIS. The mortgage on the SPETSAI PATRIOT shall be limited to £ sterling 50,000 and transferred in favour of the MORTGAGEE and the mortgage on the SPETSAI FORTUNE shall be cancelled immediately upon the signing of these presents. 10

.....
.....
.....

THE BANK and the MORTGAGEE also undertake to supply a certificate regarding the s.s. SPETSAI PATRIOT (sic) intended for the Liberian authorities under the terms of which this vessel shall change its name in accordance with the instructions of PETROUTSIS. 20

Article 6: In as much as the realization of the claims for C.T.L., G/A etc. on the SPETSAI GLORY and the sale price etc. of the SPETSAI ISLAND are not envisaged before a year, the mortgages in favour of the MORTGAGEE (in accordance with Article 2 of these presents) shall become due as to one half (£ sterling 25,000 for each mortgaged vessel) on the 1st November, 1962 and as to the other half on the 1st May 1963, but only up to the amount of the balance not realized by the BANK by such date as provided in Article 2, a, b and c, the intention of this contract being that the BANK shall not receive more than £ sterling 300,000. 30

.....
.....

Article 7: The interpretation, validity and performance of this contract shall be governed by English law.

This contract is entered into and signed in four copies the BANK and SISCO retaining one copy and each of the other parties one.
London, 26th October, 1961.

In the Federal
Supreme Court
Admiralty
Jurisdiction

For the Banque Genevoise de Commerce et de Credit
(Sgd) Constant & Constant
(Sgd) J. Llimona

No. 17f

Exhibit to Affi-
davit in Support
of Defendants'
Motion 30th July
1962 (Continued)

10 For the SPETSAL ISLAND SHIPPING
COMPANY LTD.
(Sgd) Constant and Constant

For the AMERICAN TRADING COMPANY S.A., Panama
(Sgd) Joaquin Llimona

For the COMPANIA MARITIME DI ISOLA
SPETSAL LTDA.
(Sgd) C.A. Petroutsis

C.A. PETROUTSIS

(Sgd) C.A. Petroutsis
(Sgd) Ralph Lane
(Sgd) Elizabeth E. Nicholls.

20 This is the Document referred to as Exhibit
in the Affidavit of Constantin Petroutsis
sworn to this 30th day of July, 1962.
Before me,

(Sgd) E.O.H. Okwusogu
COMMISSIONER FOR OATHS.

No. 18

No. 18

Further Affidavit in Support
of Defendants' Motion

Further Affi-
davit in Support
of Defendants'
Motion 11th
August 1962

30 IN THE FEDERAL SUPREME COURT OF NIGERIA
(ADMIRALTY)

Suit No.FSC.219/1962

Between:

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT ...
Plaintiffs

A n d

In the Federal
Supreme Court
Admiralty
Jurisdiction

CIA. MAR. DI ISOLA SPETSAI (The owners of
the steamship or vessel "SPETSAI PATRIOT")...
Defendants

AFFIDAVIT IN SUPPORT OF MOTION

No. 18

Further Affidavit
in Support of
Defendants'
Motion 11th
August 1962
(Continued)

I, Joseph Adetunji Cole, Male, Citizen of
Nigeria of No. 14/16 Abibu Oki Street, Lagos,
Nigeria do hereby make oath and say as follows:-

1. I am Solicitor for the Defendants in above
suit.
2. On the instructions of Mr. Constantin 10
Petroutsis I prepared an affidavit dated
30th July, 1962 severally sworn to by the
said Constantin Petroutsis and myself and
filed in this Honourable Court.
3. Exhibit CP3 attached to the said affidavit
contains extract of certain clauses of the
English translation of the agreement
between the plaintiffs, the defendants and
others and on which agreement the defendants
rely for their defence to the plaintiffs 20
claim.
4. When I prepared the said affidavit neither
the complete English translation nor the
original agreement which is in French was
available as annexures to the said
affidavit.
5. I attach hereto copy of a full and complete
English translation of the said agreement
and marked the same Exhibit JAC 1.
6. I have filed and deposited in the Registry 30
of this Honourable Court the original
agreement which was duly attested by James
Malcolm Waugh, Notary Public, London.

(Sgd) J.A. Cole
DEPONENT

Sworn to at the Registry of the Federal
Supreme Court, Lagos, this 11th day of
August, 1962.

BEFORE ME,

(Sgd) E.O.H. Okwusogu
COMMISSIONER FOR OATHS.

No. 18a

Exhibit to Further Affidavit
in Support of Defendants' Motion

In the Federal
Supreme Court
Admiralty
Jurisdiction

This is the document referred to as Exhibit JAC 1 in the affidavit of Joseph Adetunji Cole sworn to this 11th day of August, 1962.

No. 18a

Exhibit to
Further Affi-
davit in Support
of Defendants'
Motion 11th
August 1962

BEFORE ME,

(Sgd) E.O.H. Okwosugu
COMMISSIONER FOR OATHS.

10 NOTE The Exhibit JAC 1 above referred to is the same as Exhibit "6" at p.128 of this Record.

No. 19

Further Affidavit in Support
of Defendants' Motion

No. 19

Further Affidavit
in Support of
Defendants' Motion
14th August 1962

IN THE FEDERAL SUPREME COURT OF NIGERIA
(ADMIRALTY)

Suit No.FSC.219/1962.

Between:

20 Banque Genevoise de Commerce et de Credit ...
Plaintiffs

and

Cia. Mar. di Isola Spetsai (The owners of
the steamship or vessel "SPETSAI PATRIOT")...
Defendants.

AFFIDAVIT IN SUPPORT OF MOTION

30 I, Constantin Petroutsis, ship owner, Male, Citizen of Greece residing at No. 6 Skoufa Street, Athens, Greece but now temporarily resident at Hotel Bristol, Martins Street, Lagos, Nigeria,
Managing Director and owner of above named Defendant Company make oath and say as follows:-

1. On the 30th July, 1962, I swore to an affidavit in support of a motion filed on my instructions on the same day by Joseph

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 19

Further Affidavit
in Support of
Defendants'
Motion 14th
August 1962
(Continued)

- Adetunji Cole, Esquire, Solicitor seeking an Order of this Honourable Court to set aside the judgment in default of Defendants' appearance obtained on the 25th July, 1962 by the Plaintiffs in this suit.
2. I obtained an entry visa to Nigeria about five days after I had arrived in the Country.
 3. After the 30th July, 1962, I found among my personal effect three other cablegrams which I sent to my agents Messrs. Scandinavian Shipping Agencies Ltd., Lagos in the effort to secure legal representation for my defence against the Plaintiffs' claim. The said Scandinavian Shipping Agencies Ltd., are my agents in matters affecting shipping and navigation only. 10
 4. The said cablegrams were depatched from Geneva on the 21st, the 23rd and 24th July, 1962 respectively. Copies thereof are attached hereto and marked CP7, CP8 and CP9 respectively. 20
 5. I made enquiries from my agents and their Managing Director, Mr. Debreville informed me and I verily believe him that he received Exhibits CP2 and CP4 attached to my affidavit of the 30th July, 1962 aforesaid and Exhibits CP7 and CP8 and CP9 attached hereto.
 6. On the 26th July, 1962 I sent a cablegram to the Greek Consulate General, Lagos. I have collected the said cablegram from the Greek Consulate General and attach the same hereto with its certified true English translation marked Exhibit CP10. 30

Dated at Lagos this 14th day of August, 1962.

(Sgd) C. Petroutsis
D E P O N E N T

Sworn to at the Registry of the Federal
Supreme Court, Lagos this 14th day of
August 1962.

BEFORE ME,
(Sgd) E.O.H. Okwusogu
Commissioner for Oaths.

No. 19b

Exhibit to Further Affidavit
in Support of Defendants' Motion

Exhibit CP7

SCANSHIP LAGOS
OUR CASE IS VERY SERIOUS WE MUST HAVE THE BEST
SOLICITOR OF LAGOS THEREFOR PLEASE ARRANGE MEET
HIM SATURDAY MORNING FOR URGENT CONFERENCE
THANKS PETROUTSIS

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 19b

Exhibit to
Further Affidavit
in Support of
Defendants'
Motion

10 This is the document referred to as Exhibit
CP7 in the affidavit of Constantin Petroutsis
sworn to this 14th day of August, 1962.

Before me,

(Sgd) E.O.H. Okwusogu
COMMISSIONER FOR OATHS.

No. 19c

Exhibit to Further Affidavit
in Support of Defendants' Motion

Exhibit CP8

SCANSHIP LAGOS

PLEASE ASK OUR SOLICITOR OBTAIN FROM COURT SHORT
PROLONGATION CASE PATRIOT ARRIVING FRIDAY WITH
ALL DOCUMENTS ENABLING ME PROVE THE UNJUSTIFIED
SEIZURE FROM THE PART OF THE BANK PLEASE CONFIRM
THANKS PETROUTSIS

No. 19c

Exhibit to
Further Affidavit
in Support of
Defendants'
Motion

This is the document referred to as Exhibit
CP8 in the affidavit of Constantin Petroutsis
sworn to this 14th day of August, 1962.

Before me,

(Sgd) E.O.H. Okwusogu
COMMISSIONER FOR OATHS.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 19d

Exhibit to Further Affidavit in
Support of Defendants' Motion

No. 19d

Exhibit CP9

Exhibit to Further
Affidavit in
Support of
Defendants' Motion

SCANSHIP LAGOS

THANKS YOUR YESTERDAYS BRINGING ALL DOCUMENTS
PROOF SHIP NEVER BEEN CANCELLED LIBERIAN
REGISTRY ALSO MORTGAGE USED BY BANK FOR
OBTAINING SEIZURE WITHOUT ANY JURIDICAL VALUE
THEREFOR OUR SOLICITOR IMPERATIVE OBTAIN
ADJOURNMENT STOP WAITING VISA FLYING FRIDAY
THANKS PETROUTSIS

10

This is the document referred to as
Exhibit CP9 in the affidavit of Constantin
Petroutsis sworn to this 14th day of
August, 1962.

BEFORE ME,

(Sgd) E.O.H. Okwusogu
Commissioner for Oaths.

No. 19e

No. 19e

20

Exhibits to Further
Affidavit in
Support of
Defendants'
Motion

Exhibits to Further Affidavit in
Support of Defendants' Motion

Exhibit CP10

TRANSLATION FROM THE GREEK.

TAWL 698 wgv 250 2455 C & W Ltd.
27.7.62
LAGOS

GENEVE 28 26 2041

LT ANASTASOPOULOS BOX 147 LAGOSNIGERIA

OWNER SPETSAIPATRIOT I FIND MYSELF UNDER
UNIMAGINABLE BLACKMAIL PLEASE CONTACT SCANSHIP
OBTAIN ADJOURNMENT JUDGMENT AND YOU LOOK AFTER
OBTAINING VISA COMING IMMEDIATELY LAGOS THANKS

30

PETROUTSIS HOTEL BERGUES

IRPT 147

KINGDOM OF GREECE
ROYAL CONSULATE-GENERAL

In the Federal
Supreme Court
Admiralty
Jurisdiction

This is to certify to be a true translation from Greek into English of the attached hereto original telegramme - document from the files of the Royal Greek Consulate-General, in Lagos.

No. 19e

Exhibits to
Further Affi-
davit in Support
of Defendants'
Motion

10

Lagos, 11th August, 1962
THE CONSULATE GENERAL
(Sgd) Ph. D. Spatharis

This is the document referred to as Exhibit CP10 in the affidavit of Constantin Petroutsis sworn to this 14th day of August, 1962.

BEFORE ME,

(Sgd) E.O.H. Okwusogu
COMMISSIONER FOR OATHS.

TAWL 698 WGV 250 GENEVE 28 26 2041
LT ANASTASOPULOS BOX 147 LAGOSNIGERIA

20 PLIOKTITIS SPETSEPATRIOT EVRISKOME PRO AFANTASTOU
EKVIASMOU PARAKALO SYNEMOITHITE SCANSHIP LAVUN
PARATASIN DIKIS KE FRONTISATE EKDOSIN VISA EL THO
AMESOS LAGOS EFHARISTO PETROUTSIS HOTEL BERGUES

No. 20

No. 20

Plaintiffs' Affidavit in Answer

Plaintiffs' Affi-
davit in Answer
8th August 1962

IN THE FEDERAL SUPREME COURT No.FSC.219/1962.

Between:

Banque Genevoise de Commerce
et de Credit Plaintiffs

30

and

Compania Maritima di Isola
Spetsai Limitada
The owners of the steamship
or vessel 'Spetsai Patriot'.Defendants

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 20

Plaintiffs' Affi-
davit in Answer
8th August 1962
(Continued)

I Marcel Dubuis of 2, Rue Diday, Geneva Switzerland, a Director of Banque Genevoise de Commerce et de Credit of the same address, the above named Plaintiffs make oath and say as follows:-

1. I am informed by the Company's Solicitors and verily believe that application by motion is to be made by or on behalf of the above named Defendants to set aside the Judgment of this Honourable Court delivered on the 25th July, 1962 10 and that such motion to set aside is supported by an Affidavit of one C.A. Petroutsis which exhibits an agreement dated the 26th October 1961 of which, with others, the Plaintiffs and the Defendant Company are parties. I have not seen the said Affidavit nor do I know its contents but desire to explain to this Honourable Court the circumstances which it contended, have resulted in the said agreement having no significant affect upon the relationship between the parties to this action or 20 the rights of the Plaintiffs to enforce their mortgage on the s.s. "Spetsai Patriot".

2. There is now produced and shown to me marked "A" a notarily attested photographic copy of the agreement dated the 26th October 1961, to which is annexed a notarial translation of the said document the original of which is in the French language.

3. The association between the Plaintiffs and the Defendant Company dates from 1958 when the 30 Defendant Company was formed to take over the assets and liabilities of another Company of which the said C.A. Petroutsis was principal or only shareholder. The Defendant Company at that stage owned 7 ships all of which were mortgaged to the Plaintiffs, the mortgage upon the "Spetsai Patriot" the vessel subject of this present action, being that dated the 22nd July 1958 the original of which is already exhibited to evidence given before this Honourable Court in the present action. 40

4. Of the 7 ships, one was sold for scrap and part of the proceeds received by the Plaintiffs in part satisfaction of the mortgage on that vessel. Two were the subject of marina casualties and in respect of one of them a total loss was paid by the Insurers and received by the Plaintiffs in part satisfaction of the mortgage on that vessel,

whereas in the case of the other vessel she became a constructive total loss but this is disputed by the Insurers with the result that, apart from the sum of £40,800 received by the Plaintiffs as proceeds of the sale of the wreck, which sum is subject to numerous claims including a substantial claim for collision damage which occurred at a time when, as a result of the Defendants negligence she was uninsured no money has been received in respect of that vessel.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 20

Plaintiffs' Affi-
davit in Answer
8th August 1962
(Continued)

10 5. By the Summer of 1961, because of the disputes between the Plaintiffs as mortgagees and the Defendant Company as mortgagors, and the complete failure by the Defendant Company to make any payments in respect of the said mortgages, other than as mentioned above, which payments were quite inadequate to cover the mortgage debts on those 3 ships, the Plaintiffs and Defendant
20 Company were locked in litigation in various parts of the world including actions in Ravenna, Trieste, Geneva and Athens, and all of the 4 remaining ships were under arrest, two of which one was the s.s. "Spetsai Patriot" in actions by the Plaintiffs and two in actions by the Defendant Company, the said C.A. Petrousis or his relatives in the Courts in Athens in which the said C.A. Petrousis and his relatives
30 were contending that a transfer of the said 2 ships by the Defendant Company and assented to by the said C.A. Petrousis was ultra vires and in consequence null and void. The proceedings in Geneva were of a criminal nature and instituted by the Defendant Company and the said C.A. Petrousis against the Plaintiffs.

40 6. In this situation negotiations were opened between the various interested parties with a view to breaking the dead-lock and the agreement of the 26th October 1961, being exhibit "A" to this my affidavit and to which I refer for its full terms and effect, was the result.

7. Under the terms of the said agreement the above named Plaintiffs in consideration of the promise by the Defendant Company to do certain things including, inter alia, the execution of a new mortgage on the s.s. "Spetsai

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 20

Plaintiffs' Affidavit in Answer
8th August 1962
(Continued)

Patriot" in the sum of £50,000 and the sale as scrap of the s.s. "Spetsai Island" with the payment of the whole of the sale price to the above named Plaintiffs, agreed to write down and reduce the outstanding debt of the above named Defendant Company to £300,000.

8. Whilst the above named Plaintiffs have performed all those things required of them under the agreement, the Defendants have evidenced by their conduct an intention to disregard the agreement. In particular the Defendants have taken no steps whatever to send the "Spetsai Island" to Japan for the purpose of her sale there as scrap as required by the said agreement, but instead she is still, 9 months after the agreement laid up at Port Kheli, Greece. The Defendants have also neglected and failed to execute a new mortgage upon the s.s. Spetsai Patriot, the vessel which is the subject of this present action.

10

9. The Defendant Company and the said C.A. Petroutsis can have no doubt as to the terms and conditions of the mortgage required to be given, because the only difference between the terms and conditions of the present registered mortgage upon the s.s. Spetsai Patriot and the intended new mortgage is the amount of the debt and provision for repayment all of which are set out in the agreement. The Defendant Company has taken no action whatever to submit for approval to the above named Plaintiffs or their legal advisers a new draft mortgage to take the place of that already upon the register of the vessel.

20

30

10. It was in these circumstances that the above named Plaintiffs learned on or about the 21st June 1962 that the Deputy Commissioner of Marine Affairs of the Republic of Liberia intended to strike the said vessel, the "Spetsai Patriot" from the register of ships of the Republic of Liberia because of the Defendants failure to comply with the requirements of Liberian Law and Regulations. As this would have placed the Plaintiffs' mortgage security in peril, the present proceedings were instituted and the s.s. "Spetsai Patriot" was arrested. The rest of the circumstances are as set out in the affidavit filed in these proceedings on behalf of the above named Plaintiffs and the evidence given orally before this Honourable Court on the 16th July, 1962.

40

11. I submit that in the circumstances as set out, the above named Defendant Company has shown an intention to ignore and act as if not bound by the provisions of the agreement of the 26th October 1961, and in consequence the said agreement can have no significant affect upon the legal relationship between the Plaintiffs and the Defendant Company which in so far as it concerns the s.s. "Spetsai Patriot" is governed by the registered mortgage dated the 22nd July 1958 whereby the Defendant Company charged the s.s. "Spetsai Patriot" with the due payment of a debt of £292,790 together with interest at the rate of 6½% per annum and a bank charge of 1% per annum none of which sum has the Defendant Company ever paid. If the Defendant Company had given a new mortgage as intended by the said agreement, they would still have been in breach of clauses 5 and 11.

12. I am duly authorised by the above named Plaintiff Company to make this affidavit on its behalf.

(Sgd) M. Dubuis.

SWORN at Geneva Switzerland this seventh day of August 1962

Before me,

I, the undersigned, Paul Tournier, notary in Geneva, herewith certify to the authenticity of the above-affixed signature of Mr. Marcel Dubuis whose identity is well known to me.

Geneva, the 8th day of August, 1962.

(Sgd) Paul Tournier

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 20

Plaintiffs' Affi-
davit in Answer
8th August 1962
(Continued)

No. 21

Court Notes

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS
ON WEDNESDAY THE 15TH DAY OF AUGUST, 1962
BEFORE HIS LORDSHIP

No. 21

Court Notes
15th August 1962

In the Federal
Supreme Court
Admiralty
Jurisdiction

SIR ADETOKUNBO ADEMOLA CHIEF JUSTICE OF THE
FEDERATION.

F.S.C.219/1962

No. 21

Banque Genevoise de Commerce
et de Credit

v.

Cia. Mar. Di Isola Spetsai.

Court Notes
15th August 1952
(Continued)

Motion for an order to set aside judgment
dated 25/7/62 given in default of appearance.

Cole J.A. for the applicants (E.A. Thomas and 10
Famakinwa with him)

Impey (H.T.O. Coker, Mrs. Ogbeni, Sagoe and
Soyinka with him) for the respondent.

Moore Q.C. (Agusto with him) watching brief for
Nigerian Ports Authority.

Cole: Time given to the defendant had elapsed
before an effort was made by Messrs. Irving &
Bonnar to enter an appearance for defendant.
Refers to section 17 of the Federal Supreme Court
Act No. 12 of 1960 from which the Court derives 20
its power. Section 16 provides Rules of
Practice and Procedure which Court should adopt
in exercise of its original jurisdiction.

Motion for judgment in this matter was based
on Order 13 Rule 13 of the English Rules of
Supreme Court - see White Book 1961 at page 229.
Rule 13 is conditioned by Rule 12. Order 27
Rule 15 at p.614 of the White Book 1961. Merits
of the case in an application of this nature need
not be fully shown as long as there is a defence on 30
the merits. Farden v. Richter (1889) 23 Q.B.D.
124 at p.129. Refers to paragraphs 3 and 4 of the
Respondents affidavit: novation of contract the
plaintiffs relied on. Liability admitted only to
the extent of £50,000 payable by instalment: first
instalment due on 1st November 1962.

Evans v. Bartham (1937) 2 All E.R. 646 at p.
650 which was followed locally - see Khawam v.
Elias. 5 F.S.C. 224 at p. 230.

The applicant made every effort to come to 40

Nigeria but was not successful in view of the refusal of the Greek Consulate. He had to enter the country without a visa.

In the Federal
Supreme Court
Admiralty
Jurisdiction

Impey for the Plaintiff/respondents:

No. 21

Objection in two grounds.

Court Notes
15th August 1962
(Continued)

10 (1) Procedure: agree no procedure in this Court in this matter (first instance) and application must be under Order 27 Rule 15 English Rules. It is submitted however that Order 27 Rule 15 has no application to a case where judgment was entered in case of an absent defendant after hearing on merits - See White Book 1961 at p. 617 under the heading "Judgment or Order made in the absence of a Party" - *Rachham v. Jabrum* (1923) 39 T.L.R. 381.

Hession v. Jones (1914) 30 T.L.R. 320

See *Avary J's* judgment.

Spira v. Spira (1939) 3 All E.R. 924.

20 The proper course to take is by way of appeal, once judgment had been entered on merits in the absence of the defendant.

2nd submission: Two conditions must be fulfilled to have a judgment set aside.

(a) Defence on the merits shown.

(b) All costs must be paid - Refers to 22 Halsbury third Edition at page 789 paragraph 1667.

Smith v. Dobbins (1878) 37 L.T.R. 777. Judgment of Brett, L.J. See Jessell, M.R. in *Watt v. Barnet* (1877) 3 Q.B.D. 366.

30 See Counter Affidavit of Marcel Dubuis paragraph 1. Admit the existence of the document which the defendant now relies and exhibited in his motion. The document however we say has never been executed by the defendants: we are entitled to repudiate it for non performance by the defendants.

The mortgage is still in existence at law; no formal reconveyance; new agreement not a release of the original mortgage.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 21

Court Notes
15th August 1962
(Continued)

Merger? Mortgage deed has been merged into the agreement? This cannot be so. Mortgage is a document made under seal. Obligations under it cannot be merged into the new agreement unless a reconveyance of the interest held by the plaintiffs under the deed of mortgage.

Paragraphs 3 and 4 of the applicants' affidavit. Submit agreement not a novation. Even on the agreement, it was contemplated there should be a legal mortgage on the ship. Therefore submitted no merits on the application. 10

Cole for applicant replies:

Rachham's case (supra) applies where the parties were properly before the Court, having entered formal appearance, but failing to appear in person at the hearing of the suit itself. It was a case where plaintiff himself failed to appear at the hearing. It was a motion, filed by the plaintiff himself. It was a default in attending a hearing; not default in appearance. 20

Hearing on merits means the other side had had a chance to cross examine.

Order 13 Rule 13 of the (English R.S.C.) wants the judge to be satisfied of the basis of the claim. The case for the defendant is that plaintiffs came to the Court, hid a document which they ought to have shown the Court and obtain judgment.

Why was that document suppressed or not produced in Court. Definition of "merits" in Stroud's Judicial Dictionary 3rd Ed. Vol. III at page 1782. 30

Parties must be before the Court and fight out the case, then it would have been judgment on the merits. Judgment was merely on mortgage simpliciter.

Agreed the new agreement is not a merger, but it is submitted it is a Merger - See Strouds Judicial Dictionary (supra) at p. 1931.

See Walker v. Bourdon (1879-80) 5 Q.B.D. 267.

