

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HSB NORDBANK : CIVIL ACTION  
 :  
 v. :  
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 M/V AHMETBEY, :  
 ODIN DENIZCILIK : NO. 03-3520

Padova, J.

MEMORANDUM

October 6, 2003

Plaintiff has filed an action against the vessel M/V Ahmetbey, in rem, and Odin Denizcilik, in personam, seeking judgment against Defendants for money due and unpaid under a loan agreement and enforcement of a mortgage on the M/V Ahmetbey by the sale of the vessel. A bench trial was held on this matter on September 23 through September 25, 2003. Based upon the following findings of fact and conclusions of law, the Court will enter judgment in favor of Plaintiff and against Defendants, and will order the sale of the vessel.

**I. FINDINGS OF FACT**

Defendant M/V Ahmetbey is a maritime vessel which sails under the flag of the Republic of Turkey. (Def's Prop. Fact, ¶ 3). Defendant Odin Denizcilik ("Odin") is the owner of the M/V Ahmetbey. (Def's Prop. Fact, ¶ 2.) On August 31, 1995, Odin executed a mortgage on the M/V Ahmetbey in favor of Hamburgische

Landesbank Girozentrale ("HLG"), in the sum of \$7,920,000.00. ("First Mortgage") (Pl's Ex. A at p. 2, § B.) The First Mortgage is a First Degree, First Rank mortgage in favor of HLG. (Pl's Ex. A at p. 2.) The First Mortgage was duly acknowledged and subsequently recorded, over the Flag Certificate under Article 876 of the Turkish Code of Commerce. (Pl's Ex. E.) On July 14, 1995, Odin entered into a loan agreement with HLG in the amount of \$6,600,000, which was secured by the First Mortgage. ("1995 loan agreement") (Pl's Ex. C.) Odin is an obligor on the 1995 loan agreement and the grantor of the First Mortgage on the M/V Ahmetbey. (Pl's Ex. A at p. 1.)

On February 4, 2003, HLG merged with another bank, Landesbank Schleswig-Holstein, and became HSH Norbank (Plaintiff in this action). (Pl's Ex. B.)<sup>1</sup> This merger was completed on June 2, 2003. (Id.) The merger between the banks was recorded with the relevant authorities in Germany, and notice of the merger was sent to all of HLG's former customers, including Odin. (See N.T. 9/23/03 at 33 & Pl's Ex. B.)

Odin failed to make a required payment of \$100,000 on the First Mortgage on November 29, 2001. (Pl's Ex. G.) Odin was given notice of this default in a meeting with Plaintiff held on November 30, 2001. (N.T. 9/23/03 at 55.) A notice of default was prepared

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<sup>1</sup> For ease of reference, the Court will refer to HLG, as well as Nordbank, as Plaintiff in this memorandum.

in December, 2001, presented to Odin, and sent to Plaintiff's attorney in Turkey, Ms. Sema Yerlikaya. (N.T. 9/23/03 at 54; Pl's Ex. E.) Odin was notified of its continuing default at a meeting held on January 9, 2002, after Odin had failed to make a balloon payment due on January 4, 2002. (N.T. 9/23/03 at 57-58.) Subsequent to this meeting, Plaintiff continued to notify Odin of its continuing default by sending it periodic statements of account, which listed the amounts owed and past due. (N.T. 9/23/03 at 58; Pl's Ex. G.)

In May, 2002, Plaintiff and Odin entered into negotiations concerning a new loan agreement ("2003 loan agreement"), which, if consummated, would have superseded the 1995 loan agreement. (N.T. 9/23/03 at 61.) Mr. Karahasan, on behalf of Odin, signed the 2003 loan agreement on April 25, 2003. (N.T. 9/23/03 at 70.) It was agreed as a condition of the 2003 loan agreement that the sum of \$459,803.39 would need to be paid on or before April 30 2003, whether or not the loan was drawn down by that date. (N.T. 9/23/03 at 75; Pl's Ex. H.) Plaintiff sent Odin a letter to this effect, which specifically informed Odin that failure to make payment by April 30th might cause Plaintiff to take legal action under the 1995 loan agreement. (Pl's Ex. I.) Odin did not make the required payment on or before April 30, 2003. (N.T. 9/23/03 at 75.) Plaintiff sent Odin a letter informing it of its failure to abide

by the terms of the 2003 loan agreement on May 25, 2003. (Pl's Ex. L.)

