CHAPTER VIII

A SPECIAL STUDY OF CARGO THEFT :
AN ABUSE OF THE GREEK LEGAL SYSTEM

In any country with a large international shipping community, regulation and control is difficult. There will always be a small group of people intent on misusing the system. This chapter examines the alarming practice that is being perpetrated by a group of individuals including certain unscrupulous lawyers in Greece.

Greece, as we all know, is the oldest shipping nation and the shipping community of the world. We owe much of our shipping experience and adventure to the Greeks — both ancient as well as modern. It is therefore tragic when we find that today Greece forms an area for the perpetration of a peculiar type of maritime fraud, involving illegal deviation of vessels and consequent theft of the cargo.

For the past few years, the International Maritime Bureau (IMB) have recorded an alarming increase in the number of fully laden vessels deviating to ports in Greece and Cyprus. In most of these a large proportion of the freight (80 - 90 percent) had already been paid to the shipowner, who subsequently declared himself bankrupt and unable to complete the voyage. The vessels were abandoned leaving creditors to salvage what they could with the cargo owners being faced with the difficult and expensive task of having the cargo released from the vessel and re-shipping the same to destination.
A pattern then emerged which makes this difficult situation even more complex from the cargo owner's point. In most cases, the shipowner, acting on the instructions of his lawyer, one of a group specialising in this kind of work, puts into motion a series of legal moves whereby he is able either to sell the cargo 'legally', or to ensure that the same is lost to the bonafide consignee.

Such tactics can only succeed in an environment where the legal process can be manipulated by unscrupulous lawyers and their clients. To add to the problem or rather to aggravate the problem, the cargo owner is usually from a developing country and is at a disadvantage in obtaining expert local advice. Understandably, he may thus hesitate to take quick, positive decisions to protect his title to the cargo and generally loses it to the crafty shipowner and his legal advisers who operate a well-tried out system on a familiar terrain.

The modus operandi is as under. The shipowner offers his vessel at a low rate and thus obtains the fixture. The cargo is loaded, bills of lading issued and freight paid in accordance with the charter party. The vessel then instead of proceeding to the destination deviates to a small port in Greece, for reasons ranging from 'general average' to 'crew change' or 'provisioning'. Of course, the cargo interests and the charterers are not informed of this deviation. The shipowner next 'seeks advice' and receives instructions from a group of lawyers.
It is invariably the case that a substantial amount is owed to the crew in unpaid wages. A lawyer 'representing' the crew files a petition with the court asking for the attachment of the assets of the shipowner in pursuance of their claims. At the hearing, the lawyers representing the owner agree to the petition of the crew and a judgment by consent is obtained ordering the public sale of the shipowner's assets. Usually there is a collusion between the owner's lawyer and the lawyer representing the crew, with the claim of the crew's wages being greatly inflated.

The Court Bailiff next goes aboard the vessel to execute the judgment and is told by the owner's representative on board that both the vessel and the cargo belong to the owner, and that it would be easier to sell the cargo rather than the vessel. The Bailiff notes this in his report and hands over to the Justice of Peace or the local court having jurisdiction over the sale of the assets. It is to be noted here that neither the Bailiff nor the Justice of Peace asks the shipowner to show proof of ownership of the cargo.

A date is next set by the Justice of Peace for the auction. No notification or notice is however given to the genuine cargo owners that their cargo is to be auctioned. Since the ship is usually in a small port away from Athens or Piraeus, the advocate representing the cargo interests is unlikely to discover the auction by the local court in sufficient time to stop the proceedings.
At the auction, the shipowner, through his lawyer's nominees, will buy the cargo at a throwaway price generally equivalent to that needed to pay the crew's claim. As the auction has been given the minimum publicity, there are no other bidders. After the cargo is put through the auction, it has been 'legally' sold to a 'genuine buyer'. To revoke the auction, a successful appeal would be needed against the judgment ordering it and this is possible only through a normal law suit which can take up to a year or so at the end of which the consignee could have a judgment against nothing more than a name-plate shipping company.

The cargo is next sold within forty-eight hours of the auction to bona fide buyers, and shipped out of jurisdiction. In a particular case, an Italian buyer had been found before the date of the auction -- so certain were the owner's nominees of 'buying' the cargo at the auction. The terms are usually attractive -- 12.5 per cent in advance and the next on delivery.

In the case an alert lawyer acting for one cargo consignee learnt of the auction in time to take action. He obtained an interim order from a competent judge only before the auction, thus postponing the same pending a petition for its revocation. However, he was threatened with physical violence by associates of the lawyer if he persisted in his efforts to protect the cargo.

Public auction is the easiest way to 'legally' deprive the consignees of their goods. However, if this fails, the ship-
owner's lawyers can use a number of doubtful legal manoeuvres to prevent the quick transhipment of the cargo to its destination. Some such dubious methods are as under :-

1) The vessel is put through a series of ownership changes, with each owner demanding a greater price from the consignee for the release or delivery of his cargo. Before the consignee can take legal action against the owner, the vessel goes through a further ownership change, with all the owners being name-plate companies in flag of convenience countries and any action against owners is pointless unless the vessel belongs to them. All these companies, however, are controlled by the shipowner's lawyers or his associates. The vessel may be put through a public auction with the nominees of the shipowner bidding to buy it at a nominal rate. The process of extorting moneys from the cargo owners then proceeds as described below.