Allum v. Dickinson (1881-82) 9 Q.B.D. 632. 40

Submit not a matter for appeal. See Vint v. Hudspith (1885) 29 Ch.D. 322. The counter affidavit itself proves there is merit in the application. The Respondent admitted there was another agreement and his paragraph 1 of the counter affidavit says it has no significant effect.

In the Federal Supreme Court Admiralty Jurisdiction

No. 21

Court Notes
15th August 1962
(Continued)

10 Paragraph 5 of the counter affidavit shows that the present applicant had set up a criminal proceedings against the defendant in Geneva. Matter of costs is in the discretion of the Court.

Ruling adjourned - 24/8/62.

(Sgd) A. Ade. Ademola
Chief Justice of the Federation.

No. 22

No. 22

Ruling

Ruling 24th August 1962

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

20 ON FRIDAY THE 24TH DAY OF AUGUST, 1962

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA CHIEF JUSTICE OF THE
FEDERATION

F.S.C.219/1962

BANQUE GENEVOISE DE COMMERCE Plaintiffs/
ET DE CREDIT Respondents

v.

30 CIA. MAR. DI ISOLA SPETSAI Defendants/
(The owners of the steamship Applicants
or vessel "Spetsai Patriot")

R U L I N G

ADEMOLA, C.J.F. The Plaintiffs in this case obtained a judgment in this Court for the sum of £380,627. 0. 0. and £2,500 costs. The judgment debt represents principal and interest on a loan advanced to the defendants on a mortgage executed

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 22

Ruling 24th
August 1962
(Continued)

between parties on the 22nd July, 1958. The cash advance was made on a guarantee of the ship named "Spetsai Patriot" whose nationality is Liberian. The debt which was due had not been satisfied and the plaintiffs seized the ship on the 30th June, 1962, whilst she was in Lagos harbour.

Process was served on the Master of the ship who made efforts to contact his principals in Greece. It would appear that the principals eventually became aware of the action but had not had sufficient time to brief Counsel properly to enter an appearance in due form. On the day the case was called for hearing Mr. Murray of Irving & Bonnar appeared in Court without proper instructions from the defendants; he made it clear that his firm of Solicitors had received a cablegram from some firms of Solicitors in England about this matter, but it was not intelligible enough to assess the position, and he was contemplating entering an appearance. The matter; however, proceeded as an Admiralty action in rem, and upon a motion for judgment under Order 13, Rule 13, English Rules of the Supreme Court, after hearing evidence, judgment was entered by default for the amount claimed and costs. 10 20

The Managing Director of the Shipping Company, not without difficulties, eventually arrived in Lagos and filed a motion under Order 27, Rule 15, R.S.C.E., asking the Court to set aside the Judgment and rehear the case. In support of his affidavit of merits, he disclosed that since the deed of mortgage was entered into on 22nd July, 1958, between his company and the plaintiffs, an agreement dated 26th October, 1961, was subsequently made between them which, for consideration, set aside the mortgage deed and created a new contract between the parties, as a result of which the Company was indebted to the plaintiffs only for a sum of £50,000 payable by two monthly (sic) instalments the first instalment falling due only on 1st November, 1962, and the second on 1st May, 1963. He further explained the difficulties which made it impossible for him to enter an appearance in the case. 30 40

The plaintiffs' counsel, opposing the motion, submitted that judgment once signed cannot be set

10 aside; that Order 27, Rule 15 has no application to a case where judgment was entered in the case of an absent defendant after hearing on merits. For this proposition Counsel relied on the reference in the Annual Practice, 1962, at page 617 under "Judgment or Order made in the absence of a Party"; the cases Watt v. Barnett (1877) 3 Q.B.D. 366; Smith v. Dobbins (1878) 39 L.T.R. 381 were cited. It was argued that the proper cause, (sic) once judgment had been entered on merits in the absence of the defendant, was to proceed by way of appeal.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 22

Ruling 24th
August 1962
(Continued)

It appears to me that the cases to which Counsel drew my attention were cases in which plaintiffs have failed to turn up at hearing. The reference in the Annual Practice referred to appeared to be cases where appearances have been entered, but at the hearing one of the parties failed to be present in Court.

20 The matter of setting aside a judgment obtained by default, in my view, is one of the discretionary powers a Judge may exercise, and provided the Court is satisfied that the party applying satisfies the Court that he has a good defence, the Judge may rule that the case be relisted - see Evans v. Bartlam (1937), 2 All E.R. 646 at page 650.

30 I should be sorry to decide that a defendant, as in this matter, who had heard of a summons against him, rather late, and was unable to enter appearance in good time, and had with great difficulty arrived in this country a few days after judgment was entered against him, should be deprived of the right of a rehearing and putting a defence, which appears genuine on the face of it, before the Court.

40 I must rule in favour of the application. The motion will be allowed. Judgment entered on 25th July, 1962, for the amount of £380,627. 0. 0. and the order for £2,500 costs in favour of the plaintiffs are hereby set aside. A rehearing of the case is hereby ordered. The defendants will, however, pay to the plaintiffs costs already incurred by the plaintiffs assessed at £1,500.

In the Federal
Supreme Court
Admiralty
Jurisdiction

Fresh statement of Claim to be filed on the
defendants within 7 days. Statement of Defence
14 days thereafter; reply 3 days.

No. 22

Case adjourned sine die.

Ruling 24th
August 1962
(Continued)

(Sgd) A. Ade. Ademola.
CHIEF JUSTICE OF THE FEDERATION.

J.A. Cole (E.A. Thomas and E.B.A. Famakinwa with
him for the applicants).

G.L. Impey (H.T.O. Coker, Mrs. G.B. Ogbeni, J.K.
Sagoe and S.O. Shonola Shoyinka with 10
him) for respondents.

Chief O. Moore Q.C. (B.A. Augusto with him) Watching
Brief for the Nigerian Ports
Authority.

O.R.I. George, Acting Admiralty Marshall.

No. 23

No. 23

Order setting
aside Judgment
24th August 1962

Order Setting aside Judgment

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

F.S.C. 219/1962 20

Application for an order
to set aside judgment
given on Wednesday the 25th
day of July, 1962, to enable
the Defendants to enter
appearance and defend the claim.

Between:

CIA. MAR. DI ISOLA SPETSAI
(The owners of the
steamship or vessel 30
"SPETSAI PATRIOT") Applicants

(L.S.) and

BANQUE GENEVOISE DE
COMMERCE ET DE CREDITRespondents

(Sgd) A.Ade.Ademola
CHIEF JUSTICE OF
THE FEDERATION.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 23

Thusday the 24th day of August, 1962.

Order setting
aside Judgment
24th August 1962
(Continued)

10

UPON READING the Application herein,
the affidavit severally sworn to on the
30th day of July, 1962, and filed by and
for the Applicants, the affidavit sworn
to on the 11th day of August, 1962, and
filed on behalf of the Applicants, and
the affidavit sworn to on the 14th day
of August, 1962, by the Applicants, and
after hearing Mr. J.A.Cole (Messrs.
E.A. Thomas and V.B.A. Famakinwa with
him) of counsel for the Applicants, Mr.
G.L. Impey (Mr.H.T.O. Coker, Mrs. G.B.
Ogbeni, Messrs. J.K.Sagoe and S.O.
Shonola-Shoyinka with him) of counsel
for the Respondents, Chief O. Moore,
Q.C., (Mr. B.A.Agusto with him) of
counsel, holding watching brief, for
the Nigerian Ports Authority and Mr.
O.R.I. George of counsel, Acting
Admiralty Marshal:

20

IT IS ORDERED:

1. that this application be granted;
2. that judgment entered on 25th
day of July, 1962 for the amount
of £380,627 and the order of
£2,500 costs in favour of the
Plaintiffs be hereby set aside;
3. that the case be reheard;
4. that the Defendants do pay the
Plaintiffs costs already incurred
assessed at £1,500;

30

AND IT IS FURTHER ORDERED THAT:-

5. a fresh statement of Claim be
filed on the Defendants within
7 days;

40

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 23

Order setting
aside Judgment
24th August 1962
(Continued)

- 6. a Statement of Defence be filed within 14 days thereafter; and
- 7. a reply to the Statement of Defence be made within 3 days.

(Sgd) O.R.I. George
AG. CHIEF REGISTRAR.

No. 24

Appearance
25th August 1962

No. 24

Appearance

IN THE FEDERAL SUPREME COURT OF NIGERIA
(ADMIRALTY)

10

Suit No.FSC.219/1962

Between:

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
Plaintiffs

and

CIA. MAR. DI ISOLA SPETSAI LIMITADA
Defendants

MEMORANDUM OF APPEARANCE

PLEASE enter appearance for COMPANIA MARITIMA
DI ISOLA SPETSAI LIMITADA (owners of the
steamship or vessel "Spetsai Patriot")
Defendants in this action.
Dated the 25th day of August, 1962.

20

J. A. Cole & Co.
SOLICITORS TO THE DEFENDANTS.

Plaintiffs' address: c/o Their Solicitors,
Messrs. Gerald Impey & Co.,
130, Broad Street,
Lagos.

Defendants' address: c/o Their Solicitors,
Messrs. J.A. Cole & Co.,
14/16 Abibu Oki Street,
L a g o s.

30

No. 25

Statement of Claim (redelivered)

IN THE FEDERAL SUPREME COURT OF NIGERIA
(ADMIRALTY) Suit No.FSC.219/1962

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 25

Between:

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT....
Plaintiffs

- and -

Statement of
Claim (re-
delivered) 29th
August 1962

10 COMPANIA DE ISOLA SPETSAL LIMITADA
(The Owners of the Liberian ship
"SPETSAL PATRIOT") ... Defendants

STATEMENT OF CLAIM

1. The Plaintiffs are Bankers having their principal place of business in Geneva at 2, Rue Diday, Geneva, Switzerland and the Defendants are the owners of the ship "Spetsal Patriot".
- 20 2. By a Deed of Mortgage dated 22nd July, 1958 made between the Defendants of the one part as mortgagors and the Plaintiffs of the other part as mortgagees the Defendants mortgaged the said vessel "Spetsal Patriot" (hereinafter called "the said ship") to the Plaintiffs to secure the due repayment of a loan of £292,790. 0. 0. made by the Plaintiffs to the Defendants together with interest thereon at 6 $\frac{1}{2}$ % per annum and a Bank Charge of 1% per annum both from the said date until repayment of the said loan.
- 30 3. The said Legal Mortgage was duly registered with the Commission of Maritime Affairs of the Republic of Liberia at 10.30 hours on the 4th August, 1958 and is recorded in Book P.M. 10 at page 331.
4. No part of the said loan has been repaid nor has any payment for interest or Bank Charge ever been made and there is now due and owing to the Plaintiffs under the said Mortgage the following sums:-

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 25

Statement of
Claim (re-
delivered) 29th
August 1962
(Continued)

1) Principal loan	£292,790. 0. 0.
2) 4 years interest at 6% per annum	76,125. 8. 0.
3) 4 years Bank Charge at 1% per annum	11,711.12. 0.
Total	<u>£380,627. 0. 0.</u>

5. By clause 5 of the said Deed of Mortgage the Defendants covenanted that they would not cause or permit the vessel to be operated in any manner contrary to law and would not do or suffer or permit to be done anything which could or might injuriously affect the registration or enrolment of the vessel under the laws and regulations of Liberia and would at all times keep the vessel duly documented thereunder and by clause 11 that they would at all times and without cost or expense to the Plaintiffs maintain and preserve or cause to be maintained and preserved the vessel in good running order and repair so that the vessel should be insofar as due diligence could make her so tight staunch strong and well and sufficiently tackled apparelled furnished equipped and in every respect sea worthy and in good operating condition and would keep the vessel or cause her to be kept in such condition as would entitle her to the highest classification and rating for vessels of the same type in Lloyds Register of Shipping and that she would at all times comply with all applicable Liberian Laws treaties conventions rules and regulations issued thereunder and should have on board as and when required thereby valid certificates showing compliance therewith. 10 20 30
6. On or about the 21st day of June, 1962 the Deputy Commissioner of Maritime Affairs of the Republic of Liberia by letter dated the 18th June, 1962 informed the Plaintiffs that as a result of constant disregard to Liberian laws and regulations the said Deputy Commissioner had notified the Defendants that unless all such outstanding items were taken care of on or before the 30th day of June, 1962 the vessel would be automatically stricken from the Liberian Registry. 40

7. In breach of the aforementioned covenants in the said Deed of Mortgage the Defendants have failed and neglected to maintain the said ship in such manner as to comply with all applicable Liberian Laws treaties and conventions and rules and regulations and the Plaintiffs' said mortgage was thereby imperilled.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 25

Statement of
Claim (re-
delivered) 29th
August 1962
(Continued)

And the Plaintiffs claim:-

- 10 1) Payment of the said sum of £292,790.0.0. being the principal loan due under the said Deed of Mortgage.
- 2) £76,125. 0. 0. being 4 years interest at 6¹/₂% per annum under the said Mortgage.
- 3) £11,711, 12. 0. being 4 years Bank Charge at 1% per annum under the said Deed of Mortgage.
- 4) Such further or other relief as to this Honourable Court may seem just.

20 Dated at Lagos this 29th day of August, 1962.

Gerald Impey & Co.
Solicitors to the Plaintiffs.

Filed by Messrs. Gerald Impey & Co., 130 Broad Street, Lagos, Solicitors to the Plaintiffs in default of appearance the day of 1962.

Statement of Claim - £10. paid on CR.No.D461344 of 31.8.62.

No. 26

No. 26

Defence

Defence 7th
September 1962

30 IN THE FEDERAL SUPREME COURT OF NIGERIA
(ADMIRALTY)

Suit No.FSC219/1962

Between:

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
Plaintiffs

In the Federal
Supreme Court
Admiralty
Jurisdiction

A N D

COMPANIA DE ISOLA SPETSAI LIMITADA
(The owners of the ship "Spetsai Patriot")...
Defendants.

No. 26

STATEMENT OF DEFENCE

Defence 7th
September 1962
(Continued)

SAVE AND EXCEPT as hereinafter admitted the Defendants deny each and every allegation of fact contained in the Plaintiffs' Statement of Claim as if the same were set out seriatim and specifically traversed. 10

1. The Defendants admit paragraph 1 of the Statement of Claim.
2. The Defendants admit that a Deed of Mortgage as alleged in paragraphs 2 and 5 of the Statement of Claim was executed by them and the Plaintiffs but aver that the said Deed was rescinded or revoked by an Agreement dated the 26th October, 1961 and made between the Plaintiffs, the Defendants, the Spetsai Island Shipping Company Ltd., the American Trading Company, S.A. and Constantin A. Petroutsis. 20
3. Under the terms of the Agreement dated the 26th October, 1961 the Defendants' liability to the Plaintiffs in respect of the s.s. "Spetsai Patriot" is in the total sum of £50,000 without interest payable by instalment of £25,000 on the 1st November, 1962 and £25,000 on the 1st May, 1963. The said Defendants' liability is conditioned by the inability of the Plaintiffs to realize other assets totalling £300,000 made available to them by the Defendants. The Plaintiffs' have already realised the sum of £40,000 out of the sale of the hulk of the s.s. "Spetsai Glory". 30
4. The Defendants say that since the execution of the said Agreement of 26th October, 1961, the relationship between the parties has been governed by that Agreement and that its terms have been complied with.
5. The Defendants do not admit paragraph 3 of the Statement of Claim and put the Plaintiffs to 40

the proof thereof.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 26

Defence 7th
September 1962
(Continued)

6. The Defendants deny that any sum of money was due to the Plaintiffs as alleged in paragraph 4 of the Statement of Claim.

7. The Defendants say that paragraph 5 of the Statement of Claim relates to the Deed dated the 22nd July, 1958 aforesaid, which has been rescinded.

10 8. The Defendants are not in a position to admit or deny that the Deputy Commissioner of Maritime Affairs gave information with reference to paragraph 6 of the Statement of Claim but the Defendants say that the said Deputy Commissioner of Maritime Affairs for Liberia gave the Defendants up to the 30th June, 1961 to comply with some formalities for the retention of Liberian nationality of the ship "Spetsai Patriot".

20 9. In answer to paragraph 7 of the Statement of Claim, the Defendants aver that on the 28th June, 1962, the Deputy Commissioner extended the time for compliance to the 14th July, 1962 and by a letter dated the 16th July, 1962, the said date was further extended to the 16th September, 1962.

30 10. The Defendants deny that they failed or neglected to maintain the ship as alleged in paragraph 7 of the Statement of Claim or that the interest of the Plaintiffs in the ship, which interest the Defendants deny, was in any way imperilled.

11. The Defendants aver that the Plaintiffs' action in arresting the ship made it impossible for the Defendants to comply with the requirements of the Deputy Commissioner on or before the 16th September, 1962 in order to qualify the ship for the grant of a permanent Certificate of Registry of Liberia.

40 12. The Defendants will contend during the trial:
(a) that the Agreement of the 26th October, 1961 is a novation of the Mortgage deed

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 26

Defence 7th
September 1962
(Continued)

of the 22nd July, 1958 and that it has
revoked or rescinded and replaced the
said Mortgage Deed.

(b) That the Plaintiffs' claim is
speculative and an abuse of the process
of Court and ought to be dismissed with
substantial costs.

Dated at Lagos this 7th day of September 1962.

(Sgd) J. A. Cole & Co.,
DEFENDANTS' SOLICITORS.

10

Plaintiffs' Address: c/o Their Solicitors,
Messrs. Gerald Impey & Co.,
Solicitors,
130, Broad Street,
Lagos.

Defendants' Address: c/o Their Solicitors,
Messrs. J.A. Cole & Co.,
Solicitors,
14/16 Abibu Oki Street,
Lagos.

20

Filing document £2. paid on Cr. No. D461365 of
10/9/62.

No. 27

Reply 12th
September 1962

No. 27

REPLY

IN THE FEDERAL SUPREME COURT Suit No.FSC.219/1962
(ADMIRALTY)

Between:

Banque Genevoise de Commerce et de Credit ...
Plaintiffs

a n d

30

Compania De Isola Spetsai Limitada
(The Owners of the Liberian Ship -
"SPETSAI PATRIOT") Defendants.

STATEMENT IN REPLY

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 27

Reply, 12th
September 1962
(Continued)

1. Save as hereinafter expressly admitted the Plaintiffs join issue with the Defendants upon their defence.
2. The Plaintiffs admit that an agreement was entered into between the parties specified in paragraph 2 of the Statement of Defence and dated the 26th October, 1961 (hereinafter referred to as "the Agreement") but the Plaintiffs deny that the Deed of Mortgage dated the 22nd July 1958 (hereinafter referred to as "the Mortgage") was thereby rescinded or revoked as alleged.
3. Article 5 of the said Agreement provides inter alia - "The Mortgage on the SPETSAI PATRIOT shall be limited to £ sterling 50,000 and transferred in favour of the Mortgagee and the mortgage on the SPETSAI FORTUNE shall be cancelled immediately on the signing of these presents".
4. No reconveyance or release of the mortgage has ever been signed executed or registered.
5. The Plaintiffs will contend that the Defendants have failed to effect any transfer to the mortgagee as required by the said Agreement or to make any fresh mortgage and have wilfully failed and refused to perform any of their obligations under the said Agreement and the said mortgage has remained subsisting and in full force and effect.
6. In consequence of the Defendants' wilful failure and refusal referred to in the preceding paragraph hereof and the peril to the security of the Plaintiffs specified in paragraphs 6 and 7 of the Statement of Claim the Plaintiffs elected to treat the said Agreement as at an end and exercised their rights under the said mortgage.
7. In the alternative to paragraphs 5 and 6 hereof the Plaintiffs will contend that the effect of the said agreement was to limit the security under the mortgage to £50,000 and

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 27

Reply, 12th
September 1962
(Continued)

that the mortgage save for this limitation remained in full force and effect after the date of the Agreement. It was never the intention of the parties to the Agreement that the Plaintiffs should at any time be deprived of the security of the Mortgage unless or until another mortgage of the "Spetsai Patriot" was executed in substitution for the mortgage by the Defendants.

- 8. No mortgage or other security in substitution for the Mortgage was ever executed by the Defendants and the Plaintiffs were entitled to exercise any of their rights and remedies as mortgagees thereunder notwithstanding the Agreement. 10

DATED at LAGOS the 12th day of September, 1962.

Gerald Impey & Co.
Solicitors to the Plaintiffs

For Service on:-

The Defendants,
c/o Their Solicitors,
J. A. Cole & Co.,
14/16 Abibu Oki Street,
Lagos.

20

Filing £2. paid on CR. No.D461372 of 12/9/62.

No. 28

Court Notes
17th September
1962

No. 28

Court Notes

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

ON MONDAY THE 17TH DAY OF SEPTEMBER, 1962

30

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA

CHIEF JUSTICE OF THE
FEDERATION

SIR LIONEL BRETT,

FEDERAL JUSTICE

JOHN IDOWU CONRAD TAYLOR

FEDERAL JUSTICE

SIR VAHE ROBERT BAIRAMIAN, FEDERAL JUSTICE
F.S.C. 219/1962

In the Federal
Supreme Court
Admiralty
Jurisdiction

Banque Genevoise de Commerce et de Credit
And

No. 28

Compania de Isola Spetsai Limitada
(The owners of the Liberian Ship
"Spetsai Patriot")

Court Notes
17th September
1962 (Continued)

Substantive action.

Hearing fixed for 18/9/62.

10 Exhibits previously tendered asked for by
Mr. Impey.

Court: Ordered that exhibits with the
Registrar be returned to their
respective owners.

(Sgd) A.Ade.Ademola
C.J.F.

TUESDAY THE 18TH DAY OF SEPTEMBER 1962

Impey for plaintiffs (H.T.O. Coker with him)

J.A. COLE (Famakinwa with him) for defendants.

20 Coker reads out the pleadings.

Impey opens: Main question is whether the second
agreement has the effect of discharging the
Mortgage or precluded the plaintiffs from amount
due under the mortgage.

Mr. Lefevre, sworn to interpret French into English
and English into French.

Plaintiffs' Evidence

Plaintiffs'
Evidence

No. 29

No. 29

Evidence of Marcel Dubuis

30 Marcel Dubuis (m) S/S in French: Nationality -
Swiss, living in Geneva at 36 Quai Gustave Ador.

Marcel Dubuis
Examination
18th September
1962

In the Federal
Supreme Court
Admiralty
Jurisdiction

Plaintiffs'
Evidence
(Continued)

No. 29

Marcel Dubuis
Examination
(Continued)

18th September
1962

I am a Bank Director; a director of the plaintiffs' bank. I have a power of Attorney from the Bank to represent it - This is it - Tendered, no objection, admitted and marked Exh. 1. This is a certified copy of a translation of the power; translation into English Tendered, no objection admitted and marked Exh. 2.

Mr. Impey gives undertaking to have Exh. 1 stamped in Nigeria. I have here a document showing signatures of all Directors and Assistant Directors of the Bank. There are signatures - Book of signatures Tendered, admitted and marked Exh. 3. Our place of business in in Geneva. I know the owners of the ship "Spetsai Patriot". The defendants are owners. The plaintiffs made cash advances to the defendant on a guarantee of the ship. It was done by a Mortgage deed - This is it - Tendered, no objection: admitted and marked Exh. 4. The mortgage deed was registered in Liberia. I have here a certificate of the mortgage deed in Liberia. - Tendered; objected to by Mr. Cole. 10 20

Ground: This is a photostat copy: original should be produced.

Impey: Sections 96(1) (e) and 108.

Later: Document is withdrawn. I produce a copy of Maritime Liberian Law - Tendered, no objection: admitted and marked Exh. 5. The mortgage was executed in 1958. The money due in it has not been repaid to the Bank: no part of it has been repaid to the Bank. No interest whatever has been paid. There has been no reconveyance or release of the mortgage. After the execution of the mortgage in 1958 the Bank and the defendants were on good relationship. In 1959 the Bank asked for a refund. The defendant representative Mr. Petroutsis was not pleased; we wanted more advances made to the defendants company. This led to a dispute in 1959. We seized the ship the "Spetsai Navigator" we had mortgage on that ship also. It was all resolved by an agreement between us and the "Spetsai Navigator" was released. In 1961 there were several Court cases in Bologna, Geneva and in Athens against the defendants by the plaintiffs. 30 40

The "Spetsai Patriot" in Italy: they had a court case about her in Bologna. The action did not proceed to judgment as we reached an agreement with the defendants which was reduced into writing. This is a copy of the agreement - Tendered, no objection admitted and marked Exh. 6.