On June 2, 2003, in an unrelated action, the M/V Ahmetbey was arrested by a separate party by order of this court. See Sanayi v. Deniczilik, Docket # 03-3434 (E.D. Pa.) This arrest was subsequently lifted by order of this Court on June 6, 2003. See id.

On June 6, 2003, Plaintiff initiated the instant action, and this Court signed an order of arrest for the M/V Ahmetbey on this date. (See Order of Arrest, dated June 6, 2003, Docket # 3.) At the time of the June 6th arrest, Odin still had not repaid the amount due under the 1995 loan agreement. (See Pl's Ex. G.) At the time of the June 6th arrest, the M/V Ahmetbey was still in the process of discharging cargo from its previous charter. (N.T. 9/25/03 at 28.) However, also at the time of the June 6th arrest, the M/V Ahmetbey had entered into a new charter with another party which called for the vessel to sail to Canada. (Def's Prop. Fact at ¶¶ 31,32; N.T. 9/25/03 at 26.)

Plaintiff's uncontested calculation of the amount due under the 1995 loan agreement, as of May 14, 2003, is \$791,441.34, including accrued interest. (Pl's Prop. Fact, ¶ 76; see also Pl's Ex. G.) Plaintiff's uncontested calculation of the interest due for the period from May 14, 2003 through September 24, 2003 is \$13,042.29. (Pl's Prop. Fact, ¶ 78.) Defendants have also not

contested Plaintiff's assertion that there is an overdraft balance of \$1,108.10. (Id.)

## II. DISCUSSION

Pursuant to the terms of the Ship Mortgage Act, 46 U.S.C. § 31325(b), and 28 U.S.C. 1333, this Court has jurisdiction over the subject matter of this action, and may decide this dispute. The Ship Mortgage Act allows a party to enforce the terms of a preferred mortgage on a maritime vessel that is in default by bringing an action against the vessel in rem and an action against the obligor in personam. 46 U.S.C. § 31325(b). The Ship Mortgage Act defines a "preferred mortgage" as a mortgage that is "executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office." 46 U.S.C. § 31301 (6)(B). At trial, Defendants did not dispute the fact that the First Mortgage is a preferred mortgage under the Ship Mortgage Act, and the Court concludes that it is. See 46 U.S.C. § 31322.

Issues of Turkish law are relevant to the Court's determination of the issues in this case. "When analyzing foreign law, the district court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence." Trinidad Foundry v. K.A.S. Kamilla, 966 F.2d 613, 615 (11th Cir. 1993)(citing Fed R.

Civ. P. 44.1). At the trial held from September 23 to September 25, 2003, the Court heard testimony from expert witnesses in the field of Turkish law, and the parties have submitted a number of cases from the Turkish courts that are relevant to the instant matter.

A. Whether Adequate Notice Of Default And Arrest Was Given

Defendants do not appear to dispute Plaintiff's assertion that Odin has failed to make timely payments on the 1995 loan agreement, and that failure to make such payments is cause for a finding of default under the 1995 loan agreement. However, Defendants argue that Plaintiff failed to give adequate notice of Odin's default under the 1995 loan agreement. Specifically, Defendants assert that negotiations entered into between Plaintiff and Odin concerning the 2003 loan agreement led to a "common understanding" between the parties that Plaintiff would not arrest the M/V Ahmetbey based upon Odin's default on the 1995 loan agreement. (See Def's Prop. Find. Fact, ¶ 24, 30.) Defendants do not appear to dispute that the 2003 loan agreement was never consummated, due to Odin's failure to abide by the agreement's terms and make timely payment.<sup>2</sup> (Def's Prop. Fact, ¶ 24.) However, Defendants argue