2) The lawyers of the shipowner repetitively file the same petitions (more often blatantly false) in the courts alleging non-payment of freight by the cargo owner or other damages, requesting the court for the 'conservative sequestration' or anticipatory attachment of the cargo to meet these claims. That the petitions are devoid of any legal basis are apparent from their two main objectives, viz.,

   a) to obscure the issues regarding the consignee's

---

1. See Chapter XI of this work regarding 'Saisie Conservatoire'.

title to the cargo; and,

b) to frustrate attempts by the consignee to tranship the cargo.

It may be mentioned here that in Greece there are no courts dealing with maritime cases as yet. Thus a judge usually hears up to forty cases in one morning, and the case preceding a multi-million dollar shipping claim may be one involving a relatively trivial matter like the deciding of the payment of alimony or some other pecuniary compensation.

The lawyers representing the shipowner hope that filling petitions repetitively, they may exploit the judge's ignorance or negligence and obtain a judgment sufficient for them to arrange for a quick sale and despatch of the cargo to a fresh buyer, regardless of whether an appeal has been filed or not.

3) Sometimes lawyers use methods which would in other developed legal system result in the lawyers being expelled by the Bar Association. Unfortunately, this does not appear to be the case in Greece. Some of these tactics are:
a) a petition is filed say on a Friday requesting for the conservative sequestration of the cargo. The case is scheduled to be heard in the Court of Provisional Measures on say Monday morning. Instead of giving proper legal notice to the advocate representing the cargo interests in Athens/Piraeus, the claimant's lawyer sends a telegram late on Friday evening to the consignee in his home country. This telegram is in Greek and therefore totally unintelligible to say an Indian consignee in Madras. More often no notice is given and the defending lawyer does not attend the hearing. The case is decided ex parte and judgment in favour of the claimant's is issued.

b) documents which are either entirely false or have no legal basis are presented by the shipowner's lawyers to the court which unfortunately does not retain the same or challenge their authenticity. Thus, when a ship is being sold at a public auction, to pay for crew's wages, new buyers acquire the vessel and pay for it in full. The original owner's lawyer subsequently presents to the court a document allegedly signed by a Notary Public stating that the public auction was invalid as the original owners had at a later date reached a settlement with the crew for their unpaid wages. In a particular case, the
original owners applied for an interim order preventing the vessel's sailing on the basis of such a document.

c) petitions containing blatant falsehoods are made in the lawyer's letterhead seeking an interim order preventing the physical or legal movement of the cargo or vessels and are presented without any supporting documents before the courts. These are considered by the courts to be sufficient evidence in themselves and the desired orders are obtained. Unfortunately, the courts do not censure the lawyers making such false petitions even after the falsity of the same is established.

The cases discussed below will illustrate the methods used by these lawyers and the far-reaching consequences to the bonafide consignees resulting from their tactics. We have deliberately withheld the names of the vessels, owners and the lawyers for obvious reasons.

The first case relates to an incident in 1977 and involves a vessel V belonging to Company C. This vessel loaded transhipment cargo in a Greek port destined for West Africa. Bills of lading were issued, and all freights due collected. The vessel
was unable to sail from Greece due to the poor condition of her engines. She was arrested by the port authorities for unpaid dues and sold at a public auction some eighteen months later. The vessel was bought at the auction by X for a minimal sum, who then refused to release the cargo to the consignees except on the payment of an exorbitant amount.

The cargo consignee's lawyer began legal proceedings to obtain the release of the cargo. Meanwhile, the ship-owning company appointed L as their lawyer to act on their behalf. L promptly filed a petition in court stating that the public auction was invalid, that Company C was the rightful owner of the vessel and claimed extensive damages from X. L's reputation unnerved X, who realising that he might lose the vessel altogether, conspired with L as under:

X would form another company D to which the vessel would be transferred. Before the transfer was completed X entered into an agreement with L that the cargo would be fully discharged to L's care for onward shipment to the consignees. The cargo consignee's lawyer had meanwhile obtained a court judgment ordering X to discharge the cargo into his custody. However, before this could be effected, the vessel's ownership was transferred to
D company and the agreement to discharge the cargo to L's care came on the scene.

Investigations revealed that L had already chartered ship to carry the cargo, not to its rightful consignees in West Africa, but to Tripoli, Lebanon. Another petition was then presented to the court by the cargo consignee's lawyer asking for an injunction preventing the shipment to Lebanon. This was granted, and at the same time another case was filed against D for the release of the cargo. While this was going on L purporting to be the owner of the cargo, had sold it to Portuguese buyers and received payment in advance to the tune of 500,000 U.S. dollars.

The vessel then underwent another ownership change, this time to a company E, owned by L. As the new owner of the vessel, L obtained a court order against the personal assets of the lawyer representing the cargo consignee for a sum in excess of 300,000 U.S. dollars.