In the Federal
Supreme Court
Admiralty
Jurisdiction

Plaintiffs'
Evidence
(Continued)

No. 29

Marcel Dubuis
Examination
(Continued)

10 I see the Spetsai Island Shipping Company as the second party of the agreement Exh. 6. The Shipping Company belongs to us the plaintiffs. The third party - The America Trading Company is a foreign Company: the Bank (plaintiffs) has no interest. They were brought in because they would have taken our (Bank's) place (transfer) as mortgagee of "Spetsai Patriot". We plaintiffs (the Bank) The American Company would have paid to the Bank £50,000 as consideration for the transfer.

20 On 14th November, 1961 Mr. Petroutsis wrote a letter to our . It is written in Italian. This is it - Produced, Tendered, no objection admitted and marked Exh. 7. I have here an English Translation attached to it - Exh. 7A. The terms of Exh. 7 were never carried out by Mr. Petroutsis. Also paragraph (b) namely, to insure with a reputable Insurance Co. (Italian) for £125,000 was never carried out. Paragraph (c) No policy of Insurance was obtained. Paragraph (d) of Exh. 7 was never
30 done to my knowledge: the Lloyd certificate was never sent to us: I never saw it.

I refer to article 2(a) of the agreement Exh. 6. The Bank (plaintiffs) has never received any amount (£125,000) from an Insurance Company on a claim "Spetsai Patriot".

Paragraph 2(b) of the agreement: no £70,000 was received.

Paragraph 2(c) of the agreement: "Spetsai Island" has not been sold to Japan.

40 Paragraph 3(b) of the agreement: letter of credit mentioned therein was never obtained by the defendants. The Bank and the SISCO were prepared to release the ship "Spetsai Island" for

In the Federal
Supreme Court
Admiralty
Jurisdiction

Plaintiffs'
Evidence
(Continued)

No. 29

Marcel Dubuis
Examination
(Continued)

the venture against the letter of credit.

Paragraph 2(d) Mortgage on "Spetsai Patriot" to the America Trading Company of Panama was never transferred by SISCO to CMIS: and contrast this with bottom part of paragraph 5 of the agreement (Exh. 6).

Mortgage was given on "Spetsai Navigator".

Paragraph 3(a) at page 6 of Exh. 6: This was never carried out by the Bank (plaintiffs) because they were never asked for the mortgage of £80,000. 10
The defendants did not perform their obligations under the agreement Exh. 6. The Bank (plaintiffs) has never been asked for a discharge of the Mortgage. The Bank (plaintiffs) have never obtained benefit under the agreement (Exh. 6).

We (Plaintiffs) were not satisfied with the way the defendants were operating the ship "Spetsai Patriot". We received a letter from Liberia Bureau of Maritime Affairs - This is it - letter dated 18/6/62 tendered, no objection admitted and marked Exh. 8. 20
On receipt of Exh. 8 we took legal advice and we (plaintiffs) gave instructions for the ship to be seized. We received another letter dated 23/6/62 from the Bureau - This is it - Tendered, no objection admitted and marked Exh. 9. Our Solicitors in London received this letter dated 5th July 1962 from the defendants Solicitors in London - Tendered no objection admitted and marked Exh. 10. 30
Another letter dated 15th August 1962 from Deputy Commissioner Maritime Affairs - The Republic of Liberia was received by us - This is it - Tendered, no objection admitted and marked Exh. 11. The Bank (plaintiffs) is not nothing for the ship to go back to Trieste. We seized the ship here; we want it sold here and be paid. When we (plaintiffs) gave instructions for the arrest of the ship in Lagos, we had not forgotten the agreement Exh. 6. As far as plaintiffs are concerned we do not think the agreement (Exh. 6) 40
is any more binding upon us because the defendants have not carried out the terms.

We claim as follows:

£292,790.	0.	0.	the principal loan
£76,125.	8.	0.	4 years interest at 6½%
11,711.	12.	0.	4 years Bank Charge at 1% p.a.

In the Federal Supreme Court Admiralty Jurisdiction

Total £380,627. 0. 0.

Plaintiffs' Evidence (Continued)

When this action started Mr. Petroutsis was in Geneva. It took me half a day to get my VISAS when I came to Nigeria before for this case.

No. 29

Adjourned till 19/9/62.

Marcel Dubuis Examination (Continued)

10

(Sgd) A. Ade. Ademola
C.J.F.

ON WEDNESDAY THE 19TH DAY OF SEPTEMBER 1962

Cross-Examination

Same appearances:

Plaintiff: Marcel Dubuis (m) continues: resworn.

Mr. Lefevre, as interpreter, resworn:

Marcel Dubuis

20

30

X X d by Cole for defendants: I first saw Exh. 6 a few months ago. It was signed by our Solicitors in London on our behalf: They are our Attorneys in London. They also signed on behalf of SISCO the Liberian Company. Mr. Llimona signed on behalf of the American Trading Company. Llimona is a Solicitor. Mr. Petroutsis and the defendants always dealt with our Solicitors in England Constant and Constant who signed Exh. 6 on our behalf. Until a few months ago Exh. 6 was in the custody of our London Solicitors. They kept our documents. Spetsai Star as in Exh. 6 was sold in 1958, to Japan: The Bank collected the proceeds, about £60,000. It is correct that on "Spetsai Sailor" the Bank collected amount of sale and indemnity amount. I cannot remember the amount; it might be £100,000 as you suggested. As in Exh. 6 there is a Hull Insurance of indemnity for "Spetsai Story". I believe the maximum insurance was £125,000. I did not negotiate the Insurance;

In the Federal
Supreme Court
Admiralty
Jurisdiction

Plaintiffs'
Evidence
(Continued)

No. 29

Marcel Dubuis
Cross-Examination
(Continued)

Our Solicitors Constant and Constant did. Exh.6, paragraph 2(a) is correct; the amount mentioned was assigned to the Bank. I went to London twice in respect of this Insurance: I went twice to see about the collection of the amount - £125,000. I agree there was a claim for £70,000 against disbursement: It was to be collected from the Insurance Company. Our Solicitors in London were to negotiate for its collection. It is correct that the agreement (Exh. 6) did say we could negotiate for less than the stipulated amount. I do not know how much the Insurance Company offered our Solicitors. I do not think they had any more offers. I cannot remember the name of the adjuster mentioned at 4 (middle) of Exh. 6 (English Translation). The matter is in the hands of our Solicitors who have submitted our claims to the Insurance Company. We are still expecting an answer in respect of £70,000 and the £125,000. The Bank was waiting for the Bank guarantee before handing over the ship "Spetsai Island" to Mr. Petroutsis: By Bank guarantee I mean letters of credit. The letter of credit was to be given to us to cover the Bank to receive the amount of the sale: it is the buyer usually who issues the letter of credit.

10

20

Re "Spetsai Island": the ship was in Greece when the agreement Exh. 6 was signed. I have read page 6 of Exh. 6 (English translation) about the handing over of "Spetsai Island"; did not say a letter of credit would be given before the ship is handed over.

30

Cole: My case is that the plaintiffs have not complied with agreement Exh. 6.

Court: What about paragraph 4 of your Statement of Defence ?

Cole: We have complied, but not the plaintiffs?

Court: How then can you rely on agreement Exh. 6 when plaintiffs have not complied with it?

On 26th October, 1961 we have collected nothing in Exh. 6 from the defendant to the best of my knowledge. Mr. Petroutsis has no account with our bank; I deny he has. I agree the

40

defendant company has an account with our bank, but on the debit. I agree Mr. Petrousis is aware of the account. The sale price of "Spetsai Star" was credited to the account: this was about 1958. The sale price and indemnity collected on the "Spetsai Sailor" was credited to this account. I cannot remember which month it was. There was £40,000 due on the sale of the hulk of the "Spetsai Glory". Our bank was entitled to the amount because the insurance on it was in favour of the Bank. The amount was credited in favour of the defendants on the 26th October, 1961 when the agreement Exh. 6 was signed, the defendants

In the Federal
Supreme Court
Admiralty
Jurisdiction

Plaintiffs'
Evidence
(Continued)

No. 29

Marcel Dubuis
Cross-Examination
(Continued)

Refers paragraph 6 of Exh. 6 did say something about the claims being realised within a year. The Mortgage Exh. 4 was in 1958. A reduction of the amount on that Mortgage would depend upon a new mortgage which we were expecting from the defendants. SISCO owned the Navigator when Exh. 6 was signed. SISCO transferred to SIMS (?CMIS) but signed with a favour of £50,000 in favour of the American Company. I know George Perreare; he was the Bank Solicitor and the Administrator (Manager) of our Bank. I know Mr. Llimona is a Solicitor in Barcelona. I am not aware he is connected with the American Trading Company. I deny the American Trading Company is a subsidiary of our bank: we have no interest whatever in that company. I believe the American Trading Company is in Panama. My Bank has no transaction with them to my knowledge. I strongly deny they are a subsidiary of our bank. I know in 1959 we arrested a ship - Spetsai Patriot in Italy. We paid some amount as security for the case. After receiving letters from Liberia Government that the ship will be struck out of their Register, we have to guard against losing our security, so we acted.

Rxd: Refers to Exh. 6 at page 1 (last paragraph) and Exh. 4 at page 1. The monies paid on "Spetsai Star" and "Spetsai Sailor" were not paid in reduction of the mortgage on "Spetsai Patriot". The monies were paid in the general account, not in "Spetsai Patriot" mortgage. No money has been paid to date on "Spetsai Patriot" account. The

In the Federal
Supreme Court
Admiralty
Jurisdiction

Insurance Company have not yet admitted any liability in respect of "Spetsai Glory" with regard to the £125,000 claimed and the £70,000 for reimbursements.

Plaintiffs
Evidence
(Continued)

We now claim £380,000 from the defendants instead of £300,000 in Exh. 6 because the agreement had not been carried out.

No. 29

Case for the Plaintiffs.

Marcel Dubuis
Cross-Examination
(Continued)

Defendants'
Evidence

Defendants' Evidence

No. 30

No. 30

10

Constantine
Anastesilis
Petroutsis
Examination

Evidence of Constantine Anastesilis Petroutsis

Constantine Anastesilis Petroutsis (m) s/s in English: Greek, living in Athens, ship-owner; 3rd generation of ship-owner. I am the owner and managing director of the defendant company The Spetsai Patriot is one of my ships. In 1958 I signed mortgage with the Plaintiffs in respect of the ship. This is the Mortgage - Exh. 4. On 26th October, 1961, I entered into an agreement with the plaintiffs - Exh. 6 is the agreement. 20 This was entered into after a lot of disputes - some in Court. We resolved our differences and resolved everything by an agreement Exh. 6. The plaintiffs collected £40,000 in 1960 on the sale of the remains of "Spetsai Glory". This was before the agreement Exh. C was signed. I assigned the claim of £125,000 to the plaintiffs as shown in the agreement Exh. 6: also £70,000 has been claimed - all on "Spetsai Glory" as disbursements expended by the Bank on behalf of the defendants. 30 I assigned all these to the plaintiffs: I have not withdrawn the assignment. I am not ready and willing to take "Spetsai Island" to Japan for sale as agreed upon in Exh. 6. This is because there is a case in Geneva with the plaintiffs about the ship. If the Bank had given the ship to me soon after the contract was signed and in terms of the agreement (Exh. 6), I would have taken it to Japan for sale. I asked the Bank (plaintiffs) to

release the ship to me. The Bank did not transfer to me within a month of the agreement (Exh. 6) either ship or refer me to anybody about its transfer. The Bank had no knowledge of shipping and they did nothing to implement the agreement Exh. 6.

In the Federal
Supreme Court
Admiralty
Jurisdiction

Impey: Refers to paragraph 4 of the Statement of Claim. On the face of the pleadings, this evidence is not admissible.

Defendants'
Evidence
(Continued)

No. 30

10 Cole: Asks for leave to amend paragraph 4 of the statement of defence by adding to the last word "with" the following "by the plaintiffs".

Constantine
Anastesilis
Petroutsis
Examination
(Continued)

Court: The Court will not allow this amendment at this stage. It will put a different complex on the case and it will involve further amendment namely

- (1) that the defendant has complied.
- (2) All what had not been complied with by the plaintiffs will have to be enumerated.

20

Cole: I withdraw my application.

Witness continues:

I refer to paragraph 3 page 3 of Exh. 6. I produce the mortgage signed by the defendants in favour of the American Trading Company in compliance with paragraph 2(d) of the agreement Exh. 6.

- Tendered - Impey objects.

30

Grounds: (1) Document not original
(2) Agreement not between parties to this case.

Cole: Refers to Section 79 of the Evidence Ordinance: document notarily attested.

Cole: later withdraws document. The mortgage given to the America Trading Company was prepared by Constant and Constant. Exh. 6 says the debt be reduced to £50,000 and be transferred to the American Trading Company. As far as I am concerned I complied with the agreement of 1961 (Exh. A).

In the Federal
Supreme Court
Admiralty
Jurisdiction

Defendants'
Evidence
(Continued)

No. 30

Constantine
Anastasilis
Petroutsis
Cross-Examination

XXd by Impey: It is not true that I did nothing more under the agreement Exh. 6 than the mortgage to American Trading Company. In 1959 there is an agreement that two vessels "Spetsai Island" and Spetsai Navigator should be transferred to SISCO (branch of plaintiffs). I agree my sister in law brought proceedings against these two ships saying the defendants Company are owing him money. This is one of the actions withdrawn when the agreement Exh. 6 was made. After this SISCO transferred the "Spetsai Navigator" to my company CMIS. I agree my company then made a mortgage on the "Spetsai Navigator" to the American Trading Company. This is one of the obligations I had to perform but they were performed under plaintiff's pressure. I waited for the Bank (plaintiffs) to prepare necessary documents for me to sign but they have not done so. I agree I wrote Exh. 7. In paragraph (c) I agreed to execute a mortgage to American Trading Company. I did not execute a mortgage as stated: I waited for the plaintiffs to prepare it for me to execute - I agree I was to effect an insurance of £125,000 on "Spetsai Patriot". I carried this out, but I am not in a position to produce proof. I made the assignment as required to the Bank (plaintiffs). I sent it to the plaintiffs Solicitor in London Constant and Constant. I have a copy but it is not here. The certificate of Lloyds Insurance. I left to Mr. Asky a member of the firm of Constant and Constant to collect.

I know I was to deliver an irrevocable letter of credit as stated in Exh. 6. I never established any. I am not disputing that Exh. 8 was received also Exhs. 9 and 11. I agree every ship has to conform with Maritime Regulations which are mentioned in Exhs. 8, 9 and 11. I comply with all Maritime Regulations. After I received these threatening letters, I complied - I was given extension of time. I did not comply with the Regulations again. I was given extension till September 1962. The case of Spetsai Island will be decided in Geneva Court: I am not prepared to send it to Japan for sale dispute the agreement Exh. 6. The Court at Geneva will have to decide. I could not comply with the Regulations in Lagos as there are no dry docks. Exh. 4 mortgage I think is invalid. Exh. 6 I do not answer questions put to me about that as I am awaiting

the Geneva case which will be heard on 26/10/62. Rxd. I was asked about the extension of time to comply with the Liberian Maritime Laws. This is the telegram I received - Tendered, admitted and marked Exh. 12. The Bank (plaintiffs) complained to me that they have not got the documents I was to send to them - Insurance Certificates and assignment.

In the Federal Supreme Court Admiralty Jurisdiction

Defendant's Evidence (Continued)

In Reply to Court:

No. 30

10 I have not begun the case in Geneva but I have instructed my Solicitor to get ready against my arrival there.

Constantine Anastesilis Petroutsis Cross-Examination (Continued)

Case for the defendant.

Adjourned till 22/9/62.

(Sgd) A. Ade. Ademola
C.J.F.

SATURDAY THE 22ND DAY OF SEPTEMBER, 1962.

Inpey for the plaintiffs: H.G.O. Coker and Soyinka with him

20 J.A. Cole: Oluwole and Famakinwa with him for defendants.

No. 31

No. 31

Submissions by Counsel for the Defendants

Submissions by Counsel for Defendants 22nd September 1962

Cole addresses the Court:

30 Exh. 4 is the mortgage deed: it is no more than equitable mortgage. Exh. 6 is the later agreement: present defendants acquired liabilities and assets of original debtors to the plaintiff: see page 1 of Exh. 6. As a result of this acquisition Exh. 4 was made.

Refers to Section 100 of Exh. 5: Liberian Maritime Law. Parties to Exh. 6 not the same as parties to Exh. 4. There are only 2 issues before the Court.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 31

Submissions by
Counsel for
Defendants
22nd September
1962 (Continued)

(1) Did Exh. 6 dated 26/10/61 have the quality of an enforceable agreement between the parties?

(2) If the answer is in the affirmative, does it replace Exh. 4, or is it a novation of Exh. 4?

On the face of Exh. 6, it renders the defendant liable for £300,000 as against £380,000 now claimed. Clearly, Collateral advantages Novation and Recission were conferred upon the plaintiffs.

Payment of a small sum is no satisfaction. 10

Ford v. Earl of Chesterfield 52 Eng. Rep. 416 also Underwood v. Underwood 1894 P. D. 204 at page 211.

In the present case, consideration was given by the defendants for Exh. 6: this is unlike the two cases cited above. There must be collateral advantage to the creditor.

Foakes v. Beer (1883 - 1884) 9 H.L. app. Cases 605 at pages 611 and 612 and page 628.

Has Exh. 6 conferred collateral advantage on the plaintiffs? 20

Refers to article 2 (a) of Exh. 6; assignment of a chose in action.

Also article 2(b) assignment of a claim for £70,000

2(d) undertaking to effect two mortgages

American Trading Company became sureties for the payment of the debt to the extent of £100,000.

Last paragraph of article 1. Also article 3: additional benefit conferred upon the Bank. 30
Where a 3rd party is brought in a surety for the debt, agreement binding.

Steinman v. Magnus: 103 Eng. Rep. 1055.
See Lord Ellenborough's judgment at page 1056.

American Trading Company are sureties to the extent of £100,000.

Plaintiffs witness said he did not know how much the defendant was owing on the date agreement Exh. 6 was made, although he said he did not know what was owing.

In the Federal
Supreme Court
Admiralty
Jurisdiction

Cole: My case is we agree we owe on Exh. 6 amount of £300,000 and not £380,000 as in Exh. 4. I am saying the amount of £300,000 is as yet not due as Exh. 6 gives a year to pay - Exh. 6 dated October, 1961.

No. 31

Submissions by
Counsel for
Defendants
22nd September
1962 (Continued)

- 10 2nd Submission: Recission. Refers to chitty on contract Vol.1, 22nd Edition at page 495: paragraph 1140. - Substituted contract.

Can the agreement Exh. 4 be performed simultaneously with Exh. 6?

The plaintiffs have divested themselves of their interest in "Spetsai Patriot" by means of Exh. 6. They have transferred the mortgage to the American Shipping Company. How can they now sue upon it.

- 20 Conduct of the Parties -

Refers to Paragraph 6 of the Reply filed by the defendants.

Article 5 of Exh. 6 is very important.

Refers to 8 Halsbury, 3rd Edition page 207 paragraph 350.

Submit promise was enough for the discharge: the intention was important: so long promise was made and accepted.

- 30 Morris V. Baron and Company (1918) A.C.1. at page 22: See top of page 26 for distinction between variation and recission beginning from last two lines of page 25.

If Exh. 4 has been rescinded by Exh. 6, it is submitted this is the end of the claim.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 32

Submissions by Counsel for the Plaintiffs

No. 32

Submissions by
Counsel for the
Plaintiffs
22nd September
1962

Impey for the plaintiffs: Facts on the Statement of Claim established - Defence to be considered; that Exh. 4 has been rescinded or Novation: discharged by accord and satisfaction.

It is submitted that accord and satisfaction was not pleaded by the defendants.

See paragraph 2 of the Statement of Defence. Rescission and Novation are the only defence concerned with; they will be dealt with. 10

Paragraph 2 of the Statement of Defence admitted Exh. 4 is a deed of mortgage and that it was executed. It is therefore submitted the issue of Registration or under seal cannot now be raised. The word "executed" used in that paragraph of the defence is essential. It was plainly executed in England. Deed appeared on it to have been registered. Evidence was to that effect, the letter of the Commissioner of Maritime Affairs (Liberia) mentioned the deed and that it had been registered. - Direct Evidence of registration on the Document. 20

Submit agreement Exh. 6 is not under seal: it is agreement under hand. See the last paragraph of the agreement at page 8 of Exh. 6.

Novation: This agreement Exh. 6 cannot be a novation. New agreement to replace the old must be on the same terms. - See Osborn Dictionary: (Concise Law Dictionary) 4th Evidence at page 237. 30

Novation: consent essential, not on question of assignment.

On the same terms important for Novation. Exh. 6 deals with all sorts of agreement which Exh. 4 did not deal with. Even if the portion in it (Exh.6) refers to the Mortgage Exh. 4. It must mean that the whole contract is novated. - Refers to Halsbury 8 Halsbury 3rd Edition page 175 parag. 298 - Novation.

Also see page 258 (same Halsbury) at paragraph 451 last portion of it. See also page 264, paragraph 463.

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See Bullen and Leake, 10th Edition page 507 also Chitty on Contract.

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Submit no Novation here; cannot succeed agreement cannot be discharged by novation.

2nd Submission: Recission (including Revocation).

10 Submit this is defective. An important averment has been left out.

See Bullen and Leake, 10th Edition page 676.

Essential averment to make and establish that the recission took place before breach.

Contrary has been established: Evidence is that in October 1961 the defendants were hopelessly in breach of their agreement Exh. 4.

Edwards V. Weekes 89 Eng. Rep. 164.

May V. King 88 Eng. Rep. 1502 at page 1503.

20 Exh. 6 may be good but it is valueless as far as the mortgage Exh. 4 is concerned. It cannot be a discharge to the mortgage on the "Spetsai Patriot".

Edwards V. Chopman 150 Eng. Rep. 419 shows agreement must be reached first before.

Goldham V. Edwards 139 Eng. Rep. 1022.

30 Mortgage must be discharged by a reconveyance must be under seal. This was not done nor was there an accord and satisfaction. Parties contracted in the Mortgage deed that they must all agree - See section 28 of Exh. 4.

Pleas of recission and Novation, it is therefore submitted, are bad.

No accord and satisfaction established. It

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was not pleaded in any case: not willing to make submission on a point not pleaded.

Vacuum in the Mortgage: nothing and the Mortgage deed or in the agreement (Exh. 6) that the Mortgage or in the agreement that the Mortgage shall cease.

The Bank can only rely on its security. Can you sell the "Spetsai Patriot"?

Adjourned till 24/9/62.

(Sgd) A. Ade Ademola
C.J.F.

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25th September
1962.

ON TUESDAY THE 25TH DAY OF SEPTEMBER, 1962

Appearances as above.

Impey continues his address:

Rescission or release must be made under seal (by deed) to discharge the mortgage:

See Coote on Mortgagees: 9th Edition 1407 (Vol.11) last paragraph and up to page 1408.

8 Halsbury, 3rd Edition page 173 paragraph 294 - Rescission or new agreement: emphasising the 20 words "May be discharged at any time before breach".

Odgers Pleading and Practice, 15th Edition at page 467: Precedent No. 64: principle is the same. See paragraph 5.

Since the Judicature Act. 1895, these principle still exists today - fusion of law and equity has made no difference.

Accord and Satisfaction not pleaded: only rescission and novation has been pleaded.

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"Satisfaction could only be maintained by execution, in this case: not executory. Submitted that the agreement Exh. 6 should be carried out

before the Mortgage Exh. 4 is discharged: if the mortgage was to be discharged, it would have said so in Exh. 6. A release under seal was to come after Exh. 6 had been satisfied.

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Plaintiffs
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Equity will not grant a relief in a case like this: it would not aid the defendants, because -

- (1) he who comes into equity must come with clean hands
- (2) he who seeks equity must do equity.

10 Refers to the evidence of the two witnesses: obviously the defendants witness is unreliable: contradictions -

- (a) he sought to tell the Court that all safety regulations which the ship was to carry out were complied with in Lagos; later he said he did not and was given an extension of time to comply.
- 20 (b) By the agreement not carried out, the defendants still wish to defeat the first claim of the plaintiffs on the mortgage. In other words, they are relying on their own default.
- (c) The defendants could have done equity by saying we have failed to keep the ship in accordance with Regulations: a breach: you could collect your £50,000 from the American Company.