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<sup>2</sup> It is unclear whether, when Defendants refer to a "common understanding" between the parties resulting from the negotiations surrounding the 2003 loan agreement, Defendants are attempting to assert the existence of an oral agreement between the parties whose provisions superseded the terms of the 1995 loan agreement. To the extent that Defendants are making such a claim, there is no evidence in the record to support the

that, during negotiations involving the 2003 loan agreement, Plaintiff never specifically informed Odin that it was still in default on the 1995 loan agreement, and further never informed Odin that the M/V Ahmetbey risked arrest based upon this default if Odin refused to comply with the terms of the 2003 loan agreement. Defendants further argue that Odin received no official notice of default on the 1995 loan agreement from December, 2001 until the date of the M/V Ahmetbey's arrest. (Def's Prop. Fact ¶ 28.) Defendants appear to argue that, given the parties' ongoing negotiations, the earlier notices of default given by Plaintiff had lapsed and were therefore inadequate under the terms of the 1995 loan agreement.

The terms of the First Mortgage itself clearly state that, in the event of default, Plaintiff may take any action that it believes is necessary to protect its security. (Pl's Ex. A at p. 14). The First Mortgage further states that, upon the occurrence of an event of default,

the security created by this deed shall become enforceable forthwith without further notice and the Mortgagee thereupon shall become entitled as and when it may see fit then or at any time thereafter to put into force and to exercise all the powers possessed by it as Mortgagee and charges of the vessel and in particulars:

...(e) to sell the vessel or any share therein with or without prior notice to the Owner and with or without the benefit of any charterparty as per the terms of the jurisdiction at home or abroad and

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existence of such an agreement, and the Court finds as fact that no such oral agreement existed.

upon such terms of the Mortgagee in its absolute discretion may determine with power to postpone any such sale and without being answerable for any loss occasioned by such sale resulting from postponement thereof.

(Pl's Ex. A. at pp. 15-16.)<sup>3</sup> The mortgage agreement further provides that,

no delay or omission of the Mortgagee to exercise any right or power under the Loan Agreement or the Security Documents or any of them shall impair such right or power or be construed as a waiver or acquiescence in any default by the Owner...

(Pl's Ex. A. at p. 17.) Furthermore, the terms of the 1995 loan agreement provide that "[Plaintiff] may demand immediate payment of the loan and initiate proceedings to enforce the ship mortgage should there be an important reason to do so." (Pl's Ex. D. at ¶ 12.)

There is nothing in either the First Mortgage or the 1995 loan agreement which requires Plaintiff to provide notice to Odin before foreclosing on the mortgage and arresting the M/V Ahmetbey. There is also nothing in the First Mortgage or the 1995 loan agreement which indicates that a valid notice of default will lapse or expire at a later date and thereby excuse a debtor from its obligations under the mortgage or agreement.

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<sup>3</sup> The mortgage agreement further provides that the proceeds of any such sale shall be payable to Plaintiff for costs, panalties, interest, attorney's fees, and the outstanding indebtedness, with any outstanding surplus paid to Odin. (Pl's Ex. A at pp. 16-17).

Furthermore, Defendants' implication that Plaintiff acted unfairly or in bad faith in choosing to arrest the M/V Ahmetbey is not supported by the record. According to the testimony of Oliver Brandt, a relationship manager with the bank responsible for Odin's account, Odin was first notified of its default in a meeting held on November 30, 2001, in Plaintiff's head office. (N.T. 9/23/03 at 55.) Mr. Brandt further testified that a notice of default was subsequently prepared and sent to Odin by Plaintiff. (See N.T. 9/23/03 at 54; Pl's Ex. F.) Mr. Brandt further testified that Odin was again given notice of its default in a meeting held in January, 2002. (N.T. 9/23/03 at 57-58.) Finally, Mr. Brandt testified that continuing notices of default were sent to Odin in the form of statements of account, which clearly listed the money owed. (N.T. 9/23/03 at 58; Pl's Ex. G.) The Court finds the testimony of Mr. Brandt credible with respect to this issue.