It is now more than eight years since the vessel loaded the cargo in Greece. The legal proceedings and conflicting judgments surrounding the cargo were now so confusing that it has become difficult for anyone, including a judge, to unravel the falsehoods from the truth. In May 1982, one of the courts hearing a petition for the sequestra-
tion of the cargo, ordered the cargo to be made over into the care of the Customs. The Portuguese buyers sued company E and L personally for fraudulently extracting 500,000 U.S. dollars from them. The issue was decided in favour of the Portuguese buyer and against L. The Portuguese then commenced criminal action against L. It is understood that in October 1983, L approached another individual W and the Portuguese buyers were looking for a mutual settlement.

It is unlikely that any settlement will be reached. Whatever agreement is reached now, would be a poor consolation to the West African consignees who had paid in full for their cargo some years back and now have an outstanding judgment against them for over 300,000 U.S. dollars.

The second case involves a general cargo loaded in West Europe for the Indian subcontinent. The bills of lading were issued and all freights were paid. However, instead of proceeding to her destination, the vessel dropped anchor in a Greek port claiming unpaid freight. The cargo consignees instructed lawyers in Athens and after a protracted legal proceedings they obtained a judgment ordering the release of the cargo to them in Greece. However
when the lawyers representing the cargo consignees went to the port to take delivery of the goods, they found, to their chagrin, that the cargo had been sold and despatched to merchants in Lebanon and Greece a short while previously.

It is learnt that criminal proceedings have now been instituted with regard to the loss of some of these consignments.

The next case involves the sister ship involved in the fraud mentioned in the preceding paragraph. This vessel loaded a cargo of fertiliser in Turkey for Indonesia. Freight, prepaid bills of lading were issued and all freights were paid. This ship too, like her sister ship, arrived at a Greek port. The crew filed a petition for unpaid wages. At the hearing, this was accepted by the owners and judgment by consent was issued by the presiding judge. The cargo was thereafter ordered to be sold by public auction. Fortunately this was prevented at the last moment by the timely action of the lawyer representing the cargo interests. The ship was subsequently sold through a public auction to a third party, who refused to release the cargo except on payment of an exorbitant sum. The Indonesian consignees thereafter instructed the IMB who negotiated a more realistic freight rate with the owners, subject to the voyage being monitored by the IMB.
True to their practice, the lawyers representing the previous owners of the vessel instituted a series of legal proceedings against the present owners and the consignees, claiming, *inter alia*, that the public auction was invalid and that the cargo and the vessel actually belonged to the previous owner. A petition for conservative sequestration of the cargo and the vessel was made claiming that the new owners and the Indonesian consignees were attempting to 'criminally misappropriate' the cargo.

These sinister attempts were frustrated after considerable difficulties and the vessel eventually sailed from the Greek port with an IMB supercargo on board and finally arrived at Djakarta on December 25, 1983 -- a Christmas present for the original consignees.

This incident, it is understood, is probably the first time that the consignees have been able to retrieve their cargo in the face of such adversities.

Another case involves a vessel loaded with general cargo from West European ports and Portugal for Iran. Bills of lading were issued and all freights paid. The vessel called at Ceuta for bunkers. Her owners, however, claimed they had insufficient funds to pay for the bunkers and
requested the cargo owners to pay a freight surcharge to cover the cost. This was agreed upon by the cargo interests after considerable negotiations and the money was paid.

The vessel then proceeded to Greece and was promptly arrested by the vessel's 'mortgages' crew and suppliers. Additional huge sums were demanded by the owners in order to pay off the debts and proceed on her voyage. The owners refused to offload the cargo for transhipment before a 'ransom' was paid. In the meantime, they filed petitions against the cargo for unpaid freights and damages.

It has been more than three years since the vessel began her voyage. Today she lies with her cargo on board quietly rusting away in a small Greek anchorage, whilst the claims and counter-claims are steadily growing day by day with the passage of time.

Besides the above, there have been a spate of fully laden vessels being abandoned by their owners in Crete and Greece over the past six or seven years. In all these cases, the cargo consignees are put to tremendous expense and effort in order to recover the cargo. In a majority of the cases, in spite of the best of the efforts, the cargo
is lost in labyrinth of litigations and claims.

The IMB have issued a caveat to the cargo owners and charterers in this respect to avoid being a prey to such fraudsters. However, they have voiced the feelings of all the bona fide traders, when they observed:

'We feel that the situation could be greatly improved if the Bar Association of Piraeus and Athens were to take more effective action to censure lawyers who act in a manner contrary to the ethics and integrity of the legal community.

We believe that a viable legal system exists, but it is being misused by some lawyers. It is obviously wrong that claimants may constantly place the same petitions before the court, in the hope of a favourite decision.

Obtaining interim orders on vessels is a serious and expensive business and it should not be possible for a lawyer to obtain such an order without any supporting documents. In any case, such an order should not be issued unless there is a real danger of the vessel leaving the jurisdiction.
It is also an extremely undesirable state of affairs that the Bailiff of the Court can cause assets to be put through a public auction without first thoroughly checking their ownership.¹*

---

¹* 'Cargo Theft: An Abuse of the Greek Legal System'
International Maritime Bureau Special Report, April, 1984.