30 Not saying the agreement Exh. C is nudum pactum (null and void) for all purposes but that as far as rescission of the portion of the agreement relating to the "Spetsai Patriot" is concerned.

To support that defendants have not done equity, to be absolved that No assurance that this vessel will be put in sea worthy condition.

Non-Joiner of other Parties: Not a defence to defeat a claim. Refers to Order XVI Rule 11 of the 1962: Page 344. Rules of the Supreme Court, Annual Practice.

40 Not necessary to plead in Reply that the defendants were in breach when Exh. 6 was entered into. That could be established and

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was established by evidence

Judgment is Reserved.

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(Sgd) A. Ade. Ademola
CHIEF JUSTICE OF THE FEDERATION.

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Counsel for the
Plaintiffs
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Judgment
7th November 1962

JUDGMENT

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS
ON WEDNESDAY, THE 7TH NOVEMBER, 1962

BEFORE THEIR LORDSHIPS

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SIR ADETOKUNBO ADEMOLA CHIEF JUSTICE OF THE
FEDERATION.

SIR LIONEL BRETT FEDERAL JUSTICE

JOHN IDOWU CONRAD TAYLOR FEDERAL JUSTICE

SIR VAHE BAIRAMIAN FEDERAL JUSTICE

F.S.C.219/1962

BETWEEN:

BANQUE GENEVOISE DE COMMERCE
ET DE CREDIT PLAINTIFFS

A N D

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COMPANIA DE ISOLA
SPETSAI LIMITADA DEFENDANTS

J U D G M E N T

This is an action in rem brought in the original jurisdiction of the Court as a Colonial Court of Admiralty. The Court is constituted a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, by s. 17 of the Federal Supreme Court Ordinance, 1960 and Order II, rule 1, of the Federal Supreme Court 30

Rules, 1961 lays down that in the absence of any provision in the Rules themselves the practice and procedure shall be conducted in substantial conformity with that for the time being in force in England in the High Court of Justice. As regards the extent of the jurisdiction, it was held by the Judicial Committee in The Yuri Maru, (1927) A.C. 906, that the jurisdiction conferred by s. 2(2) of the Colonial Courts of Admiralty Act, 1890, was that possessed by the High Court in England on the date when the Act came into operation, that is to say, the 25th July, 1890.

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10 The plaintiffs are bankers having their principal place of business in Geneva, Switzerland. The defendants are a company registered in Costa Rica and are the owners of a ship named the "Spetsai Patriot", which is registered in Liberia. The plaintiffs claim a total sum of
20 £380,000 made up of a loan of £292,790 with interest and bank charges, which they allege is secured by a mortgage on the "Spetsai Patriot", made on the 22nd July, 1958, and duly registered in accordance with the law of Liberia. The jurisdiction of the Court is founded on the fact that the "Spetsai Patriot" was arrested in the port of Lagos under a warrant issued by this Court at the instance of the plaintiffs. Section 3 of the Admiralty Practice and Jurisdiction Act, 1840,
30 provided that "whenever any ship or vessel shall be under arrest by process issuing from the High Court of Admiralty.....the said Court shall have full jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship or vessel and to decide any suit instituted by any such person in respect of any such claims or causes of action respectively", and no issue has been raised as to the power of the Court to order the arrest of a
40 foreign ship for the sole purpose of enforcing the rights of a mortgagee.

The suit was commenced by the filing of a Statement of Claim on the 12th July, 1962, and on the 25th July the Plaintiffs obtained judgment for the full sum claimed, in default of appearance by the Defendants. This was set aside on the application of the Defendants and the suit was heard as a contested case on the 18th, 19th, 22nd and 25th September.

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It is conceded that the principal sum secured by the mortgage has not been repaid, and although a certain attempt was made to suggest that the mortgage had not been duly executed or registered it was not pressed. Paragraph 2 of the Statement of Defence contains an admission that a deed of mortgage was made, and it is not now open to the defendants to contend that its execution did not satisfy the requirements of Liberian Law. On the evidence, I am satisfied that it was duly registered. It has certainly not been formally cancelled, and no release or reconveyance of the ship has been carried out, but the question which we have to decide is whether it was open to the Plaintiffs on the 12th July, 1962, to sue for any sum secured by the mortgage and if so, what that sum was. The reason given by the Plaintiffs for wishing to pursue their monetary claim and procure the sale of the ship now is that the Maritime authorities of Liberia have threatened to cancel the registration of the ship for failure to comply with the safety regulations. It is clear from the evidence that the regulations have not been complied with, indeed only the extent of the non-compliance is in any way disputed, but on the view which I take of the legal issues it is unnecessary to go into that matter further. 10 20

As I have already said, paragraph 2 of the Statement of Defence admits that a deed of mortgage was executed, but it goes on to aver that the deed "was rescinded or revoked by an agreement dated the 26th October, 1961, and made between the Plaintiffs, the Defendants, the Spetsai Island Shipping Company Limited, the Amercian Trading Company, S.A., and Constantin A. Petroutsis." Paragraph 3 sets out certain of the terms of the agreement, and paragraph 4 pleads that "since the execution of the agreement the relationship between the parties has been governed by that agreement and that its terms have been complied with". Paragraph 7 repeats that the deed of mortgage has been rescinded and paragraph 12 begins "the Defendants will contend at the trial (a) that the agreement of the 26th October, 1961, is a novation of the mortgage deed of the 22nd July, 1958 and that it has revoked or rescinded or replaced the said mortgage deed". As the agreement of the 26th October, 1961, was in writing the reference to it makes it part of the pleading: 30 40

Day v. Williams Hill (Park Lane) (1949) 1 K.B. 532, and it was produced in evidence. The essential part of this pleading is the statement in paragraph 4 that since the agreement was entered into the relationship between the parties has been governed by it. This was enough to make it clear to the plaintiffs that the defendants were relying on the agreement as debarring them from enforcing the mortgage, and in my view it is open to the Court to give the agreement its true legal effect, irrespective of whether the word "novation" is used correctly in paragraph 12, or of whether the mortgage can properly be said to have been revoked.

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Before considering the terms of the agreement, it will be convenient to deal with the parties to it. It is made "between, of the one part, the Banque Genevoise de Commerce et de Credit, 2 Rue Diday, at Geneva, hereinafter called Bank, the Spetsai Island Shipping Company Limited of Monrovia, Liberia, hereinafter called SISCO, and the American Trading Company S.A., of Panama, Panama, hereinafter called Mortgagee, and of the other part the Compania Maritime di Isola Spetsai Limitada of Costa Rica, hereinafter called CMIS, and Constantin A. Petroutsis, hereinafter called Petroutsis". Mr. Dubuis who gave evidence for the plaintiffs, stated that SISCO was at that time owned by the Bank, but that the Bank had no interest in the American Trading Company. Mr. Petroutsis, who gave evidence for the defendants, is the Managing Director of CMIS and signed the agreement on their behalf.

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The agreement begins with a preamble which sets out the history of various transactions between the Bank and CMIS, the legal relationships between them immediately before the agreement was entered into, and the purpose of entering into the agreement. It is of sufficient importance for the construction of the agreement to be quoted in full. The original was in French but I quote from a certified translation into English:-

"Preamble:

"In 1957, the BANK opened various credits for the Compania Maritime Linea Adriatica-

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Golfo Iersico Ltda of San Jose, Costa-Rica, the assets and liabilities whereof were taken over in July 1958 by CMIS.

"The assets of this latter Company were constituted by its fleet made up of 7 vessels and the BANK, having obtained guarantees by way of mortgages on the 6 vessels, by assignments of freight and by all insurance indemnities on the mortgaged vessels, agreed in accordance with an Act of 22nd July, 1958, to various advances so that the liabilities of CMIS towards it amounted in December 1958, according to the accounts of the Bank to a sum of about \$100,000. 10

"The SPETSAI STAR having been sold to Japan in October 1958; the s.s. SPETSAI SAILOR having sunk in the Red Sea in November 1958 and the s.s. SPETSAI GLORY having run aground on the coast of the island of Crete, in February 1959, the BANK has already collected the sale price and the insurance indemnity for the SPETSAI SAILOR; the BANK has still to collect the hull insurance indemnity for the SPETSAI GLORY; in view of the freight crisis, CMIS was unable to make the payments laid down in the agreements with the BANK and, in June, 1959 a contract was entered into between the BANK and CMIS governing the extent of the obligations of CMIS to the BANK and the methods of payment of the debt; such contract also stipulated supplementary securities to be supplied, among them the transfer of the ownership of s.s. SPETSAI NAVIGATOR and SPETSAI ISLAND to a Liberian Company of which the Bank became the proprietor, that is SISCO under the special conditions laid down in the above-mentioned contract. 20 30

"The events which followed on account of the inability of CMIS to liquidate its assets and of the measures taken by the BANK for the recovery of the debt, gave rise to disputes some of which were already the subject of litigation before the Courts of Geneva, the Court of Appeal of Bologna and before the Court of First Instance of Piræus whilst 40

other actions are to be commenced in accordance with the intention of the parties before the competent jurisdictions.

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"At all events the contracting parties with a view to a definite settlement of all the accounts and litigation between them agree by these presents as follows:"
by the word "Settlement". Of these the first two required to be quoted in full:-

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10 "Article 1. The parties waive the drawing up of detailed accounts. CMIS acknowledges that it is indebted to the BANK in the sum of three hundred thousand pounds sterling (£300,000) as the balance of all accounts and of all claims between the BANK and SISCO of the one part and CMIS and PETROUTSIS of the other part. It is a comprehensive figure, acknowledged to be a capital sum but which bears no interest.

20 "Article 2. The recovery by the BANK of the above-mentioned sum is assured by the realization of the following assets of CMIS:

(a) A claim against the hull insurers of the s.s. SPETSAI GLORY estimated at £ sterling 125,000 already assigned to the BANK.

30 (b) A claim against the insurers or charterers of the s.s. SPETSAI GLORY etc. for expenses disbursed by the BANK for the account of the ship (included in the sum of £ sterling 300,000), for general average and "special charges" estimated at £ sterling 70,000 and for the guarantee in connection with the collision with the s.s. "LEONIDAS".

(c) the s.s. SPETSAI ISLAND registered in the name of SISCO which is to be sold to Japan at an estimated £ sterling 80,000.

40 (d) Two maritime mortgages also as security are to be given by CMIS in favour of the AMERICAN TRADING COMPANY OF PANAMA for £ sterling 50,000 each on the s.s. SPETSAI PATRIOT and the s.s. SPETSAI NAVIGATOR which is to be transferred by SISCO to CMIS.

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Article 3 gives fuller details of the transfer of assets referred to in clauses (a), (b) and (c) of Article 2 and of the rights and liabilities of various parties, and Articles 4 provides for the payment of certain fees by the Bank. Articles 5 and 6 require to be quoted in full. They read:-

"Article 5. Promising good and faithful carrying out of the present settlement the parties reciprocally discharged each other for 10 the balance of all accounts and of all claims and waive all civil or criminal procedure. CMIS and PETROUTSIS undertake to eliminate at their own expense and their liability any hindrance which may arise from sequestration and arrests effected by third parties on the SPETSAI ISLAND and the SPETSAI NAVIGATOR in Greece. The BANK also shall release as soon as this settlement is signed the sequestrations or other measures taken by it on the s.s. 20 SPETSAI PATRIOT and the s.s. SPETSAI FORTUNE in order to facilitate the placing of the said vessels at the free disposition of CMIS and of PETROUTSIS. The mortgage on the SPETSAI PATRIOT shall be limited to £ sterling 50,000 and transferred in favour of the MORTGAGEE and the mortgage on the SEPTSAI FORTUNE shall be cancelled immediately upon the signing of these presents

"In order to facilitate the formalities for 30 the releasing of the seizures, arrests etc. the BANK this day shall hand to PETROUTSIS an express authorization to the Italian Lawyers (Office Berlinghieri) to proceed immediately to this end so that these two vessels may immediately be at the free disposal of CMIS and PETROUTSIS and shall telegraph in the same terms to such lawyers.

"The seizures and arrests of s.s. SPETSAI PATRIOT and s.s. SPETSAI FORTUNE imposed by 40 Andreas Valsamakis and Cap. D. Tsekouras shall be lifted and discharged solely at the expense and at the liability of C.PETROUTSIS and CMIS, the Bank having no responsibility whatsoever in this connection.

"In addition SISCO shall immediately restore ownership of the s.s. SPETSAI NAVIGATOR to CMIS and undertakes to carry out all the necessary

formalities to fulfil this undertaking which in the case of the SPETSAI NAVIGATOR shall include putting into possession.

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"The BANK and the MORTGAGEE also undertake to supply a certificate regarding the s.s. SPETSAI PATRIOT intended for the Liberian Authorities under the terms of which this vessel shall change its name in accordance with the instructions of C. PETROUTSIS.

10 "Article 6. In as much as the realization of the claims for C.T.L., G/A etc. on the SPETSAI GLORY and the sale price etc. of the SPETSAI ISLAND are not envisaged before a year, the mortgages in favour of the mortgagees (in accordance with art. 2(d) of these presents) shall become due as to one half (£ sterling 25,000 for each mortgaged vessel) on the 1st November 1962 and as to
20 the other half on the 1st May 1963, but only up to the amount of the balance not realized by the Bank by such date as provided in art. 2(a), (b) and (c), the intention of this contract being that the BANK shall not receive more than £ sterling 300,000.

"Any payment made to the BANK arising from the sources set out in article 2(a), (b) and (c) over and above £ sterling
30 200,000 shall be considered as payment on account of the mortgages (a half on each) and an act to this effect signed by the MORTGAGEE shall be delivered at the same time as the receipt by the BANK and the necessary registrations shall be made. Also all payments made to the MORTGAGEE by virtue of the above-mentioned mortgages shall be considered as a payment made to the Bank on account of its claim for £ sterling 300,000."

40 Article 7 provides that the interpretation, validity and performance of the contract shall be governed by English law.

On the 14th November, 1961, Mr. Petroutsis addressed a letter to the Bank's London attorney, which was produced in evidence. It may be of interest as showing the state of Mr. Petroutsis

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mind when he wrote it, but needless to say it cannot alter the effect of the written agreement and I do not think it necessary to consider it.

In the course of his evidence, Mr. Dubuis said that the Bank had received no benefit from the various assets referred to in Article 2 of the agreement. Nothing had been recovered so far from the insurers of the Spetsai Glory. The Spetsai Island had not been sold to Japan owing to the failure of CMIS to provide a letter of credit, which was a necessary condition for the release of the ship by SISCO. The various actions at law had evidently been withdrawn, and a mortgage of the Spetsai Navigator to the American Trading Company had been executed, but not a mortgage of the Spetsai Patriot. Having regard to the difference in wording between Article 2(d) of the agreement, which provides that CMIS shall give a mortgage for £50,000 on the Spetsai Patriot to the American Trading Company, and Article 5, which apparently provides that the existing mortgage shall be transferred in favour of the American Trading Company, it would perhaps be going too far to say that the agreement made it the duty of the Bank to carry out the transfer, but I would point out here that it would have been open to the Bank to take that course if it attached importance to this part of the agreement, and it is not clear to me that the Bank is entitled to complain because CMIS has not done what it has never been called on to do, and what in any case CMIS could not have done until the Bank released the vessel from the existing mortgage. In dealing with the arrest of the Spetsai Patriot Mr. Dubuis said "In having the ship arrested we had not forgotten the agreement of October, 1961. We were going to lose our mortgage rights" (this refers to the threatened cancellation of the Liberian registration) "and we had to protect our interest. We considered the agreement as cancelled; it had not been implemented by Petroutsis". Later, in reply to the Court, he said "We consider the agreement void because it was not carried out". This may explain why no mention of the agreement is made in the Statement of Claim, but the consequence of the omission is that the Statement of Claim fails to disclose what the real issues are. In addressing the Court on

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10 behalf of the Bank, Mr. Impey was not prepared to go quite to the length of submitting that the agreement was wholly void, and his submission on this aspect of the case was that although the agreement had been performed in part, and could not be treated as a nullity, still it was ineffective as a rescission of the mortgage, and the Bank was entitled to exercise its rights under the mortgage and enforce it as a security either, as Mr. Impey submitted, for the full sum referred to in the mortgage or at the very least, for the reduced sum of £50,000.

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20 We are not called on to determine whether the various breaches alleged against CMIS would have given the Bank a right of action for damages, nor, in view of the relief asked for, need we consider whether in face of the threat to cancel the registration of the ship it would have been open to the Bank on the 12th July to take any steps to protect the security, as opposed to obtaining judgment for a sum of money enforceable by the sale of the ship. We have only to consider whether on that date the agreement entitled the Bank to obtain judgment for a sum of money and enforce it by sale of the ship, and this, in my view, is a matter of the construction of the agreement, to which the question whether there have been breaches of it is irrelevant. Mr. Impey's submissions on this may, 30 I think, be summarised as follows - (a) Novation, which was pleaded, implies a contract on the same terms between one party to the original contract and a third party. The agreement of the 26th October, 1961, cannot be considered a novation of the mortgage in this sense. (b) The plea of rescission was defective in that it omitted a material averment, namely that rescission took place before a breach of the original contract. Here CMIS were in breach of the terms of the 40 mortgage before the 26th October, 1961. (c) A mortgage can only be rescinded by an instrument under seal or by accord and satisfaction, and the agreement relied on was not under seal. (d) As regards accord and satisfaction, it was not pleaded and cannot be relied on. If, contrary to this submission, it can be relied on, there has been no actual satisfaction, and it was not intended that the promises made by CMIS should be accepted as satisfaction.

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I have already said that in my view the defendants sufficiently pleaded their reliance on the agreement to entitle the Court to ascertain and enforce its true effect on the mortgage, whether novation, rescission or accord and satisfaction be the correct description of it. The intention of the parties is to be gathered from the agreement to which they set their hands, and I would attach the greatest significance to the last paragraph of the preamble, in which, after 10 setting out the previous dealings between the parties, and the litigation which was then pending, the parties say - "At all events the contracting parties with a view to a definite settlement of all the accounts and litigation between them agree by these presents as follows". There is also significance in the first sentence of Article 5 - "Promising good and faithful carrying out of the present settlement the parties reciprocally discharge each other for the balance of all accounts 20 and of all claims and waive all civil or criminal procedure". The natural interpretation of these passages seems to me to be that the parties intended to start afresh and to let their future relationships be governed by the agreement, not by any rights and obligations which they possessed immediately before the agreement so far as those rights or obligations might be inconsistent with the agreement. As to the consideration necessary to make such an agreement binding, the well-known 30 principles accepted in Foakes v. Beer (1884) 9 App. Cas. 605, that payment of a lesser sum that is due is no consideration for a forbearance to sue for the larger sum, does not apply to a comprehensive settlement involving a variety of claims on both sides. In such a case, it was emphasised more than once in the Speeches in the House of Lords in Morris v. Baron & Company (1918) A.C.1, to which Mr. Cole referred us, that it is a question 40 of fact whether the new agreement without performance was taken in accord and satisfaction of the old: see Lord Finlay, L.C., at p. 13 and Lord Atkinson at p.35. Questions of fact in any case fall to be determined according to the circumstances of that case, and little assistance is to be derived from decisions on the facts of other cases. In the present case the passages which I have cited from the agreement, coupled with the waiver of accounts and the provision that the

Bank shall be enabled to obtain from various sources the whole sum agreed to be due, indicate to me that it was the intention of the parties that the agreement by itself was to be taken in accord and satisfaction, and furthermore the defendants have carried out at least part performance in withdrawing, or procuring the withdrawal of, litigation and in executing a mortgage on the Spetsai Navigator.

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10 In the circumstances I would hold that the agreement was a binding compromise of existing claims on each side and that although the mortgage to the Bank remains in force for the time being the Bank cannot do anything to enforce its rights under the mortgage which would be inconsistent with the terms of the agreement. Whatever breaches of the agreement CMIS may have been guilty of, I do not consider that the Bank, having taken advantage of, for example, the
20 withdrawal of various lawsuits, can claim to treat the agreement as cancelled, as Mr. Dubuis suggests. I find it equally impossible to accept Mr. Impey's submission that the agreement is in force, but nevertheless does not preclude the Bank from suing for the full amount originally secured by the mortgage; the limitation of the amount so secured to a maximum of £50,000 and the detailed arrangements for its assessment and payment are an essential part of the comprehensive
30 settlement effected by the agreement and no ground have been shown for holding that while the rest of the agreement became operative at once these provisions remain inoperative. The elements of the settlement are not severable, and the parties must either be bound by the agreement as a whole or not bound by it at all, and for the reasons which I have tried to state I am of the opinion that they are bound by the agreement as a whole.

40 A number of authorities were cited to us by Mr. Impey in support of the first three heads of his argument, but they are only material if his submission that accord and satisfaction was not properly pleaded is accepted and as I do not regard the submission as well-founded I need not mention them. I would, however, refer again to the case of Morris v. Baron, not so much for what was actually decided in the House of Lords as for the approach of their Lordships to the legal issues involved, which has a distinct bearing on Mr. Impey's submissions

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as to the issues open on the pleadings in this case. The actual decision, as summarised in the headnote was that "A contract for the sale of goods of more than £10 in value, evidenced in writing as required by s.4 of the Sale of Goods Act, 1893, may be impliedly rescinded by a parol contract for the sale of goods, though unenforceable by reason of its non-compliance with the statute, where there is a clear intention to rescind as distinguished from an intention to vary". In the first place, although in coming to this decision a number of their Lordships referred to the doctrine of accord and satisfaction, it does not appear that it was invoked in the pleadings and it is not mentioned in the summary of the submissions of counsel. Secondly, I observe that Viscount Haldane, at p. 17 refers to the second (and unenforceable) agreement between the same two parties as "the novation attempted to be effected by the final parol contract", which reinforces the statement made by Lord Selbourne, L.C. in Scarf v. Jardine (1882) 7 App. Cas. 351, that a fresh contract between the same parties may in some circumstances be a novation. Finally, it is clear that the rescission or abrogation of the original contract took place after breach of it by one party if not both. This confirms my view that in the present case the Statement of Defence sufficiently raised the issues on which this matter turns.

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In case his main submission failed, Mr. Impey submitted in the alternative, though he naturally did not lay much stress on the submission, that even if the agreement precluded the Bank from suing for a mortgage debt of £292,790 plus interest and bank charges it remained open to the Bank to sue for a mortgage debt of £50,000 and that the Bank was entitled to judgment for that sum. It is the rights of the parties on the 12th July, 1962, that have to be considered and the claim seems to have been premature. In Article 6 of the agreement the parties recognise that the realisation of the assets referred to in article 2(a), (b) and (c) is likely to take not less than a year from the 26th October, 1961, and the agreement therefore provides that the first instalment payable on the mortgage should not fall due until the 1st November, 1962. Since any sum

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recovered out of these assets in excess of £200,000 is to be regarded as payment on account of the mortgages (a half on each) the amount of the instalment due on the 1st November, 1962, could not have been calculated before that date. It follows from these facts that on the 12th July, 1962, no payment was due under the mortgage and that it was not open to the Bank to sue to recover either £50,000 or any other sum by virtue of the mortgage. A judgment for a sum of money was the only relief claimed, and for the reasons I have given I think it must fail.

10

On these grounds I would dismiss the action with costs to be taxed. Since the Chief Registrar, as Admiralty Marshal, has been concerned in the matter I would remit the costs for taxation to a single Judge sitting in chambers. The "Spetsai Patriot" should be released at once from arrest.

20

(Sgd) L. Brett
FEDERAL JUSTICE

I Concur (Sgd) A. Ade. Ademola
CHIEF JUSTICE OF THE FEDERATION

I concur (Sgd) John Taylor
FEDERAL JUSTICE

I concur (Sgd) Vahe Bairamian
FEDERAL JUSTICE

Mr. G.L. Impey (Messrs. H.G.O. Coker and Soyinka with him) for Plaintiffs.

30

Mr. J.A. Cole (Messrs. Oluwola and Famakinwa with him) for Defendants.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 33

Judgment, 7th
November 1962
(Continued)

No. 34

No. 34

ORDER

Order, 7th
November 1962

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

Suit No.FSC.219/1962

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 34

Order, 7th
November 1962
(Continued)

Between:

Banque Genevoise
De commerce et de CreditPlaintiffs

and

Compania De Isola
Spetsai LimitadaDefendants

(Sgd) A. Ade. Ademola
CHIEF JUSTICE OF THE
FEDERATION.