Defendants have presented no evidence which could lead this Court to the conclusion that, during subsequent negotiations between the parties concerning a revised 2003 loan agreement, Plaintiff excused Odin from its default under the 1995 loan agreement. To the contrary, a letter dated April 15, 2003 from Plaintiff to Odin gave Odin notice that, if Odin did not abide by the terms of the 2003 loan agreement, Plaintiff might commence legal action under the 1995 loan agreement. (Pl's Ex. I.) Thus, contrary to its assertions, Odin received warning that, if it did

not comply with the terms of the 2003 loan agreement, it risked further legal action, including foreclosure and arrest.

The Court therefore concludes that there is no basis for Defendants' assertion that Plaintiff provided Odin with inadequate notice of default, either under the terms of the 1995 loan agreement or the First Mortgage. The Court further concludes that Odin continues to be in default on the 1995 loan agreement, and that Plaintiff has a right under the terms of the First mortgage and the 1995 loan agreement to demand immediate repayment of the entire sum loaned under the agreement. Furthermore, pursuant to the Ship Mortgage Act and the terms of the First Mortgage, the entire debt, plus interest accruing, constitutes a lien upon the M/V Ahmetbey, which is enforceable in this Court.

B. Sale Of A Ship In A Foreign Country Under Turkish Law

Defendants argue that, under Turkish law, a mortgage on a Turkish flagged ship cannot be enforced in a foreign country, unless the parties make an agreement to conduct such enforcement proceedings outside of Turkey after the loan secured by the mortgage becomes due and payable. In support of this assertion, Defendants produced the testimony of Dr. Samim Unan, a law professor at a university located in Istanbul. The First Mortgage provides that the First Mortgage "shall be construed and enforceable in accordance with the laws of the Republic of Turkey." (Pl's Ex. A at p. 19.) However, the First Mortgage also clearly

states that Plaintiff may institute proceedings to enforce or protect the First Mortgage and the 1995 loan agreement in the courts of any country. (Pl's Ex. A. at p. 19.) According to the testimony of Dr. Unan, this latter provision in the First Mortgage is invalid under Turkish law, because the mortgage contract was entered into before the first payment became due under the 1995 loan agreement. According to Dr. Unan, under Turkish law, a creditor may not seek to enforce a mortgage by means other than "official enforcement," unless the debtor and creditor agree to alternative methods of enforcement after money secured by the mortgage becomes due and payable. (Tr. 9/24/03 at 125-26.) Dr. Unan further testified that, under Turkish law, "official enforcement" means enforcement only in Turkish courts, and not in foreign courts. (Id.) Thus, Dr. Unan testified that a contract provision providing for enforcement in a foreign court is "an abuse of contract clause, and it is invalid under Turkish law. . . . You cannot agree on such a clause before the loan secured on the mortgage becomes due and payable. It's only after that moment that this is possible between the parties, not before." (Tr. 9/24/03 at 123.) Dr. Unan further testified that, because of this rule, if Plaintiff obtained a judgment in this Court, the registry in Turkey where the First Mortgage is recorded would not recognize the judgment or any subsequent sale based upon the judgment, and would

refuse to remove Odin's name from the registry and replace it with the name of the new owner. (Tr. 9/24/03 at p. 127.)

Dr. Unan provides no caselaw which supports this assertion. By contrast, Plaintiff has submitted two decisions from the Turkish courts which directly contradict Dr. Unan's testimony. The first decision, involving the ship formerly known as M/T Gokturk, is from the Third Commercial Court of Commerce in Turkey. (Pl's Ex. Z, Corvett Shipping Ltd. v. Registration Office of Republic of Turkey (3rd Comm. Ct. of Turkey, 1999) ("Gokturk decision"). This case concerned a ship, formerly registered in Turkey, that had been sold to a foreign owner via a compulsory auction conducted in Greece in accordance with Greek law. (Id. at p. 3.) Plaintiff sought to have the vessel deleted from the Turkish ship registration. (Id. at p. 2.) The Gokturk decision stated that "compulsory execution is among the absolute powers exercised and enjoyed by each state within its territory and national boundaries" and further that "compulsory execution is a direct result of its powers of sovereignty and governing." (Id. at p. 5.) The Court held that legal enforceability of the sale of a ship and consequent change in ownership shall be "established in accordance with the law of the state where this established new legal status is formed and this status shall have a legal enforceability without any intervention by another foreign jurisdiction..." (Id. at p. 6.) The Gokturk court further held that the prior decision of the registration office

refusing to delete the ship's prior registration was in error. (Id.) Thus, according to the Gokturk decision, a sale of a Turkish flagged ship in a foreign court shall be given affect in a Turkish court. The Gokturk decision makes no mention of any Turkish law which restricts the ability of the parties to agree to the enforcement of a mortgage in a foreign court, as described by Dr. Unan. Similarly, in a case involving the vessel known as M/V Guzin S., the Second Commercial Court of Turkey held that it had no jurisdiction to interfere with the decision of a court in South Africa which had ordered the Guzin S. sold at auction.<sup>4</sup> (Pl's Ex. ZZ, ECE Denizcilik ve Ticaret A.S. v. Hamburgische Landesbank Girozentrale (2nd Comm. Ct. Turkey 2003)("Guzin S. decision"). According to the testimony of Ms. Yerlikaya, the Gokturk decision is final and cannot be appealed, and currently represents an "example case" used by other courts and attorneys practicing in the area of maritime law. (N.T. 9/24/03 at 150.)<sup>5</sup>

Dr. Unan's assertions were also rejected by a South African court in the case involving the vessel M/V Baha Karahasan, Basak Denizlik v. Baha Karahasan, Case No's A108/2003, A114/2003 (High Ct. of South Africa, Durban, Sep. 19, 2003) ("Baha Karahasan

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<sup>4</sup> Defendant Odin Deniczilik in this case is also the owner of the Guzin S., and was the plaintiff in the Guzin S. action.

<sup>5</sup> Ms. Yerlikaya also indicated that the Guzin S. decision may still be appealed by the losing party. (N.T. 9/24/03 at 150.)

decision") The Baha Karahasan court specifically rejected Dr. Unan's interpretation of Turkish law that "official enforcement" means enforcement only in Turkish, and not foreign courts. (Pl's Ex. Q, at pp. 6-8.) The court thus held that provisions in Turkish law requiring a creditor to seek "official enforcement" of a mortgage (unless alternative forms of enforcement are subsequently agreed to) do not in any way restrict the ability of a creditor to seek enforcement in a foreign court. (Id.) In so holding, the court relied upon the opinion of an earlier South African court involving the arrest of a Turkish vessel, and upon the expert opinions submitted in that case. (Id.) The court further noted that Dr. Unan's interpretation of Turkish law would result in an absurd and inequitable result, as a shipowner could avoid enforcement of a mortgage against its ship simply by avoiding Turkish ports. (Id. at 8.)

The Court therefore concludes that the enforcement of the First Mortgage in this Court is valid under Turkish law.