Wednesday the 7th day of November, 1962. 10

UPON READING the Statements of Claims
and Defence herein and after hearing
Mr. G.L. Impey (Messrs. H.T.O. Coker and
Soyinka with him) of counsel for the
Plaintiffs and Mr. J.A. Cole (Messrs.
Oluwole and Famakinwa with him) of
counsel for the Defendants:

IT IS ORDERED that this action be
dismissed with costs to be taxed by a
single Judge sitting in Chambers. 20

IT IS FURTHER ORDERED that "Spetsai
Patriot" be released at once from arrest.

(Sgd) O.R.I. George
AG. CHIEF REGISTRAR.

No. 35

Order for Costs
20th November 1962

No. 35

Order for Costs

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

BEFORE MR. JUSTICE VAHE BAIRAMIAN,
FEDERAL JUSTICE SITTING IN CHAMBERS. 30

F.S.C. 219/1962

Between:

Banque Genevoise de Commerce
et de CreditPlaintiffs

and

Compania De Isola Spetsai
Limitada (The owners of the
ship "Spetsai Patriot").Defendants

Tuesday the 20th day of November, 1962.

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 35

Order for Costs
20th November
1962 (Continued)

10 In pursuance of the Order in this matter bearing date the 7th day of November, 1962, I have been attended by Mr. J.A. Cole, with him Mr. E.A. Thomas for the Defendants, Mr. G.L. Impey (with him Miss R.A. Taylor) for the Plaintiffs, Chief O. Moore, Q.C. (with him Mr. Kehinde) for Nigerian Ports Authority, Mr. V.A. Kushimo for Scandinavian Shipping Agency and Mr. O.R.I. George, Acting Admiralty Marshal appearing in person:

I HEREBY CERTIFY that an Order is made as follows:-

- 20
1. Defendants are allowed £3,906 to collect from Plaintiffs as net costs;
 2. The Items in D "Other Expenses" are disallowed as not properly claimable as costs in taxation of costs;
 3. The costs allowed are the total costs claimable by the Defendants against the Plaintiffs, and there is to be no other Bill of Costs against them.

GIVEN under my hand and the Seal of the Court.

30 (L.S.) (Sgd) Vahe Bairamian
FEDERAL JUSTICE.

No. 36

Order granting Conditional leave to
Appeal to the Privy Council

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

No. 36

Order granting
Conditional leave
to Appeal to the
Privy Council

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 36

Application for an order for
conditional leave to appeal
to Privy Council and for stay
of execution.

Order granting
Conditional
leave to Appeal
to the Privy
Council, 28th
January 1963
(Continued)

Between:

Banque Genevoise de Commerece
et de Credit ...Plaintiffs/
Appellants

and

10

Cia. Mar. di Isola Spetsai
(The Owners of the Steamship
or vessel Spetsai Patriot). ... Defendants/
Respondents.

(Sgd) A. Ade. Ademola
CHIEF JUSTICE OF THE
FEDERATION.

Monday the 28th day of January, 1963.

UPON READING the Application herein
and the affidavit sworn to on the 3rd day of
January, 1963, filed on behalf of the Appellants
and after hearing Mr.G.L. Impey of counsel for
the Appellants and Mr. J.A. Cole of counsel for
the Respondents:

20

IT IS ORDERED that the Appellants be at
liberty to appeal to Her Majesty in Council
from the judgment of this Court dated 7th day
of November, 1962, upon fulfilment within 3
months from the date hereof of the following
conditions, namely:

30

1. That the Appellants do enter into
good and sufficient security to the
satisfaction of the Court in the sum
of £500 for the due prosecution of
the appeal and the payment of all such
costs as may become payable to the
Respondents in the event of the Appell-
ants not obtaining an order granting
them final leave to appeal, or of the
appeal being dismissed for non- prose-
cution, or of Her Majesty in Council

40

ordering the Appellants to pay the Respondents' costs of the appeal (as the case may be);

In the Federal
Supreme Court
Admiralty
Jurisdiction

- 2. That the Appellants do deposit in Court the sum of £50 for the preparation of the Record of Appeal and do take all necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England:

No. 36

Order granting
Conditional
leave to Appeal
to the Privy
Council, 28th
January 1963
(Continued)

10

AND THAT the costs of this application, to be taxed, shall abide the result of the appeal to Her Majesty in Council.

IT IS FURTHER ORDERED that execution be stayed as regards the judgment costs provided the Appellants pay into Court within 50 days of this Order such balance of costs namely (£3,906. 0. 0.) as is due to the Respondents and that the Respondents be entitled to costs fixed at 5 guineas.

20

(Sgd) D.A. Nwoche
for CHIEF REGISTRAR.

No. 37

Order granting final leave to
Appeal to the Privy Council.

No. 37

Order granting
final leave to
Appeal to the
Privy Council
9th August 1963

IN THE FEDERAL SUPREME COURT OF NIGERIA
HOLDEN AT LAGOS

F.S.C.219/1962

30

Application for an order
for Final Leave to appeal
to the Privy Council.

Between:

(L.S.) Banque Genevoise de Commerce
et de Credit

... Plaintiffs/
Appellants

and

In the Federal
Supreme Court
Admiralty
Jurisdiction

No. 37

Order granting
final leave to
Appeal to the
Privy Council
9th August 1963
(Continued)

Compagna Isola Spetsai ... Defendants/
Limitada (Owners of the Respondents.
"Spetsai Patriot")

(Sgd) L. Brett
AG. CHIEF
JUSTICE OF THE
FEDERATION

Friday the 9th day of August, 1963

UPON READING the Application herein,
the affidavit sworn to on the 20th day of 10
June, 1963, and the further affidavit sworn
to on the 8th day of August, 1963, both
filed on behalf of the Applicants and after
hearing Mr. G.L. Impey (Miss Rose Taylor
with him) of counsel for the Applicants and
Mr. J.A. Cole of Counsel for the Respondents:

IT IS ORDERED that final leave to appeal
to the Privy Council be granted.

(Sgd) M.A. Macauley
CHIEF REGISTRAR. 20

EXHIBITS

Exhibit "4"

"4"
Liberian Deed
of Mortgage in
English 22nd
July, 1958

Liberian Deed of Mortgage in English

THIS FIRST PREFERRED M O R T G A G E made the
twenty second day of July One thousand nine hundred
and fifty eight by COMPANIA MARITTIMA DI ISOLA
SPETSAI LIMITADA a corporation organised and exis-
ting under the Laws of the Republic of Costa Rica
(herein called "the Shipowner") to BANQUE
GENEVOISE DE COMMERCE ET DE CREDIT a company 30
incorporated under the Laws of Switzerland with
its principal offices at Geneva Switzerland
(herein called "the Mortgagee")

W H E R E A S :-

(1) The Shipowner is the sole owner of the Steam
ship "SPETSAI PATRIOT" (hereinafter sometimes called
"the Vessel") The Vessel is duly documented in the
name of the Shipowner under and pursuant to the
Laws of the Republic of Liberia at the Port of

Monrovia its Official Number is 997 its gross tonnage is 4698 tons its net tonnage is 2844 tons Length 416.11 feet Width 54.6 Feet with a Depth of 23.8³/₄ feet International Code Signal "5LIS"

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

10 (2) The Shipowner is justly indebted to the Mortgagee in the principal sum of Two hundred and ninety two thousand seven hundred and ninety pounds (£292,790) Transferable Sterling payable as hereinafter set forth together with interest at the rate of Six and one half per centum per annum and a banking charge at the rate of One per centum per annum payable on the Fifteenth day of August the Fifteenth day of November the Fifteenth day of February and the Fifteenth day of May in each year which said sum was intended to be secured by a Mortgage on the said vessel and her insurance policies and as hereinafter appears

20 (3) The Shipowner shall pay or cause to be paid to the Mortgagee its successors and assigns the Mortgage debt above mentioned by the following instalments:-

	<u>DATE OF PAYMENT</u>	<u>PRINCIPAL</u>
	15th August 1958	£40,000
	15th November 1958	£60,000
	15th February 1959	£60,000
	15th May 1959	£60,000
	15th August 1959	£60,000
30	15th November 1959	£12,790

40 (4) THE Shipowner shall pay or cause to be paid to the Mortgagees its successors and assigns interest on the total unpaid balance of the Mortgage debt above mentioned at the rate of Six and one half per centum per annum and a banking charge in the total unpaid balance of the Mortgage Debt above mentioned at the rate of One per centum per annum on the Fifteenth day of August the Fifteenth day of November the Fifteenth day of February and the Fifteenth day of May in each year the first of such payments to be made on the Fifteenth day of August One thousand nine hundred and fifty eight

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

(5) THE Shipowner in order to secure the payment of the said indebtedness by the instalments as aforesaid and interest and banking charge thereon as aforesaid and the performance and observance of and compliance with all of the covenants terms and conditions in this Mortgage contained has duly authorised the execution and delivery of the First Preferred Mortgage under and pursuant to the Laws and regulations of the Republic of Liberia.

N O W T H E R E F O R E T H I S M O R T G A G E
W I T N E S S E T H that in CONSIDERATION of the 10
premises and of the sum loaned and advanced as
above recited the receipt whereof is hereby
acknowledged and in order to secure the payment of
the principal sum of TWO HUNDRED AND NINETY TWO
THOUSAND SEVEN HUNDRED AND NINETY POUNDS
transferable sterling TOGETHER with interest
thereon at the rate of Six and one half per centum
(6½%) per annum and a banking charge at the rate
of one per centum per annum and the payment of all 20
such other sums as may hereafter become secured by
this Mortgage in accordance with the terms hereof
and to secure the performance and observance of
and compliance with the covenants terms and
conditions herein the Shipowner has granted
conveyed mortgaged pledged set over and confirmed
and does by these presents grant convey mortgage
pledge set over and confirm unto the Mortgagee its
successors and assigns the whole of the said Steam
Ship "SPETSAI PATRIOT" TOGETHER with all of the
boilers engines machinery masts spars sails rigging 30
boats anchors chains tackle apparel furniture
fittings and equipment and all other appurtenances
to the vessel appertaining or belonging whether now
owned or hereafter acquired whether on board or not
and all additions improvements and replacements
hereafter made in or to the Vessel TO HAVE AND TO
HOLD the same unto the Mortgagee its successors
and assigns forever upon the terms herein set forth
for the enforcement of the payment of the 40
principal sum interest and banking charge and to
secure the performance and observance of such
compliance with the covenants terms and conditions
in this Mortgage contained PROVIDED ONLY and the
condition of these presents is such that on payment
by the Shipowner of the said principal sum
interest and banking charge in the manner provided
herein and of all other such sums as may hereafter
become secured by this Mortgage in accordance with

the terms hereof then these presents and the rights hereunder shall cease determine and be void otherwise to be and remain in full force and effect _____

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

10 THE SHIPOWNER HEREBY COVENANTS AND AGREES
to pay to the Mortgagee at Geneva Switzerland the said sum of Two hundred and ninety two thousand seven hundred and ninety pounds (£292,790) transferable sterling together with interest and banking charge thereon as herein provided and at all times to keep perform and observe all and singular the covenants conditions and agreements in this Mortgage expressed or implied on its part to be kept performed and observed and to pay all sums that may hereafter become due hereunder_____

20 THE SHIPOWNER AGREES that upon default in the payment of any one of the instalments of principal interest and banking charge the remaining instalments of principal shall immediately become due and payable without notice together with interest and banking charge thereon at the rates aforesaid _____

30 THE SHIPOWNER may at its option prepay without penalty the whole or part of the said indebtedness of Two hundred and ninety two thousand seven hundred and ninety pounds (£292,790) transferable sterling at any time provided that such prepayment shall be accompanied by accrued interest and banking charge at the rates aforesaid to the date of prepayment _____

THE SHIPOWNER for itself and its successors and assigns HEREBY COVENANTS AND AGREES with the Mortgagee its successors and assigns that the vessel and all the appurtenances thereto appertaining or belonging and all improvements and replacements hereafter made in or to the Vessel or any part thereof are to be held by the Mortgagee subject to the further covenants conditions provisions terms and uses hereinafter set forth

40

ARTICLE I

Covenants of the Shipowner

THE SHIPOWNER COVENANTS AND AGREES with the

EXHIBITS

Mortgagee as follows :-

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

SECTION 1. THE SHIPOWNER will pay to the Mortgagee its successors and assigns the said sum of Two hundred and ninety two thousand seven hundred and ninety pounds (£292,790) transferable sterling on the dates and in the manner herein provided and will pay interest and banking charge thereon on the dates and in the manner herein further provided and at all times will comply with the covenants and conditions herein expressed or implied on its part to be observed performed or complied with and for so long as any moneys remain due and owing to the Mortgagee _____ 10

SECTION 2. THE SHIPOWNER was duly organized and is now existing as a corporation under the Laws of Costa Rica it is duly authorised to mortgage the Vessel all corporate action necessary and required by law for the execution and delivery of this Mortgage and the good faith affidavit filed herewith has been duly and effectively taken _____ 20

SECTION 3. THE SHIPOWNER lawfully owns and is lawfully possessed of the Vessel free from any lien or encumbrance whatsoever prior to the lien of this Mortgage and will warrant and defend the title and possession thereto and to every part thereof for the benefit of the Mortgagee against the claims and demands of all persons whomsoever _____

SECTION 4. THE SHIPOWNER will at its expense and at no cost to the Mortgagee comply with and satisfy all of the provisions of the Liberian Maritime Code as amended in order to establish and maintain this Mortgage as a First Preferred Mortgage thereunder upon the Vessel and upon all renewals replacements and improvements made in or to the same _____ 30

SECTION 5. THE SHIPOWNER will not cause or permit the Vessel to be operated in any manner contrary to law and the Shipowner will not engage in any unlawful trade or violate any law or carry any cargo that will expose the Vessel to penalty forfeiture or capture and will not do or suffer or permit to be done anything which can or may injuriously affect the registration or enrolment of the Vessel under the laws and regulations of _____ 40

Liberia and will at all times keep the Vessel
duly documented thereunder _____

EXHIBITS

"4"

Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

SECTION 6. THE SHIPOWNER will pay and dis-
charge when due and payable from time to time all
taxes assessments governmental charges fines and
penalties lawfully imposed on the Vessel or any
income therefrom _____

10 SECTION 7. NEITHER THE SHIPOWNER any
charterer the Master of the Vessel nor any other
person has or shall have any right power or
authority to create incur or permit to be placed
or imposed or continued upon the Vessel any lien
whatsoever other than for crew's wages and salvage

20 SECTION 8. THE SHIPOWNER will place and at
all times and places will retain a properly
certified copy of this Mortgage and of any assign-
ment of this Mortgage (if requested by any assignee)
on board the Vessel with her papers and will cause
each such certified copy and such papers to be
20 exhibited to any and all persons having business
therewith which might give rise to any lien there-
on other than liens for crew's wages and salvage and
to any representative of the Mortgagee and will
place and keep prominently displayed in the chart
room and in the Master's cabin of the Vessel a
framed printed notice in plain type reading as
follows:-

NOTICE OF MORTGAGE

30 "This Vessel is covered by a First Preferred
Mortgage to Banque Genevoise de Commerce et de
Credit under the authority of Chapter 3 of
title 22 of the Liberian Code of Laws of 1956
as amended Under the terms of the said
Mortgage neither the Owner any charterer the
Master of the Vessel nor any other person has
any right power or authority to create incur
or permit to be imposed upon this Vessel any
lien whatsoever other than for crew's wages
and salvage".

40 SECTION 9. EXCEPT for the lien of this Mort-
gage the Shipowner will not suffer to be continued
any lien encumbrance or charge on the Vessel and in
due course and in any event within Thirty (30)

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

days after the same becomes due and payable will pay or cause to be discharged or make adequate provision for the satisfaction or discharge of all claims or demands or will cause the vessel to be released or discharged from any lien encumbrance or charge therefor _____

SECTION 10. IF a libel be filed against the Vessel or the Vessel be otherwise attached levied upon or taken into custody by virtue of any legal proceeding in any court the Shipowner will promptly notify the Mortgagee thereof by telegraph confirmed by letter at its office in Geneva Switzerland and within Fifteen (15) days will cause such Vessel to be released and all liens thereon to be discharged and will promptly notify the Mortgagee thereof in the manner aforesaid _____ 10

SECTION 11. THE SHIPOWNER will at the times and without cost or expense to the Mortgagee maintain and preserve or cause to be maintained and preserved the Vessel in good running order and repair so that the Vessel shall be in so far as due diligence can make her so tight staunch strong and well and sufficiently tackled apparelled furnished equipped and in every respect seaworthy and in good operating condition and will keep the Vessel or cause her to be kept in such condition as will entitle her to the highest classification and rating for vessels of the same age and type in Lloyd's Register of Shipping or other classification society of like standing and annually will furnish to the Mortgagee a certificate by such Bureau or classification society that such classification is maintained The vessel shall AND THE SHIPOWNER COVENANTS that she will at all times comply with all applicable Liberian Laws treaties and conventions and rules and regulations issued thereunder and shall have on board as and when required thereby valid certificates showing compliance therewith The Shipowner will not make or permit to be made any substantial change in the structure type or speed of the Vessel or change in her rig without first receiving the written approval thereof by the Mortgagee _____ 20 30 40

SECTION 12. THE SHIPOWNER will at all reasonable times afford the Mortgagee or its authorized representatives full and complete

access to the Vessel for the purpose of inspecting the Vessel and her cargo and papers and at the request of the Mortgagee the Shipowner will deliver for inspection copies of any and all contracts and documents relating to the Vessel whether on board or not. If default shall be made in keeping the Vessel in the order and state of repair referred to in Section 11 hereof for the purpose of effecting such repairs as shall in the opinion of the Mortgagee be necessary the Shipowner shall give complete access to the Vessel as aforesaid.

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

10

SECTION 13. THE SHIPOWNER will not transfer or change the flag or port of documentation of the Vessel without the written consent of the Mortgagee first had and obtained and any such written consent to any one transfer or change of flag or port of documentation shall not be construed to be a waiver of this provision with respect to any subsequent proposed transfer or change of flag or port of documentation.

20

SECTION 14. THE SHIPOWNER will not sell mortgage hypothecate pledge demise or transfer the Vessel nor time charter for a period exceeding Six (6) months without the written consent of the Mortgagee first had and obtained and any such written consent to any one sale mortgage hypothecate pledge demise charter or transfer shall not be construed to be a waiver of this provision with respect to any subsequent proposed sale mortgage hypothecate pledge demise charter or transfer. Any such sale mortgage hypothecate pledge demise charter or transfer of the Vessel shall be subject to the provisions of this Mortgage and the lien it creates.

30

SECTION 15. THE SHIPOWNER will fully perform any and all charter parties which are or may be entered into with respect to the Vessel.

40

SECTION 16. THE SHIPOWNER AGREES that in the event of requisition of the Vessel by any governmental authority any and all moneys which said governmental authority shall pay compensation for the Vessel or for her use shall be paid to the Mortgagee to be applied as provided in Section 31 hereof and to that end the Shipowner agrees to execute and deliver all other further instruments

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

requested by the Mortgagee provided that if such requisition applies only to the use of such vessel the provisions of this Section 16 shall not apply if and so long as the Shipowner shall not be in default in respect of any obligation under this Mortgage

SECTION 17. THE SHIPOWNER will reimburse the Mortgagee promptly with interest at the rate of Six and one half per centum (6½%) per annum for any and all expenditures which the Mortgagee may from time to time make lay out or expend in providing such protection in respect to insurance discharge of liens taxes dues assessments governmental charges fines and penalties lawfully imposed repairs attorneys' fees and other matters as the Shipowner is obligated herein to provide but fails to provide Such obligations of the Shipowner to reimburse the Mortgagee shall be an additional indebtedness due from the Shipowner secured by this Mortgage and shall be payable by the Shipowner on demand The Mortgagee though privileged so to do shall be under no obligation to the Shipowner to make any such expenditures nor shall the making thereof relieve the Shipowner of any default in that respect

ARTICLE II

Insurance of the Vessel

SECTION 18. THE SHIPOWNER at its own expense when and so long as this Mortgage shall be outstanding shall insure the Vessel and keep the same insured in British Sterling for the full insurable value of the Vessel

Unless otherwise agreed to by the Mortgagee such insurance shall be taken out pursuant to the following terms and conditions

(A) The insurance shall be placed with responsible underwriters satisfactory to the Mortgagee

(B) While being operated the Vessel shall always be covered against marine perils and risks of war covered by Hull and machinery policies

(C) When and while the Vessel is laid up in lieu of the aforesaid hull insurance port risk insurance may be taken out thereon by the Shipowner under forms or port risk policies

approved by the Mortgagee

EXHIBITS

(D) When and so long as this Mortgage shall be outstanding the Shipowner will also at its own expense have the vessel fully entered in a Protection and Indemnity Association or Club in good standing in both protection and indemnity classes or keep the Vessel insured against protection and indemnity risks and liabilities by policies or certificates. The entry in such association or club or the protection and indemnity insurance shall be always maintained for an adequate and sufficient amount according to the usual practice

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

10

(E) All insurance policies required hereunder shall be taken out in the names of the Shipowner and the Mortgagee and shall provide that all losses are payable to the Mortgagee

20

(F) The insurance proceeds payable in respect of all losses except total or constructive total loss or an arranged or compromised total loss under the Hull and Machinery Policies for marine perils and risks of war shall be released by the Mortgagee to the Shipowner unless and until the Shipowner shall be in default under this Mortgage

30

(G) In the event that insurance moneys shall become due under any protection and indemnity insurance if the Shipowner is not then in default hereunder payment of such losses under each insurance shall be made direct to the Shipowner to reimburse it for any loss damage or expense suffered or incurred by it and covered by such insurance. While the Shipowner is in default under this Mortgage the Mortgagee shall be entitled to receive such insurance moneys and shall apply the proceeds thereof as provided in Section 31 hereof or at the option of the Mortgagee to the discharge of the liability covered by such insurance moneys

40

(H) Certified copies of all policies and cover notes shall be delivered to and held by the Mortgagee and the Shipowner shall furnish the Mortgagee with the original of the policies when and if requested by the Mortgagee

50

(I) The Shipowner shall furnish the Mortgagee from time to time on request and in any event at least annually with information as to the insurance maintained on the Vessel and the names of the companies underwriters association or clubs with whom such insurance is carried. The Shipowner shall promptly furnish the Mortgagee with full information regarding any casualties or other accidents or

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd July
1958 (Continued)

damage to the Vessel involving an amount in excess of Ten thousand pounds (£10,000) Sterling

(J) The Shipowner agrees that it will not do any act or voluntarily suffer nor permit any act to be done whereby any insurance shall or may be suspended or defeated and will not suffer nor permit the Vessel to engage in any voyage nor to carry any cargo not permitted under the policies of insurance in effect without first covering the Vessel to the amount herein provided for with insurance satisfactory to the Mortgagee for such voyage or the carriage of such cargo _____ 10

SECTION 19. IN THE EVENT OF THE SHIPOWNER failing to effect and keep on foot insurance in accordance with Section 18 hereof it shall be lawful for but not obligatory on the Mortgagee to effect and keep on foot insurance or insurances and entries in a Protection and Indemnity Association or Club to any amount and of any description and if it deem expedient the war risks upon the vessel _____ 20

SECTION 20. IN THE EVENT OF a total or constructive total loss or an arranged or compromised total loss of the Vessel the Mortgagee shall first apply the insurance proceeds received on account of such loss to the payment of the costs of collecting such proceeds and retain out of the balance of the proceeds the sum or sums that shall be or become due to the Mortgagee under this Mortgage And such other sums as shall become secured under this Mortgage whether or not the same be then due and payable together with accrued interest thereon and pay the balance if any to the order of the Shipowner _____ 30

ARTICLE III

Events of Default and Remedies

SECTION 21. IN case any one or more of the following events herein termed "events of default" shall happen:

(A) A default by the Shipowner in the payment at the times and in the manner aforesaid of the principal sum and in payment of interest and banking charge thereon as herein provided and continuation of such default for Seven (7) days or _____ 40

(B) Default in the due and punctual observance and performance of any provision of Sections 4 5 8 9 10 11 12 13 14 or 18 hereof or

(C) Default in the due observance or performance of any of the other covenants and conditions herein required to be kept and performed by the Shipowner and continuance of such default for Twenty (20) days or

10 (D) The Shipowner shall (a) apply for or consent to the appointment of a receiver or trustee of the Vessel or a receiver trustee or liquidator of the Shipowner or of all or a substantial part of the assets of the Shipowner (b) be unable or admit in writing its inability to pay its debts as they mature (c) make a general assignment for the benefit of creditors (d) be adjudicated a bankrupt or insolvent or (e) file a voluntary petition in bankruptcy or a petition
20 or an answer seeking reorganisation or an arrangement with creditors or take advantage of any insolvency law or an answer admitting the material allegations of a petition filed against the shipowner in any bankruptcy reorganisation or insolvency proceeding or corporate action shall be taken by the Shipowner for the purpose of effecting any of the foregoing or

(E) An order judgment or decree shall be entered without the application approval or consent of the Shipowner by any court of competent
30 jurisdiction approving a petition seeking reorganisation of the Shipowner or appointing a receiver or trustee of the Vessel or a receiver trustee or liquidator of the Shipowner or of all or a substantial part of the assets of the Shipowner and such order judgment or decree shall continue unstayed and in effect for any period of Thirty (30) consecutive days

40 Then and in each and every such case the Mortgagee shall have the right to:-

(1) Declare due and payable immediately all
50 of the said sum of Two hundred and ninety two thousand seven hundred and ninety pounds (£292,790) transferable sterling and accrued interest and banking charge thereon or so much thereof as shall then remain outstanding and upon such declaration the same with interest and banking charge to date of declaration shall become and be immediately due and payable and thereafter shall bear interest at the rate of Six and one half per centum (6½%) per annum and a banking charge at the rate of one per centum per annum from and including the date of

EXHIBITS

"4"

Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

declaration to the date of full payment

(2) Exercise all of the rights and remedies in foreclosure and otherwise given to mortgagee by the provisions of law

(3) Bring suit at law in equity or in admiralty as it may be advised to recover judgment for any and all amounts due or otherwise hereunder and collect the same out of any and all property of the Shipowner whether covered by this Mortgage or otherwise

10

(4) Take and enter into possession of the Vessel at any time wherever the same may be without legal process and without being responsible for loss or damage and the Shipowner or other person in possession forthwith upon demand of the Mortgagee shall surrender to the Mortgagee possession of such Vessel and the Mortgagee may without being responsible for loss or damage hold lay up lease charter operate or otherwise use such Vessel for such time and upon such terms as it may deem to be for its best advantage and demand collect and retain all hire freights earnings issues revenues income profits return premiums salvage awards or recoveries in general average and all other sums due or to become due in respect of such Vessel or in respect of any insurance thereon from any person whomsoever accounting only for the net profits if any arising from such use of such Vessel and charging upon all receipts from the use of such Vessel or from the sale thereof by court proceedings or pursuant to Sub-section (5) next following all costs expenses charges damages or losses by reason of such use and if at any time the Mortgagee shall avail itself of the right herein given it to take the Vessel the Mortgagee shall have the right to dock such Vessel for a reasonable time at any dock pier or other premises of the Shipowner without charge or to dock her at any other place at the cost and expense of the Shipowner

20

30

40

(5) Take and enter into possession of the Vessel at any time wherever the same may be without legal process and if it seems desirable to the Mortgagee and without being responsible for loss or damage sell such Vessel at any place and at such time as the Mortgagee may specify and in such manner as the Mortgagee may deem advisable free from any claim by the Shipowner in admiralty in equity at law or by statute after first giving notice of the time and place of sale with a

50

general description of the property in the following manner:-

EXHIBITS

(i) By publishing such notice for ten (10) consecutive days in a daily newspaper of general circulation published in Geneva Switzerland

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

(ii) If the place of sale should not be Geneva Switzerland also by publication of a similar notice in a daily newspaper if any published at the place of sale and

10 (iii) By mailing a similar notice to the Shipowner on the day of first publication

SECTION 22. ANY sale of the Vessel made in pursuance of this Mortgage whether under the power of sale hereby granted or any judicial proceedings shall operate to divest all right title and interest of all nature whatsoever of the Shipowner therein and thereto and shall bar the Shipowner its successors and assigns and all persons claiming by through or under them. No purchaser shall be bound to inquire whether notice has been given or whether any default has occurred or as to the propriety of the sale or as to the application of the proceeds thereof

20

SECTION 23. THE MORTGAGEE IS HEREBY APPOINTED Attorney-in-fact of the Shipowner to execute and deliver to any purchaser aforesaid and is hereby vested with full power and authority to make in the name and on behalf of the Shipowner a good conveyance of the title to the Vessel so sold In the event of any sale of the Vessel under any power herein contained the Shipowner will if and when required by the Mortgagee execute such form of conveyance of the Vessel as the Mortgagee may direct or approve

30

SECTION 24. THE MORTGAGEE IS HEREBY APPOINTED Attorney-in-fact of the Shipowner upon the happening of any event of default in the name of the Shipowner to demand collect receive compromise and sue for so far as may be permitted by law all freight hire earnings issues revenues income and profits of the Vessel and all amounts due from underwriters under any insurance thereon as payment of losses or as return premiums or otherwise salvage awards and recoveries in general average or otherwise and all other sums due or to become due at the time of the happening of any event of default in respect of the Vessel or in respect of any insurance thereon from any person whomsoever and to make give and execute in the name of the

40

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

Shipowner acquittances receipts releases or other discharges for the same whether under seal or otherwise and to endorse and accept in the name of the Shipowner all checks notes drafts warrants agreements and other instruments in writing with respect to the foregoing _____

SECTION 25. WHENEVER any right to enter and take possession of the Vessel accrues to the Mortgagee it may require the Shipowner to deliver and the Shipowner shall on demand at its own cost and expense deliver to the Mortgagee the Vessel as demanded. If any legal proceedings shall be taken to enforce any right under this Mortgage the Mortgagee shall be entitled as a matter of right to the appointment of a receiver of the Vessel and of the freights hire earnings issues revenues income and profits due or to become due and arising from the operation thereof _____ 10

SECTION 26. THE SHIPOWNER AUTHORISES AND EMPOWERS the Mortgagee or its appointees or any of them to appear in the name of the Shipowner its successors and assigns in any court of any country or nation of the world where a suit is pending against the vessel because of or on account of any alleged lien against the Vessel from which the Vessel has not been released and to take such proceedings as to them or any of them may seek proper towards the defence of such suit and the purchase or discharge of such lien and all expenditures made or incurred by them or any of them for the purpose of such defence or purchase or discharge shall be a debt due from the Shipowner its successors and assigns to the Mortgagee and shall be secured by the lien of this Mortgage in like manner and extent as if the amount and description thereof were written herein _____ 20 30

SECTION 27. THE SHIPOWNER COVENANTS that upon the happening of any of the events of default then upon written demand of the Mortgagee the Shipowner will pay to the Mortgagee the whole amount due and payable for principal interest and banking charge and in case the Shipowner shall fail to pay the same forthwith upon such demand the Mortgagee shall be entitled to recover judgment for the whole amount so due and unpaid together with interest thereon at the rate of Six and one half per centum _____ 40

(6 $\frac{1}{2}$ %) per annum and a banking charge at the rate of one per centum per annum such further amounts as shall be sufficient to cover the reasonable compensation to the Mortgagee's agents attorneys and counsel and any necessary advances expenses and liabilities made or incurred by it hereunder. All moneys collected by the Mortgagee under this Section 27 shall be applied by the Mortgagee in accordance with the provisions of Section 31_____

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

10 SECTION 28. EACH and every power and
remedy herein given to the Mortgagee shall be
cumulative and shall be in addition to every
other power and remedy herein given or now or
hereafter existing at law in equity in admiralty
or by statute and each and every power and remedy
whether herein given or otherwise existing may be
exercised from time to time and as often and in
such order as may be deemed expedient by the
Mortgagee and the exercise or the beginning of the
20 exercise of any power or remedy shall not be
construed to be a waiver of the right to exercise
at the same time or thereafter any other power or
remedy No delay or omission by the Mortgagee in
the exercise of any right or power or in the
pursuance of any remedy accruing upon any default
as above defined shall impair any such right or
power or remedy or be construed to be a waiver of
any such event of default or to be an acquiescence
therein nor shall the acceptance by the Mortgagee
30 of any security or of any payment of or on account
after any event of default or of any payment on
account of any past default be construed to be a
waiver of any right to take advantage of any
future event of default or of any past event of
default not completely cured thereby_____

40 SECTION 29. IF at any time after an event
of default and prior to the actual sale of the
Vessel by the Mortgagee or prior to any foreclosure
proceedings the Shipowner offers completely to cure
all events of default and to pay all expenses
advances and damages to the Mortgagee consequent
on such events of default with interest at the
rate of Six and one half per centum (6 $\frac{1}{2}$ %) per
annum then the Mortgagee may accept such offer and
payment and restore the Shipowner to its former
position but such action shall not affect any
subsequent event of default or impair any rights
consequent thereon_____

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

SECTION 30. IN case the Mortgagee shall have proceeded to enforce any right power or remedy under this Mortgage by foreclosure entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee then and in every such case the Shipowner and the Mortgagee shall be restored to their former positions and rights hereunder with respect to the property subject or intended to be subject to this Mortgage and all rights remedies and powers of the Mortgagee shall continue as if no such proceedings had been taken 10

SECTION 31. THE proceeds of any sale of the Vessel and the net earning of any charter operation or other use of the vessel by the Mortgagee under any of the powers herein specified and any and all other moneys received by the Mortgagee pursuant to or under the terms of this Mortgage or in any proceedings hereunder the application of which has not elsewhere herein been specifically provided for shall be applied as follows: 20

FIRST: TO the payment of all expenses and charges including the expenses of any sale the expenses of any retaking attorney fees court costs and any other expenses or advances made or incurred by the Mortgagee in the protection of its rights or the pursuance of its remedies hereunder 30

SECOND: TO the payment of principal sum and interest and banking charge and all sums secured by this Mortgage whether due or not together with interest thereon 30

THIRD: TO the payment of any surplus thereafter remaining to the Shipowner or to whomsoever may be entitled thereto In the event that the proceeds are insufficient to pay the amount specified in above FIRST AND SECOND the Mortgagee shall be entitled to collect the balance from the Shipowner or any other person liable therefor 40

SECTION 32. UNTIL one or more of the events of default hereinabove described shall happen the Shipowner (a) shall be suffered and permitted to

retain actual possession and use of the Vessel and (b) shall have the right from time to time in its discretion and without application to the Mortgagee and without obtaining a release thereof by the Mortgagee to dispose of free from the lien hereof any boilers engines machinery masts spars sails rigging boats anchors chains tackle apparel furniture fittings or equipment or any other appurtenances of the Vessel that are no longer useful necessary profitable or advantageous in the operation of the Vessel first or simultaneously replacing the same by new boilers engines machinery masts spars sails rigging boats anchors chains tackle apparel furniture fittings equipment or other appurtenances of substantially equal value to the Shipowner which shall forthwith become subject to the lien of this Mortgage as a preferred mortgage thereon

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd July
1958 (Continued)

ARTICLE VI

Sundry Provisions

SECTION 33. FOR purpose of endorsement of this Preferred Mortgage on the document of the Vessel as required by Chapter 3 of Title 22 of the Liberian Code of Law of 1956 as amended the total amount is Two hundred and ninety two thousand seven hundred and ninety pounds (£292,790) transferable sterling and interest at Six and one half per centum ($6\frac{1}{2}\%$) per annum and a banking charge at one per centum per annum and performance of mortgage covenants Subject to the terms and conditions hereof the date of maturity is the Fifteenth day of November One thousand nine hundred and fifty nine and the discharge amount is the same as the total amount _____

SECTION 34. THE SHIPOWNER HEREBY COVENANTS AND AGREES that a service of process or notice made on or to the Shipowner at the following address under or in connection with this Mortgage shall be valid and sufficient for any and all such purposes:-

COMPANIA MARITIMA DI ISOLA SPETSAL LIMITADA
care of Maritime & Trading Cy. S.A.

40 Rue du Stand
Geneva
Switzerland

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

SECTION 35. ALL of the covenants promises stipulations and agreements of the Shipowner in this mortgage contained shall bind the Shipowner and its successors and assigns and shall enure to the benefit of the Mortgagee and its successors and assigns In the event of any assignment of this Mortgage the term "Mortgagee" as used in this Mortgage shall be deemed to mean any such assignee All moneys payable hereunder shall be paid to the Mortgagee in Geneva in transferable sterling and 10 this Mortgage shall not be satisfied or discharged until payment of all moneys due under this Mortgage has been made in Geneva in transferable sterling

SECTION 36. SHOULD taxes be at any time levied in Liberia or elsewhere other than Switzerland upon the principal moneys interest and banking charge due or to become due hereunder such taxes shall be borne and paid by the Shipowner or if under the provisions of the law imposing such 20 taxes this stipulation cannot be observed the rate of interest due to the Mortgagee shall be increased by such an amount as shall make good the amount paid by the Mortgagee or debited against it in respect of such taxes If by the provisions of such law such an arrangement cannot legally be made the Mortgagee may require immediate payment of all sums secured hereby

SECTION 37. WHEREVER and whenever herein any right power or authority is granted or given to the 30 Mortgagee such right power or authority may be exercised in all cases by the Mortgagee or such agent or agents as it may appoint and the act or acts of such agent or agents when taken shall constitute the act of the Mortgagee hereunder

SECTION 38. THIS MORTGAGE may be executed in any number of counterparts each of which shall be an original but such counterparts shall together constitute but one and the same instrument

IN W I T N E S S whereof the Shipowner has 40 executed this Mortgage the day and year first above written

COMPANIA MARITIMA DI ISOLA SPETSAL LIMITADA
BY: H.L. Constant
Attorney-in-Fact

(ACKNOWLEDGMENT)

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

On this Twenty-second day of July One
thousand nine hundred and fifty eight before me
came HARVEY LEON CONSTANT -
to me known who being by me duly sworn did depose
and say that he resides at 24, St. Mary Axe,
. London, E.C.3, E n g l a n d; that he is the
Attorney-in-Fact of Compania Maritima Di Isola
Spetsai Limitada the corporation described in and
10 which executed the foregoing mortgage that
pursuant to the powers and authorities conferred
on him by a Power of Attorney executed by the said
Corporation in his favour on the Sixteenth day of
J u l y One thousand nine hundred and fifty eight
(which said Power of Attorney has been unto me
produced) he was duly authorised to sign and
deliver the foregoing mortgage on behalf and as
the act and deed of such corporation and that he
signed his name thereto by like authority and that
20 he executed said mortgage as Attorney-in-Fact of
the said Compania Maritima Di Isola Spetsai
Limitada and that the same is the free and
voluntary act and deed of said Compania Maritima
Di Isola Spetsai Limitada and of himself as such
Attorney-in-Fact for the uses and purposes
therein expressed.

Notary Public,
London, England.

A F F I D A V I T

30 HARVEY LEON CONSTANT _____ being
duly sworn deposes and says that he is the Attorney
in-Fact of Compania Maritima Di Isola Spetsai
Limitada the sole owner of the Vessel "SPETSAI
PATRIOT" and that he is making this Affidavit in
compliance with the provisions of Chapter 3 of
Title 22 of the Liberian Code of Law of 1956 as
amended

40 THAT a First Preferred Mortgage dated the
Twenty-second day of J u l y One thousand nine
hundred and fifty eight was executed by the
Compania Maritima Di Isola Spetsai Limitada to
Banque Genevoise De Commerce Et De Credit in the
sum of Two hundred and ninety two thousand seven
hundred and ninety pounds (£292,790) transferable
sterling payable as therein stated and that said

EXHIBITS

"4"
Liberian Deed
of Mortgage in
English 22nd
July 1958
(Continued)

Mortgage was executed to secure to the said Mort-
gagee the said sum of money which was advanced by
the Mortgagee to the Mortgagor together with
interest and banking charge and that said mortgage
has been made in good faith and without any design
to hinder delay or defraud any existing or future
creditor of the Mortgagor or any lien or of the
mortgaged vessel

SWORN to before me this)
Twenty-second day of)
J u l y 1958) H.L. Constant 10

NOTARY PUBLIC,
LONDON, ENGLAND.

DATED 22nd July 1958

COMPANIA MARITIMA DI ISOLA
SPETSAI LIMITADA

- and -

BANQUE GENEVOISE DE COMMERCE
ET DE CREDIT

FIRST PREFERRED MORTGAGE

PORT OF NEW YORK 20

OFFICE OF DEPUTY COMMISSIONER OF
MARITIME AFFAIRS OF THE REPUBLIC
OF LIBERIA

August 4 1958

Received for Record 10 h 30 m a.m.E.D.S.T.

Recorded Book p.m. 10 Page 331

Albert J. Rudbeck
Deputy Commissioner of Maritime Affairs
of the Republic of Liberia

Exhibit "5"

Certificate as to Liberian Maritime Law

C E R T I F I C A T E

TO ALL WHOM THESE PRESENTS SHALL COME,
GREETINGS:

10 I, Charles Tyrell O'conour King II,
Ambassador Extraordinary and Plenipotentiary of
the Republic of Liberia in Lagos accredited to
the Government of the Federation of Nigeria, do
hereby certify that the annexed booklet entitled
15 THE LIBERIAN MARITIME LAW, dated 7th April 1960,
containing 28 pages, contains the Liberian Maritime
Law of the Republic of Liberia, (Title 22 of the
Liberian Code of Laws of 1956, effective 1 March,
1958, as Amended 7 April, 1960), and inscribed on
the inside cover of page 2 thereof the printed
Coat-of -Arms of the Republic of Liberia, and
which booklet has been published by the authority
of the Liberian Government; the same therefore
20 being the Maritime Laws of the Republic of Liberia
in full force and effect as aforesaid amended, in
the Republic of Liberia; to which due credence
should be given.

30 Given under my hand and the
Seal of the Embassy of the
Republic of Liberia, at its
Chancery situate on 20
Ikorodu Road, Yaba, Lagos
this 14th day of July in the
year of our Lord one thousand
nine hundred and Sixty-two (A.D.
1962) and of the Republic of
Liberia the one hundred and
fifteenth year.

Charles T.O. King
AMBASSADOR

EXHIBITS

"5"
Certificate as to
Liberian Maritime
Law 14th July
1962

The Booklet
referred to is
separately
reproduced

EXHIBITS

Exhibit "3"

"3"
List of
authorised
signatories
April 1961

List of authorised Signatories

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT

LISTE DES SIGNATURES
AUTORISEES

B G
C C
Avril 1961

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT

SIEGE : GENEVE
AGENCE : VESENAZ

10

Cette liste de signatures remplace toutes les
precedentes

La banque n'est engagee que par la signature
collective de deux ayants droit.

Les mandataires commerciaux ne signent pas
entre eux, mais conjointement avec une autre
personne autorisee Le mandat qui leur est confere
en vertu de l'art. 462 du C.O. s'etend aussi aux
engagements de change.

20

Les caissiers signent individuellement les
quittances de caisse.

Signatures valables pour le siege de Geneve

M. Jean HUMBERT
President Honoraire

M. Rene DORIA
President du Conseil
d'administration

M. Francois CRAMER
Vice-president du Conseil
d'administration

30

M. Rene De l'HARPE
Administrateur

M. Ercor ELMASSIAN
Administrateur

EXHIBITS

"3"
List of
authorised
signatories
April 1961
(Continued)

	M. Marcel DUBUIS Directeur	
	M. Pierre-Yvan KERN Directeur	
	M. Francis CORDELIER Directeur-adjoint	
	M. Paul BERTRAND Sous-Directeur	
10	M. Francis LADERMANN Sous-directeur	
	M. Marcel-A NAVILLE Sous-directeur	
	M. Edmond SANDOZ Sous Directeur	
	M. Frederic COUVREU Fonc de pouvoir	
	M. Kurt ERNE Fonde de pouvoir	p.p.
20	M. Jean GIREL Fonde de pouvoir	p.p.
	M. Frederic HUMBEL Fonde de pouvoir	p.p.
	M. Rene PERROCHON Fonde de pouvoir	p.p.
	M. Ernest SCHNYDER Fonde de pouvoir	p.p.
	Mlle Monique BARBIERI Mandataire commercial	p.a.
30	M. William DEFERNE Mandataire commercial	p.a.
	M. Rene GRIVET Mandataire commercial	p.a.
	M. Roger PUGIN Mandataire commercial	p.a.
	M. Charles TISSOT Mandataire commercial	p.a.
	M. Oscar VOGLER Mandataire commercial	p.a.

EXHIBITS

"3"
List of
authorised
signatories
April 1961
(Continued)

Signatures valables pour l'agence de Vesenz

Celles des personnes autorisees a signer
pour le siege de Geneve;
de plus, celles de:

M. Henri BOZONET
Gerant
Fonde de pouvoir p.p.
M. Armand ROSSIER
Mandatair commercial p.a.

Signatures valables pour l'agence de Versoix

10

Celles des personnes autorisees a signer
pour le siege de Geneve;
de plus, celles de:

Andre CHAMBORDON
Gerant
Fonde de pouvoir p.p.
Raymonde DOHME
Mandataire commercial p.a.

"6"
Mortgage Agree-
ment and Trans-
lation 26th
October 1961

Exhibit "6"

Mortgage Agreement and Translation

20

To all to whom these presents shall come, I
JAMES MALCOLM WAUGH of the City of London Notary
Public by Royal Authority duly admitted and sworn
Do hereby Certify that the document hereunto
annexed marked "A" contains a true and faithful
photographic copy of an Original Document executed
before me on the 26th October 1961, I the said
Notary having carefully collated and compared the
said photographic copy with the said Original and
thereupon found the same to correspond and agree
exactly therewith;

30

AND THAT the Document hereunto also annexed
marked "B" contains a true and faithful translation
from the French into the English language of the
said annexed Document marked "A"

In faith and testimony whereof I the said Notary
have subscribed my name and set and affixed my seal

of Office at London aforesaid this ninth day of
November One thousand Nine hundred and sixty one.

J. Malcolm Waugh
Not: Pub:

EXHIBITS

"6"
Mortgage
Agreement and
Translation
26th October
1962 (Continued)

Entre d'une part:

- 1) La Banque Genevoise de Commerce et de Credit.
2, rue Diday, a Geneve, ci-apres designee par
"BANQUE"
- 2) La SPETSAI ISLAND SHIPPING COMPANY LTD., of
Monrovia, Liberia, ci-apres designee par "SISCO"
- 3) La AMERICAN TRADING COMPANY S.A. of Panama,
Panama, ci-apres designee par "Mortgagee".

et d'autre part:

- 1) La Compania Maritime di Isola Spetsai
Limitada de Costarica, ci-apres designee par
"CMIS"
- 2) Constantin A. Petroutsis, de rue Scoufa,
Athenes, ci-apres designe par "PETROUTSIS"
il est convenue:

20 Preamble:

En 1957, la BANQUE avait ouvert differents
credits a la Compania Maritime Linea Adriatica-
Golfo Persico Ltda de San Jose, Costa-Rica, dont
l'actif et le passif furent repris en juillet
1958 par la CMIS.

L'actif de cette derniere Compagnie etait
constitue par sa flotte formee de 7 navires et la
BANQUE, ayant obtenu des garanties representees
par des hypothèques sur les 6 navires, des
cessions de frets et de toutes indemnites
d'assurance sur les navires hypothèques, consentit,
suivant acte du 22 juillet 1958, a diverses avances
de sorte que la dette de la CMIS envers elle
s'elevait en decembre 1958, suivant les comptes de
la Banque, a une somme d'environ \$ 1.00.000.

Le SPETSAI STAR ayant ete vendu au Japon, en
Octobre 1958, s.s. SPETSAI SAILOR ayant coule dans
la Mer Rouge en novembre 1958 et le s.s. SPETSAI
GLORY s'etant echoue sur les cotes de l'Ile de
Crete en fevrier 1959, la BANQUE encaissa deja le
prix de vente et l'indemnité d'assurance pour le
SPETSAI SAILOR; la BANQUE doit encore encaisser
l'indemnité d'Assurance sur coque pour le SPETSAI

EXHIBITS

"6"
Mortgage
Agreement and
Translation
26th October
1962 (Continued)

GLORY; Vu la crise du fret, la CMIS ne put effectuer les paiements prevus dans les accords avec la BANQUE et, en Juin 1959, fut conclu entre la BANQUE et la CMIS un contrat réglant l'étendue des obligations de la CMIS envers la BANQUE et les modalités de paiement de la dette qui prévoyait aussi de garanties supplémentaires à fournir, parmi lesquelles le transfert de la propriété de s.s, SPETSAI NAVIGATOR et SPETSAI ISLAND à une compagnie libérienne dont la Banque devenait propriétaire, soit la SISCO, aux conditions spéciales prévues dans le susdit contrat. 10

Les événements qui suivirent du fait de l'impossibilité de la CMIS de liquider son actif et des mesures prises par la BANQUE pour le recouvrement de la dette, ont donné lieu à des contestations dont quelques unes font déjà l'objet des litiges devant les juridictions de Genève, devant la Cour d'Appel de Bologne et devant le Tribunal de première Instance de Piree, tandis que d'autres procès devraient être introduits suivant l'intention des parties devant les juridictions compétentes. 20

En tout état, les parties contractantes, dans le but d'une liquidation définitive de tous les comptes et litiges entre elles, conviennent par la présents sur ce qui suit:

Transaction :

Article 1er Les parties renoncent à établir des comptes détaillés. La CMIS reconnaît devoir Lstg 30 trois cent mille (300.000) à la BANQUE pour solde de tout compte et de toute prétention entre la BANQUE et la SISCO d'une part et la CMIS et PETROUTSIS d'autre part. Il s'agit d'un montant forfaitaire, reconnu en capitale mais qui ne porte pas d'intérêts.

Article 2eme Le recouvrement par la BANQUE de la susdite somme est assuré par la liquidation des éléments d'Actif de la CMIS suivants: 40
a) Reclamation contre les assureurs sur coque du s.s. SPETSAI GLORY déjà cédée à la BANQUE estimée à Lstg. 125.000.
b) Reclamation contre les assureurs ou affréteurs du s.s. SPETSAI GLORY e.t.c. pour frais exposés par la BANQUE pour compte de l'armement (inclus dans la somme de Lstg. 300.000) pour avarie générale et

"special charges" estimee a Lstg. 70.000 et pour garantie a propos d'abordage avec le s.s.

"LEONIDAS".

c) Le s.s. SPETSAI ISLAND enregistre au nom de la SISCO et qui sera vendu au Japon

d) Deux hypotheques maritimes aussi a titre de garantie seront accordees par la CMIS en faveur de la AMERICAN TRADING COMPANY of PANAMA de Lstg. 50.000 chacune sur les s.s. SPETSAI PATRIOT et le

10 s.s. SPETSAI NAVIGATOR qui sera transfere par la SISCO a la CMIS.

EXHIBITS

"6"

Mortgage
Agreement and
Translation
26th October
1962 (Continued)

Article 3eme Ad a) : Les Lstg.125.000 representent l'indemnité que normalement les Assureurs su coque doivent payer pour la perte totale du s.s. SPETSAI GLORY. En plus, il pourrait y avoir des interets de retard a payer par les Assureurs, mais ces interets s'ils sont payes, ils appartiendront a la BANQUE.

20 La CMIS a cede tous ces droits sur l'indemnité pour perte totale (C.T.L.), et prend la responsabilite envers la Banque de ce que les assureurs sur coque paieront bien Lstg.125.000 indemnité pour la perte total du s.s. SPETSAI GLORY (inclus les Lstg. 40.000 provenant de la vente de ce navire).

30 La Banque a le droit de negotier avec les Assureurs sur cette reclamation mais si elle accepte un reglement moins de Lstg.125.000, la BANQUE perdrait ses droits contre la CMIS a concurrence de la perte eventuelle sur les Lstg.125.000.

40 S'il y aura lieu de porter l'affaire devant les tribunaux competents et la reclamation centre les assureurs n'est pas acceptee en plein, CMIS et P. restent responsables de la difference pourvu qu'ils sont interpeles d'intervenir au proces. Il est entendu que la somme provenant de la vente du s.s. SPETSAI GLORY sera imputee sur les Lstg.300.000 c.a.d. que la somme de Lstg.300.000 sera diminuee du prix de cette vente. Il est aussi entendu que les polices sur "freight and disbursements" n'ayant pas ete cedees a la BANQUE n'entrent pas en compte et tout paiement par les assureurs sur ces polices restera acquis par la CMIS qui en donnera decharge aux assureurs.

Ad B) La BANQUE affirme avoir expose ou devoir encore exposer au total Lstg.70.000 pour couvrir les

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frais d'avarie generale et les "special charges" du s.s. SPETSAI GLORY. La BANQUE sera responsable de justifier envers dispatcheurs de Londres ce montant de Lstg.70.000, dans la mesure ou les dispatcheurs n'approuveraient pas les frais exposes par la BANQUE la CMIS et PETROUTSIS seront responsables a concurrence du montant dument paye par la BANQUE et refuse par les dispatcheurs. La CMIS et PETROUTSIS de leur cote restent responsables que les assureurs du SPETSAI GLORY payent le montant total admis par les dispatcheurs. 10

Ce montant de Lstg.70,000 ainsi que les garanties fournies par la BANQUE pour l'abordage SPETSAI GLORY - LEONIDAS etant inclus dans le montant de Lstg. 300.000 il est entendu; a) que toute reclamation contre les assureurs, chargeurs e.t.c. et tout recouvrement des garanties apres reglement de la reclamation pour l'abordage et le sauvetage, seront acquis par la CMIS qui s'engage pourtant de payer, toute somme ainsi recue, a la BANQUE a valoir sur la somme de Lstg.300.000 autant que cette derniere somme n'aurait ete deja reglee par la realisation des autres garanties. 20
b) que toute demarche ou proces afferant a ces reclamations seront menes dorenavant par la CMIS et a ces propres frais et responsabilite.

Ad c) Le montant de Lstg.80,000 devrait provenir de la vente au Japon du s.s. SPETSAI ISLAND. La CMIS est responsable envers la BANQUE de ce que la vente de ce bateau rapportera bien a la BANQUE Lstg.80.000 net. 30

Le s.s. SPETSAI ISLAND actuellement propriete de la SISCO restera jusqu'a sa vente propriete de cette Societe, mais cette derniere autorise la CMIS et PETROUTSIS a vendre le bateau au Japon pour un montant minimum de Lstg.65.000 a defaut d'obtenir mieux, et il incombera a la CMIS et a C. PETROUTSIS de garantir les frets de ce navire jusqu'a telle somme que le montant de Lstg.80.000 sera encaisse par la BANQUE faute de quoi ils devront completer ce montant d'une autre source. 40

D'autre part, la SISCO autorise egalement PETROUTSIS a affreter le bateau pour l'envoyer au Japon. Les affretements se feront au seul risque et profit de la CMIS et de C. PETROUTSIS.

L'armement du SPETSAI ISLAND en vue de ce voyage au Japon est également a la charge et aux frais de la CMIS et PETROUTSIS seuls.

La BANQUE s'engage a faire a ses propres frais toutes les formalites necessaries pour changer le nom et le pavillon du "SPETSAI ISLAND". Le nouveau nom sera "ISLAND" et le nouveau pavillon celui de Liberie ou du Panama.

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10 La BANQUE fera de son mieux pour mettra le s.s. "SPETSAI ISLAND" immediatement a la signature de la presents convention a la disposition de PETROUTSIS et de la CMIS au Porto Cheli pour sa vente au Japon et son affretement ainsi que son armement.

20 Avant le depart de s.s. PETSAL ISLAND sic pour le Japon un accreditif irrevocable devra etre establi par les acheteurs (minimum Lstg. 65.000) en faveur de la BANQUE. La difference entre le montant de cet accreditif et la somme de Lstg.80.000 sera payee par la CMIS et PETROUTSIS direcetement a la Banque au plus tard au moment de la livraison du bateau au Japon. La Banque a l'option, qui sera excercee dans un delai d'un mois, (a) de transferer le SPETSAI ISLAND a la CMIS ou autre Societe indiquee par PETROUTSIS, sous un drapeau de convenance choisi par elle, et d'inscrire une hypotheqe pour Lsgt.80.000

30 b) de affreter le meme bateau en coque nue (bars boat hire) a CMIS ou autre Compagnie indiquee par PETROUTSIS, tout cela en vue de permettre un ou plusieurs voyage dan le but de transporter le navire a Japon sans responsabilite pour la BANQUE

40 Dans tous les cas, avant le depart de s.s. SPETSAI ISLAND de la Grece, les risques seront couverts par des assurances a Londres, Italie ou Espagne au choix de PETROUTSIS, comme d'usage et les frais seront a la charge de la CMIS et de PETROUTSIS y compris les assurances accidents concernant l'equipage. Dans le cas ou une somme superieure a Lstg. 80.000 serait obtenue de la vente du SPETSAI ISLAND, cette somme sera acquise par la BANQUE valoir toujours sursa creance de Lstg. 300.000. Les modalites des polices d'assurance seront approuves par la BANQUE dans la cas oule bateau sera hypotheqe la police endorse en faveur de creditteur.

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Article 4eme. La BANQUE s'engage a payer aussitot que le present sera signe la note de frais et honoraires de l'etude A.HAFNER ainsi que le montant de F.S.7.000 pour frais et honoraires de l'etude Th.VALSAMAKIS.

Article 5eme. Promettant bonne et fidele execution de la presente convention les parties se donnent quittance reciproque, pour solde de tout compte et de toute pretention et renonciation a toute procedure civile ou penale. La CMIS et PETROUTSIS s'engagent d'eliminer a leurs propres frais et sur leur responsabilite tout obstacle pouvant provenir des sequestres et saisies effectuees par de tiers sur le SPETSAI ISLAND et le SPETSAI NAVIGATOR en Grece. La BANQUE d'autre part liberera immediatement a la signature du present les sequestres ou autre mesures prises par elle sur le s.s. SPETSAI PATRIOT et le s.s. SPETSAI FORTUNE pour faciliter que les dits bateaux soient mis a le libre disposition de la CMIS et de PETROUTSIS. L'hypothèque sur le SPETSAI PATRIOT sera restreinte a Lstg.50.000 et transferee en faveur du MORTGAGEE et l'hypothèque sur le SPETSAI FORTUNE sera radiee immediatement a la signature du present.

Afin de faciliter les formalites pour la levee des saisies, sequestres e.t.c. la BANQUE remet aujourd'hui a PETROUTSIS une autorisation expresse a ses avocats en Italie (Etude Berlinghieri) pour proceder immediatement a ce fin de sorte que ces deux navires soient immediatement a la libre disposition de la CMIS et PETROUTSIS et telegraphiera dans le meme sens a ces avocats.

Les saisies et sequestres sur les s.s. SPETSAI PATRIOT et s.s. SPETSAI FORTUNE imposees par Andreas Valsamakis et Capt. D. Tsekouras seront levees et disposees exclusivement aux frais et sur la responsabilite de C. PETROUTSIS et de la CMIS, la Banque n'ayant de responsabilite quelconque a cet egard.

En outre la SISCO restituera immediatement la proprietee de s.s. SPETSAI NAVIGATOR a la CMIS et s'engage a executer toutes les formalites necessaires pour accomplir cet engagement, lequel comprendra pour le SPETSAI NAVIGATOR la mise en possession.

La BANQUE et le MORTGAGEE s'engagent a fournir également une attestation concernant le s.s. SPETSAIN (sic) PATRIOT" destinee aux autorites de Liberia aux termes de laquelle ce bateau change son nom suivant les indications de C. PETROUTSIS.

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10 Article 6eme Etant donne que la realisation des reclamations pour C.T.L. G/A e.t.c. du SPETSAI GLORY et du prix de vente e.t.c. du SPETSAI ISLAND ne sont prevues avant une annee les hypotheques en faveur des mortgagees (suivant art. 2 d du present) seront exigibles en moitie (Lstg.25000 pour chaque bateau hypotheque) au 1er Novembre 1962, et pour l'autre moitie en 1er Mai 1963, et cela jusqu'a concurrence du solde qui ne serait realise par la Banque jusqu'a a cette date, comme prevu ena art. 2 a,b, et c, le sens du present contrat etant que la BANQUE ne recevra plus que Lstg.300.000

20 Tout paiement fait a la BANQUE provenant des sources enumerees en article 2, a,b, et c, en plus de Lstg.200.000 sera considere comme paiement a valoir sur les hypotheques (moitie sur chacune) et acte a cet effet signe par le MORTGAGEE sera livre simultanement avec le reçu de la BANQUE et les enregistrements necessaires seront faits. D'autre part tout paiement fait au MORTGAGEE en vertu des susdites hypotheques sera considere comme un paiement fait a la BANQUE a valoir sur sa
30 reclamation de Lstg.300.000.

Article 7eme. L'interpretation, validite et performance du present contrat seront reglees par les lois Anglaises.

Le present contrat est fait et signe en quatre exemplaire, la BANQUE et la SISCO retenant une copie et chacune des autres parties une.

Londres le 26 Octobre 1961
Pour la BANQUE GENEVOISE DU COMMERCE ET DE CREDIT
Constant and Constant

40 Pour la SPETSAI ISLAND
SHIPPING Company Ltd.
Constant and Constant

Pour la AMERICAN TRADING COMPANY
S.A., Panama.

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Pour la COMPANIA MARITIME DI
ISOLA SPETSAI Ltda
C.A. Petroutsis

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C.A. PETROUTSIS
C.A. Petroutsis
Ralph Kane
Elizabeth E. Nicholls

(Translation from the French)

Between of the one part:

- 1) The Banque Genevoise de Commerce et de Credit,
2, rue Diday, at Geneva, hereinafter called "BANK" 10
- 2) The SPETSAI ISLAND SHIPPING COMPANY LTD., of
Monrovia, Liberia hereinafter called "SISCO"
- 3) The AMERICAN TRADING COMPANY S.S. of Panama,
Panama, hereinafter called "Mortgagee".

and of the other part:

- 1) The Compania Maritima di Isola Spetsai Limitada
of Costa Rica, hereinafter called "CMIS"
- 2) Constantin A. Petroutsis, of rue Scoufa, Athens,
hereinafter called "PETROUTSIS"

it is agreed :

20

Preamble :

In 1957, the BANK opened various credits for
the Compania Maritima Linea Adriatica-Golfo Persico
Ltda of San Jose, Costa-Rica, the assets and
liabilities whereof were taken over in July 1958
by CMIS.

The assets of this latter Company were con-
stituted by its fleet made up of 7 vessels and the
BANK, having obtained guarantees by way of mortgages
on the 6 vessels, by assignments of freight and by 30
all insurance indemnities on the mortgaged vessels,
agreed, in accordance with an Act of the 22nd July
1958, to various advances so that the liabilities
of CMIS towards it amounted in December 1958,
according to the accounts of the Bank to a sum of
about \$ 100,000. --.

The SPETSAI STAR having been sold to Japan in
October 1958; the s.s. SPETSAI SAILOR having sunk
in the Red Sea in November 1958 and the s.s.
SPETSAI GLORY having run aground on the coast of 40
the island of Crete in February 1959, the BANK has
already collected the sale price and the insurance
indemnity for the SPETSAI SAILOR; the BANK has still

to collect the hull insurance indemnity for the SPETSAI GLORY; In view of the freight crisis, CMIS was unable to make the payments laid down in the agreements with the BANK and, in June 1959 a contract was entered into between the BANK and CMIS governing the extent of the obligations of CMIS to the BANK and the methods of payment of the debt; such contract also stipulated supplementary securities to be supplied, among them the transfer
10 of the ownership of s.s. SPETSAI NAVIGATOR and SPETSAI ISLAND to a Liberian Company of which the Bank became the proprietor, that is SISCO, under the special conditions laid down in the above-mentioned contract.

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The events which followed on account of the inability of CMIS to liquidate its assets and of the measures taken by the BANK for the recovery of the debt, gave rise to disputes some of which were already the subject of litigation before the
20 Courts of Geneva, the Court of Appeal of Bologna and before the Court of First Instance of Piraeus whilst other actions are to be commenced in accordance with the intention of the parties before the competent jurisdictions.

At all events the contracting parties with a view to a definitive settlement of all the accounts and litigation between them, agree by these presents as follows:

Settlement

30 Article 1. The parties waive the drawing up of detailed accounts. CMIS acknowledges that it is indebted to the BANK in the sum of three hundred thousand pounds sterling (300,000) as the balance of all accounts and of all claims between the BANK and SISCO of the one part and CMIS and PETROUTSIS of the other part. It is a comprehensive figure, acknowledged to be a capital sum but which bears no interest.

40 Article 2. The recovery by the BANK of the above-mentioned sum is assured by the realization of the following assets of CMIS:

a) A claim against the hull insurers of the s.s. SPETSAI GLORY estimated at £ sterling 125,000 already assigned to the BANK.

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b) A claim against the insurers or charterers of the s.s. SPETSAI GLORY etc. for expenses disbursed by the BANK for the account of the ship (included in the sum of £ sterling 300,000) for general average and "special charges" estimated at £ sterling 70,000 and for the guarantee in connection with the collision with the s.s. "LEONIDAS".

c) The s.s. SPETSAI ISLAND registered in the name of SISCO which is to be sold to Japan at an estimated £ sterling 80,000.

10

d) Two maritime mortgages also as security are to be given by CMIS in favour of the AMERICAN TRADING COMPANY of PANAMA for £ sterling 50,000 each on the s.s. SPETSAI PATRIOT and the s.s. SPETSAI NAVIGATOR which is to be transferred by SISCO to CMIS.

Article 3. As regards a) The £ sterling 125,000 represents the indemnity which the hull insurers must normally pay for the total loss of the s.s. SPETSAI GLORY. In addition there may be the interest for late payment by the Insurers, but this interest, if it is paid, shall belong to the BANK.

20

CMIS has assigned all these rights to the indemnity for total loss (C.T.L.) and assumes liability towards the Bank for the hull insurers duly paying £ sterling 125,000 indemnity for the total loss of the s.s. SPETSAI GLORY (including £ sterling 40,000 coming from the sale of this vessel).

The Bank has the right to negotiate with the Insurers regarding this claim but if it accepts a settlement of less than £ sterling 125,000, the BANK would lose its rights against CMIS to the extent of the possible loss on £ sterling 125,000. If it shall be necessary to bring the matter before the competent courts and the claim against the insurers is not accepted in full, CMIS and P. remain liable for the difference provided that they have joined in the action. It is intended that the sum arising from the sale of the s.s. SPETSAI GLORY shall be charged against £ sterling 300,000 that is to say the sum of £ sterling 300,000 shall be reduced by the price of such sale. It is also understood that the policies for "freight and disbursements" which have not been assigned to the

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BANK are not to be taken into account and any payment by the insurers on these policies shall remain with CMIS who shall give discharge therefor to the insurers.

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10 As regards (b) The BANK states that it has disbursed or has still to disburse a total of £ sterling 70,000 to cover the expenses of general average and the "special charges" for the s.s. SPETSAL GLORY. The BANK shall be responsible for justifying this sum of £ sterling 70,000 to the London average adjusters; to the extent to which the average adjusters may not approve the expenses disbursed by the BANK, CMIS and PETROUTSIS shall be responsible up to the amount duly paid by the BANK and refused by the average adjusters. CMIS and PETROUTSIS on their part remain responsible for the insurers of the SPETSAL GLORY paying the total amount allowed by the average adjusters.

20 As this amount of £ sterling 70,000 and the guarantees furnished by the BANK for the collision SPETSAL GLORY-LEONIDAS are included in the amount of £ sterling 300,000, it is agreed:

30 a) that all claims against the insurers, shippers etc. and all recoveries of guarantees after the settlement of the claim for the collision and the salvage shall be acquired by CMIS who undertake, however, to pay all sums thus received to the BANK in payment of the sum of £ sterling 300,000 in so far as this latter sum may not have already been satisfied by the realization of other securities. b) that any proceedings or actions concerning these claims shall be carried on henceforth by CMIS and at its own cost and responsibility.

40 As regards c) An amount of £ sterling 80,000 should come from the sale to Japan of the s.s. SPETSAL ISLAND. CMIS is responsible to the BANK that the sale of this ship shall in fact bring £ sterling 80,000 net to the BANK.

The s.s. SPETSAL ISLAND at present owned by SISCO shall remain, until its sale, the property of such Company, but the latter authorises CMIS and PETROUTSIS to sell the ship to Japan for a minimum sum of £ sterling 65,000 in default of

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obtaining a better price, and it shall be incumbent upon CMIS and upon C. PETROUTSIS to guarantee the freights of this vessel up to such a sum that the amount of £ sterling 80,000 shall be collected by the BANK, in default of which they will have to make up this amount from another source.

On the other hand, SISCO also authorises PETROUTSIS to charter the ship for the purpose of sending it to Japan. The chartering shall be at the sole risk and for the profit of CMIS and of C. PETROUTSIS. 10

The fitting out of the SPETSAL ISLAND for this voyage to Japan is also for the account and at the expense of CMIS and PETROUTSIS alone.

THE BANK undertakes to carry out at its own expense all the formalities necessary to change the name and the flag of the SPETSAL ISLAND. The new name shall be "ISLAND" and the new flag that of Liberia or of Panama.

The BANK shall do its utmost to place the s.s. 20 "SPETSAL ISLAND" immediately upon the signing of this agreement at the disposal of PETROUTSIS and CMIS at Porto-Cheli for its sale to Japan, its chartering and its fitting out.

Before the departure of the s.s. PETSAL ISLAND (sic) for Japan an irrevocable letter of credit shall be established by the purchasers (minimum £ sterling 65,000) in favour of the BANK. The difference between the amount of this letter of credit and the sum of £ sterling 80,000 shall be payable by CMIS and PETROUTSIS direct to the Bank at the latest at the time of the delivery of the ship to Japan. The Bank has the option, which shall be exercised within a period of one month, 30
a) to transfer the SPETSAL ISLAND to CMIS or to another Company indicated by PETROUTSIS, under a flag of convenience chosen by it and to register a mortgage for £ sterling 80,000. -
b) to bare boat charter the said ship to CMIS or another Company indicated by PETROUTSIS, all with a view to permitting one or more voyages for the purpose of transferring the vessel to Japan, with no responsibility on the part of the BANK. 40

In any event, before the s.s. SPETSAL ISLAND

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10 departs from Greece, the risks shall be covered by insurance in London, Italy or Spain at the choice of PETROUTSIS in accordance with usage and the expenses are to be for the account of CMIS and PETROUTSIS and shall include accident insurance for the crew. In the event of a sum greater than £ sterling 80,000 being obtained for the sale of the SPETSAI ISLAND, this sum shall be acquired by the BANK still to be charged against its claim of £ sterling 300,000. The forms of the insurance policies shall be approved by the BANK; in the event of the boat being mortgaged the policy shall be indorsed in favour of the creditor.

Article 4. The BANK undertakes to pay as soon as this settlement is signed the note of charges and fees from the office of A. HAFNER as well as the amount of Swiss francs 7,000 for charges and fees for the office of Th. VALSAMAKIS.

20 Article 5. Promising good and faithful carrying out of the present settlement the parties reciprocally discharge each other for the balance of all accounts and of all claims and waive all civil or criminal procedure. CMIS and PETROUTSIS undertake to eliminate at their own expense and their liability any hindrance which may arise from sequestrations and arrests effected by third parties on the SPETSAI ISLAND and the SPETSAI NAVIGATOR in Greece. The BANK also shall
30 release as soon as this settlement is signed the sequestrations or other measures taken by it on the s.s. SPETSAI PATRIOT and the s.s. SPETSAI FORTUNE in order to facilitate the placing of the said vessels at the free disposition of CMIS and of PETROUTSIS. The mortgage on the SPETSAI PATRIOT shall be limited to £ sterling 50,000 and transferred in favour of the MORTGAGEE and the mortgage on the SPETSAI FORTUNE shall be cancelled immediately upon the signing of these presents.

40 In order to facilitate the formalities for the releasing of the seizures, arrests etc. the BANK this day shall hand to PETROUTSIS an express authorisation to the Italian lawyers (Office Berlinghieri) to proceed immediately to this end so that these two vessels may immediately be at the free disposal of CMIS and

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PETROUTSIS and shall telegraph in the same terms to such lawyers.

The seizures and arrests of s.s. SPETSAI PATRIOT and s.s. SPETSAI FORTUNE imposed by Andreas Valsamakis and Capt. D. Tsekouras shall be lifted and discharged solely at the expense and at the liability of C. PETROUTSIS and CMIS, the Bank having no responsibility whatsoever in this connection.

In addition SISCO shall immediately restore ownership of the s.s. SPETSAI NAVIGATOR to CMIS and undertakes to carry out all the necessary formalities to fulfil this undertaking which in the case of the SPETSAI NAVIGATOR shall include putting into possession. 10

The BANK and the MORTGAGEE also undertake to supply a certificate regarding the s.s. SPETSAIN (sic) PATRIOT intended for the Liberian authorities under the terms of which this vessel shall change its name in accordance with the instructions of C. PETROUTSIS. 20

Article 6. In as much as the realization of the claims for C.T.L., G/A etc. on the SPETSAI GLORY and the sale price etc. of the SPETSAI ISLAND are not envisaged before a year, the mortgages in favour of the mortgagees (in accordance with art. 2 d of these presents) shall become due as to one half (£ sterling 25,000 for each mortgaged vessel) on the 1st November 1962 and as to the other half on the 1st May 1963, but only up to the amount of the balance not realized by the Bank by such date as provided in art. 2, a, b and c, the intention of this contract being that the BANK shall not receive more than £ sterling 300,000. - 30

Any payment made to the BANK arising from the sources set out in article 2 a, b, and c, over and above £ sterling 200,000 shall be considered as payment on account of the mortgages (a half on each) and an act to this effect signed by the MORTGAGEE shall be delivered at the same time as the receipt by the BANK and the necessary registrations shall be made. Also all payments made to the MORTGAGEE by virtue of the above-mentioned mortgages shall be considered as a payment made to the BANK on account of its claim for £ sterling 300,000. - 40

Article 7. The interpretation, validity and performance of this contract shall be governed by English Law.

This contract is entered into and signed in four copies, the BANK and SISCO retaining one copy and each of the other parties one.

London, 26th October 1961.

For the BANQUE GENEVOISE DU COMMERCE ET DE CREDIT
(Sgd) Constant and Constant
10 (Sgd) J. Llimona

For the SPETSAI ISLAND
SHIPPING Company Ltd.
(Sgd) Constant & Constant

For the AMERICAN TRADING COMPANY S.A., Panama
(Sgd) Joaquin Llimona

For the COMPANIA MARITIME DI ISOLA
SPETSAI Ltda
(Sgd) C.A. Petroutsis

C.A. PETROUTSIS
(Sgd) C.A. Petroutsis

20 (Sgd) Ralph Lane
(Sgd) Elizabeth E. Nicholls

Exhibit "7"

Letter, C.A. Petroutsis to Avv. Renzo
Berlinghieri.

C.A. PETROUTSIS
Via Cicerone, 8
T r i e s t e

Trieste, 14 novembre 1961

Preg.mo Sig.
Avv. Renzo BERLINGHIERI

30

GENOVA
Via Roma, 10

Nella Sua qualita di mandatario speciale della
Banque Genevoise de Commerce et de Credit e della
American Trading Company S.A. di Panama.

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"7"

Letter, C.A.
Petroutsis to
Avv. Renzo
Berlinghieri
14th November
1961.

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S/S Spetsai Patriot

"7"
Letter, C.A.
Petroutsis to
Avv. Renzo
Berlinghieri
14th November
1961 (Continued)

Egregio Avvocato,

la presente e per confermar Le che io sottoscritto tanto in proprio quanto nella mia qualita di legale rappresentante della Compagnia Marittima di Isola Spetsai Limitada mi impegno formalmente nei confronti delle societa che Lei rappresenta:

A) ad addivenire, dietro semplice richiesta dell'una o dell'altra societa da Lei rappresentate, alla stipulazione di un nuovo mortgage per atto pubblico ovvero ad una correzione per addendum al mortgage gia esistente, con la sostituzione dell'American Trading Company S.A. di Panama o di altra societa che Lei o altri legali delle societa indichera alla Banque Genevoise de Commerce et de Credit che appunto nella qualita di creditrice ipotecaria figura nel mortgage gia sulla Spetsai Patriot esistente. La mia collaborazione alla stipula di questo nuovo eventuale atto sara piena, pronta e assoluta. 10 20

B) Ad assicurare presso primaria compagnia di assicurazione Italiana per la somma complessiva di £ 125.000. - il piroscafo Spetsai Patriot dando tempestiva comunicazione all'avv. Berlinghieri della conclusione del contratto di assicurazione.

C) Ad ottenere dalla compagnia assicurativa che mi riservo di nominare, che la polizza di assicurazione sia girata alla Banque Genevoise de Commerce et de Credit oppure alla American Trading Company S.A. di Panama oppure ancora a qualche altra societa che mi verra tempestivamente indicata; cosicche la eventuale liquidazione assicurativa che potesse in ipotesi competere a seguito di un avvenimento di qualsiasi genere verra direttamente dalla societa assicuratrice pagata, fino a concorrenza di £ 50.000. - alla Banque Genevoise de Commerce et de Credit oppure alla American Trading Company S.A. di Panama oppure a qualche altra societa che venisse indicata. 30 40

D) Ad inviarLe entro il piu breve tempo possibile e comunque prima della partenza della nave dal Porto di Trieste, la fotocopia della

certificazione del Lloyd's Register of Shipping attestante la regolarita del "safety equipment" della Spetsai Patriot nonche la regolarita dell' apparato radio ricevente trasmittente da parte della Radio Marittima di Trieste.

La presente, che ad ogni effetto Le invio in tre esemplari, sono da me firmati in Sua presenza e contro firmati dell'avv. Cavalieri.

EXHIBITS

"7"
Letter, C.A.
Petroutsis to
Avv. Renzo
Berlinghieri
14th November
1961 (Continued)

10 Gli impegni specificati da A) usque ad D) sono da me assunti in conformita all'accordo stipulato in Londra in data 26 ottobre 1961, pertanto ogni e qualsiasi differenza interpretativa tra la presente scrittura e il tenore del precitato atto redatto a Londra il 26 ottobre c.m. verra risolto con espresso richiamo alle norme contenute in siffatto atto che con la presente scrittura non vengono comunque derogate o modificate.

20 Distinti saluti
(Sgd) C.A. Petroutsis C.A. Petroutsis
C.A. Petroutsis nell-qualita F. to C.A. Petroutsis

Exhibit "7A"

English Translation of Exhibit 7

C.A. Petroutsis
Via Cicerone 8 Trieste, 14th November 1961
Trieste
Renzo Berlinghieri Esq.,
Via Roma 10,
Genoa.

"7A"
English
Translation of
Exhibit 7
14th November
1961

30 In his quality of attorney in fact and in law of Banque Genevoise de Commerce et de Credit and of Messrs. American Trading Company S.A. of Panama.

S/S Spetsai Patriot:

Dear Sir,

I confirm you that I, the undersigned, also in my quality of legal representative of Compagnia

EXHIBITS

"7A"
English
Translation of
Exhibit 7
14th November
1961 (Continued)

Marittima di Isola Spetsai Limitada undertake: in respect of the Company represented by you:-

(A) To stipulate, upon request of either one or the other company represented by you, a new mortgage by notarial deed or to correct by adding to the mortgage already existing with the substitution of Messrs. American Trading Company S.A. of Panama, or another company which you or other Solicitors of the Company will point out to the Banque Genevoise de Commerce et de Credit which, as the mortgage credit party is already shown in the existing mortgage of the Spetsai Patriot. My co-operation on the above deed will be full and unconditioned. 10

(B) To insure with an outstanding Italian insurance company for the total amount of £125,000 the vessel "Spetsai Patriot" and to give prompt notice of the stipulation of the insurance contract to Mr. Renzo Berlingieri.

(C) To obtain from the insurance company which will be communicated as soon as possible, that the policy of insurance be assigned to Banque Genevoise de Commerce et de Credit or to American Trading Company S.A. of Panama or to any other company which will be indicated, so that any eventual payment of the insurance company in connection with any accident will be made directly, and up to the sum of £50,000 to Banque Genevoise de Commerce et de Credit or to American Trading Company S.A. or to any other company which will be indicated. 20 30

(D) To forward on to you as soon as possible and in any case before the Spetsai Patriot leaves Trieste photostat copy of the certificate of Lloyd's Register of Shipping showing that the requirement for "safety equipment" of the Spetsai Patriot and the regularity of the Receiving and Transmitting radio installation from side of the Maritime Radio of Trieste.

The present declaration that for any use I send to you in triplicate are signed by me in your presence and countersigned by Mr. Cavalieri. 40

The engagements specified in paragraphs A up to D are undertaken by me in accordance with the

agreement stipulated in London on the 26th October 1961, so that any different interpretation between the present declaration and the content of the aforesaid Act stipulated in London on the 26th October 1961 will be solved with the reference to the terms contained in the above Act which, with the present declaration are not, in any case, modified or altered.

EXHIBITS

"7A"
English
Translation of
Exhibit 7 14th
November 1961
(Continued)

10 Yours faithfully,
(Sgd) C.A. Petroutsis nella-qualita
(Sgd) C.A. Petroutsis

I the undersigned, Mario Balestra, hereby certify that the above is a true translation of a letter in Italian dated 14th November 1961 at Trieste, submitted to me.

(Sgd) Mario Balestra
16th September, 1962

Exhibit "8"

20 Letter, Treasury Department of Liberia
to Banque Genevoise de Commerce et de
Credit

REPUBLIC OF LIBERIA
Treasury Department
Bureau of Maritime Affairs

18 June 1962

Banque Genevoise de Commerce et de Credit
Geneva Switzerland

RE: s.s. SPETSAI PATRIOT
Official Number 997

Gentlemen:

30 According to the records in this office, a mortgage on the above vessel in your favour was recorded in this office on August 4, 1958 in Book PM 10 at page 331; Since the date of maturity (November 15, 1959) has long passed, it would appear that the mortgage on its face has expired, although no Satisfaction or Release has been filed with this office.

"8"
Letter, Treasury
Department of
Liberia to Banque
Genevoise de
Commerce et de
Credit 18th
June 1962

EXHIBITS

"8"
Letter, Treasury
Department of
Liberia to Banque
Genevoise de
Commerce et de
Credit 18th June
1962 (Continued)

Because of constant disregard to Liberian Laws and Regulations, this office had notified the registered owners of the vessel that, unless all such outstanding items were taken care of on or before June 30, 1962, the vessel would be automatically stricken from Liberian Registry. Although said date is only two weeks off, no word has been heard from the owners.

This office is putting you, as mortgagee of record, on notice that if all outstanding items are not taken care of by June 30, 1962 the vessel will be automatically stricken from Liberian Registry. 10

Sincerely yours,
(Sgd) Albert J. Ruddick
Deputy Commissioner.

"12"
Cablegram
Libdeputy New
York to Adria-
lines 28th June
1962

Exhibit "12"

Cablegram Libdeputy New York to Adrialines

I T A L C A B L E

LUE159 GP153 NEWYORK 19 28 919A PER LA RIPOSTA
ADRIALINES TRIESTE TELEFONATE AL N.31555

20

ADRIALINES Tf.23883 -A28388
ADRIA LINES E TRADING
VIA. S. CATERINA 7
TRIESTE FONO INDI T/U

SPETSAIPATRIOT YOUR CABLE NOTED STOP IN ORDER
PROVIDE FULL REPEAT FULL COMPLIANCE DEADLINE
EXTENDED JULY FOURTEENTH = LIBDEPUTY +

"9"
Letter, Treasury
Department of
Liberia to Banque
Genevoise de
Commerce et de
Credit 28th June
1962

Exhibit "9"

Letter, Treasury Department of Liberia to
Banque Genevoise de Commerce et de Credit

30

THE REPUBLIC OF LIBERIA
TREASURY DEPARTMENT
BUREAU OF MARITIME AFFAIRS

28 June 1962

Banque Genevoise de Commerce et de Credit
2, Rue Diday
Geneva
Switzerland

RE: s.s. SPETSAI PATRIOT

Gentlemen:

Receipt is hereby acknowledged of your letter of June 23, 1962.

10 With respect to the mortgage held by you on the above vessel, insofar as recording and its preferred status are concerned the mortgage has been and still is in good order. As to whether or not there has been a breach or default under the covenants of the mortgage because of the owner's failure to keep the vessel at all times properly complying with all Liberian laws, this of course is a matter between the mortgagor and mortgagee and the particular covenants of the mortgage.

20 While this office fully appreciates your position, it cannot tolerate a disregard of Liberian Law. After discussion via long-distance telephone with Constant and Constant, this office has agreed to extend the deadline for complete compliance for fourteen days; i.e., July 14, 1962, in order to permit the vessel to arrive at a port. This extension has been communicated to the owners and agents of the vessel.

30 Sincerely yours,
(Sgd) Albert J. Rudick
Deputy Commissioner.

Exhibit "10"

Letter, Alexander S. Seferiades to
William A. Crump & Son

ALEXANDER S. SEFERIADES
Telephone Avenue 1544

BEVIS MARKS HOUSE
BEVIS MARKS
LONDON, E.C.3.
5th July 1962

EXHIBITS

"9"

Letter, Treasury
Department of
Liberia to Banque
Genevoise de
Commerce et de
Credit 28th June
1962 (Continued)

"10"

Letter, Alexander
S. Seferiades to
William A. Crump
& Son 5th July
1962

EXHIBITS

"10"
Letter, Alexander
S. Seferiades to
William A. Crump
& Son 5th July
1962 (Continued)

Your ref: F/5

Messrs. William A. Crump & Son,
2/3 Crosby Square,
Bishopsgate,
LONDON E.C.3

Dear Sirs,

"SPETSAI" Fleet

Thank you for your letter of the 4th instant and I am glad to hear that you have been instructed to proceed against Underwriters in respect of the "Spetsai Glory" CTL claim. In this matter I have 10
always acted for whom the claim may concern and several original documents and correspondence are in the files of my office. I wish to bring to your notice that I shall be delighted to assist you in any possible way in attaining your aim in this matter.

"Spetsai Patriot" The Owners, as also myself, were astonished to hear by a cable of the Master that the vessel was arrested in Lagos for complaints of Mortgagees, as yet still unknown to the Owners and 20
to myself. It was natural for me whilst I was in correspondence with the legal adviser of the Banque Genevoise, Mr. Perreard, to have been advised of such an intention. Without knowing any details at all of your proceedings, may I bring to your notice the following facts:-

a) According to the Agreement of the 26th October last, the existing mortgage on the "Spetsai Patriot" should have been substituted by another mortgage for covering an amount up to £50,000 on behalf of a 30
Panamanian company your principals have established. The continuance of this mortgage is only due to a breach of your principals of the provisions of the Agreement of the 26th October last.

b) The vessel called at Lagos with cargoes destined to other ports also in performance of her round itinerary voyage of South Africa. I cannot see how the interruption of this voyage may be lawful in English law. I understand that the Nigerian law on the matter is based on English law. 40
Herewith I attach copy of the cable I have sent to the Banque Genevoise on receipt of the information of the arrest of the "Spetsai Patriot". I must say, however, that I cannot see in what way

urgency dictated to your principals the action they have taken.

Yours faithfully,

(Sgd)

Enc.

EXHIBITS

"10"

Letter, Alexander S. Seferiades to William A. Crump & Son 5th July 1962 (Continued)

Exhibit "1"

Power of Attorney (in French)

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
FONDEE EN 1868
2, RUE DIDAY
GENEVE

10

"1"

Power of Attorney (in French) 10th July 1962

P R O C U R A T I O N

La soussignee, BANQUE GENEVOISE DE COMMERCE ET DE CREDIT, Societe Anonyme, dont le siege est a Geneve, 2, rue Diday, representee aux fins de la presente par

Monsieur Rene DORIA President de son Conseil d'Administration,

et

Monsieur Kricor ELMASSIAN, Administrateur,

20 declare par les presentes donner pouvoir a Monsieur Marcel DUBUIS, Directeur, de la représenter dans le litige qui l'oppose a la "Compania Maritima di Isola Spetsai Limitada" et a Sieur Constantin PETROUTSIS relativement au bateau "Spetsai Patriot".

30 A cet effet, le mandataire aura pouvoir d'agir par toutes voies amiables ou judiciaires pour le compte du mandant et le représentera valablement devant toutes les juridictions, tant administratives que judiciaires, civiles ou militaires, ordinaires ou exceptionnelles comme aupres de toutes Autorites et Administrations.

Notamment, le mandataire pourra pour le compte du mandant et en son nom, exercer toutes poursuites employer tous moyens legaux de contrainte, faire

EXHIBITS

"1"
Power of Attorney
(in French) 10th
July 1962
(Continued)

toutes demarches et vacations, entreprendre toutes
procedures judiciaires ou contentieuses, resister a
toutes demandes, former toutes oppositions, plaider
se desister de tous droits, proroger toutes
competences, faire appel ou recours a tous arrêts,
jugements, decisions ou sentences, exposer tous
frais, debours et depenses, effectuer tous paiements
et avances, traiter, compromettre, transiger,
executer tous jugements, consentir toutes remises de
dettes, accorder tous termes et delais, recevoir 10
toutes sommes et en donner valable quittance a
valoir ou pour solde, accepter toutes delegations,
transports, nantissements et hypotheques, prendre
toutes inscriptions et en donner main-leevee,
provoquer toutes faillites, liquidations ou
concordats, effectuer toutes productions, assister
a toutes assemblees officielles ou non, contester
toutes tierces pretentions, recevoir tous depots et
cautions, signer tous actes et toutes plaintes,
elire tous domiciles en Suisse comme a l'etranger, 20
se substituer toutes personnes de son choix pour
l'execution totale ou partielle du mandat, faire
en un mot et avec les pouvoirs les plus etendus
tout ce qui sera necessaire ou simplement utile a
l'accomplissement du mandat.

Pour tous differends ou litiges qui
resulteraient du present mandat, le mandant declare
accepter expressement la competence des tribunaux
genevois et l'application du droit suisse.

Ainsi fait a Geneve, le dix juillet mil neuf cent 30
soixante-deux.

Le Mandataire :
Le Mandant: (Sgd) Dubuis

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT
(Sgd) K. Elmassian R. Doria

Vu pour legalisation des signatures de
Monsieur Marcel Dubuis et de Monsieur Kricor
Elmassian et de Monsieur Rene Doria, ces
deux derniers engagent valablement la 40
Banque Genevoise de Commerce et de Credit
par leurs signatures collectives; apposees
ci-dessus. -----
Geneve, le 10 juillet 1962. -----
(Sgd) Gustave Martin

Vu pour legalisation de la
signature de M. Gustave MARTIN
notaire apposee ci-dessus
Geneve le 10 JUIL.1962

BLANC
Chef de bureau

EXHIBITS

"1"
Power of Attorney
(in French) 10th
July 1962
(Continued)

10

For the legalisation of the seal and
signature of State Chancery, Republic
and Canton of Geneva This tenth day of
July 1962 at Her Majesty's Consulate
General at Geneva
(Sgd) Margaret Manning
BRITISH PRO-CONSUL

Exhibit "2"

English Translation of Exhibit 1

AT YOUR SERVICE LTD. (A.Y.S.)
PRIVATE LETTER BOX 2141
LAGOS
Phone 24339

"2"
English Trans-
lation of
Exhibit 1 10th
July 1962

20

12th July, 1962.

We hereby certify that the attached document
is a true translation into English of the Power of
Attorney written in French by the BANQUE GENEVOISE
DE COMMERCE ET DE CREDIT dated 10th of July 1962
and presented to us on the 12th day of July 1962.

(Sgd) A.P. Lefevre.

POWER OF ATTORNEY

30

The undersigned, BANQUE GENEVOISE DE COMMERCE
ET DE CREDIT, a limited liability company, whose
Head Office is at Geneva, 2, rue Diday, represented
for the purpose of the presents by

Monsieur Rene DORIA, Chairman of their Board
of Directors

and

Monsieur Kricor ELMASSIAN, Director

hereby declare to give Mr. Marcel DUBUIS, Director

EXHIBITS

"2"
English Trans-
lation of Exhibit
1 10th July 1962
(Continued)

power to represent them in the case against the
"Compania Maritima di Isola Spetsai Limitada" and
Mr. Constantin PETROUTSIS concerning the ship
"Spetsai Patriot".

To this effect, the proxy will be empowered to
act through all amicable or legal means on behalf
of the mandator, and will represent them validly
before all jurisdictions, administrative as well as
judiciary, civil or military, ordinary or extra-
ordinary as well as before all Authorities or
Administrations. 10

Namely, the proxy will be empowered on behalf
and in the name of the mandator to institute all
proceedings, use all legal means of constraint,
take all steps and abeyance, undertake all judic-
iary or contentious proceedings, resist all claims,
issue all writs, go to law, withdraw all claims,
extend all powers, appeal against all decrees,
judgments, decisions or sentences, engage all
expenses, disbursements and expenditure, effect all
payments and advances, transact, compromise, come
to an agreement, execute all judgments, allow all
remissions of debts, grant all terms and extensions,
receive all sums and issue valid receipts for part
or the whole, accept all assignments, transfers,
securities or mortgages, take all registrations and
restorations, declare all bankruptcies, liquidations
or certificates, effect all productions, attend all
meetings official or otherwise, contest all
oppositions by a third party, receive all deposits
and sureties, sign all acts and all charges, make
all elections of domicile in Switzerland as well as
in foreign countries, appoint any person of his
choice for the total or partial execution of the
power of attorney, in one word do with the widest
powers all that will be necessary or useful to the
fulfilment of the power of attorney. 20 30

For all disputes or litigations which might
result from the said power of attorney, the
mandator declares to accept expressly the
competence of the courts of justice of Geneva and
the enforcement of the Swiss law. 40

Made at Geneva the tenth of July one thousand
nine hundred and sixty two.

The Mandator:
BANQUE GENEVOISE DE COMMERCE ET DE CREDIT

Exhibit "11"

EXHIBITS

Letter, Treasury Department of Liberia
to Compania Maritima de Isola Spetsai
Limitada.

THE REPUBLIC OF LIBERIA
TREASURY DEPARTMENT
BUREAU OF MARITIME AFFAIRS

15 August 1962

"11"
Letter, Treasury
Department of
Liberia to
Compania
Maritima de
Isola Spetsai
Limitada 15th
August 1962

10 Compania Maritima de Isola Spetsai Limitada
c/o Adria Lines S.a.r.L.
P.O. Box 524
Via S. Caterina, 7
Trieste, Italy

RE: s.s. SPETSAI PATRIOT - Official
Number 997

Gentlemen:

20 This office has today received from Lloyd's
Register of Shipping a Safety Equipment Certificate
marked "provisional", showing it valid only until
October 5, 1962. Lloyd's further notes that the
Certificate is provisional because there are a
number of outstanding items still required to
complete the survey.

30 Your attention is called to my letter of July
16, 1962 in which I mentioned that, in order to
enable the vessel to proceed to Trieste for the
necessary work, the Provisional Certificate of
Registry as extended was further extended to
September 16, 1962. It was further understood
that no extensions would be given beyond that date.
At the present time, it would appear that the
following items must be taken care of prior to
September 16, 1962 or steps will be taken against
the vessel:

1) Liberian Safety Equipment Certificate - a
full term Certificate is required.

2) Liberian Load Line Certificate - a full-
term Certificate is required to replace the
provisional one now in effect.

EXHIBITS

"11"
Letter, Treasury
Department of
Liberia to
Compania Maritima
de Isola Spetsai
Limitada 15th
August 1962
(Continued)

3) Officers' Licenses. At the present time, this office is in receipt of applications for only six licenses. These cover three deck officers, two engineers and the radio officer. However, with respect to these licenses, the necessary fees totalling \$60 have not been received. Furthermore as to these applications, Mr. A.N. Agnos has applied for that of Chief Engineer, although he only holds a Greek First Assistant Engineer's License and would be entitled only to a Liberian First Assistant Engineer's License. Proper applications will have to be received for all officers on board the vessel. 10

4) Monies due. In addition to the \$60 referred to above and such other amounts as must be submitted with officers' applications still required, there is presently \$53.58 still outstanding (after taking into account monies already received).

Very truly yours,

20

(Sgd) Albert J Rudick
Deputy Commissioner

AJR:jbm
c.c. to Banque Genevoise de Commerce

IN THE PRIVY COUNCIL

No. 8 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

ADMIRALTY JURISDICTION F.S.C. 219/1962

B E T W E E N

BANQUE GENEVOISE DE COMMERCE ET DE CREDIT

(Plaintiffs) Appellants

- and -

COMPANIA MARITIMA DE ISOLA SPETSAI LIMITADA

(The Owners of the Steamship or Vessel
"SPETSAI PATRIOT")

(Defendants) Respondents

RECORD OF PROCEEDINGS

WILLIAM A. CRUMP & SON,
2/3 Crosby Square,
Bishopsgate London E.C.3

Solicitors for the Appellants

T. L. WILSON & CO.
6, Westminster Palace Gardens,
Victoria Street,
London S.W.1.

Solicitors for the Respondents