C. The Propriety Of The Arrest Of The M/V Ahmetbey Under Turkish Law

Defendants argue that, under Turkish law, a ship that is "Ready to Sail" cannot be arrested in the manner in which the M/V Ahmetbey was arrested on June 6, 2003. Defendants further argue

that the M/V Ahmetbey was "Ready to Sail" as that term is understood in Turkish law on June 6, 2003. The Court disagrees.<sup>6</sup>

Defendants' witness, Serkan Aral, admitted that the M/V Ahmetbey was discharging cargo at the time she was arrested on June 6, 2003, and the Court has so found as fact. (N.T. 9/25/03 at 28.) The parties also do not dispute that at the time of the arrest the M/V Ahmetbey was also under charter to subsequently deliver goods to a Canadian port after its stop in Philadelphia, and the Court has so found as fact. (Def's Prop. Fact at ¶¶ 31,32; N.T. 9/25/03 at 26.) Defendants argue that, regardless of whether the M/V Ahmetbey was still discharging cargo at the time of the arrest, it was still "Ready to Sail" under Turkish law. Defendants further argue that, because the arrest of the M/V Ahmetbey was improper

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<sup>6</sup>The parties dispute whether Turkish or United States law applies to the procedure used to arrest a ship in United States waters. The First Mortgage between the parties contains a clause which provides that Turkish law will govern this dispute. These clauses are enforceable in this Court. Trinidad Foundry, 966 F.2d at 615. Plaintiff argues that the method used to arrest a ship described in the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure is procedural, and applies regardless of any analogous procedural rules in Turkish law (there is no dispute that United States law does not prohibit the arrest of ships which are "Ready to Sail"). (Pl's Post Trial Memorandum of Law, at p. 7.) Defendants have argued, however, that the provisions in Turkish law concerning the arrest of a ship that is "Ready to Sail" are substantive in nature, and are designed to protect the rights of cargo owners. Because the Court finds, based upon the record before it, that the ship was properly arrested in accordance with Turkish law, the Court declines to engage in a choice of law analysis regarding this issue. Cf. Oil Shipping, B.V. v. Denizcilik, 10 F.3d 1015, 1018 (3d Cir. 1993) (noting that a choice of law analysis is only necessary where an actual conflict between two bodies of law exists.)

under Turkish law, this court cannot properly enforce the mortgage on the vessel.

In its prior decision denying Defendants' motion to vacate the arrest of the vessel, this Court ruled that Plaintiff had established that the June 6th arrest of the M/V Ahmetbey was proper under Turkish law. (See Memorandum of August 27, 2003, Docket # 39.)<sup>7</sup> Nothing in the record currently before the Court alters this Court's prior conclusion. According to Dr. Unan, Defendants' own witness, there is no Turkish law specifically defining the circumstances under which a ship is "Ready to Sail." (N.T. 9/24/03 at 128.) Rather, this determination must be made by the court after considering all relevant factors. (Id.) Specifically, Dr. Unan testified that "it is generally recognized that a ship is ready to sail when formalities are accomplished and there is no obstacle to sail, but it depends on the way of the involved interests, on the continuation of the voyage of when and where the limit passes, it's a question of interpretation, and there are

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<sup>7</sup>In this memorandum, this Court relied upon two opinions of the Turkish courts, Veli Alemday Gemi v. Ali Acik and Sotrade Denizilik v. T. Emiak Bankasi. In this memorandum, we noted that, in the former case, the Turkish court found that a vessel could not be arrested because it was "full and ready to move," while in the latter case, the Turkish court found that a vessel was "Ready to Sail" because, in addition to having received permission from customs authorities to leave, it had already been loaded with its cargo for its voyage. (See Memorandum of August 27, 2003, at p. 10.) Neither of these cases is consistent with Defendants' view that a ship which is still discharging cargo is "Ready to Sail" simply because it has been chartered for a subsequent voyage.

different interpretations." (N.T. 9/24/03 at 129). Thus, Dr. Unan did not answer the question of whether, under the circumstances of this case, the M/V Ahmetbey was "Ready to Sail" when it was arrested on June 6th.

The Court concludes, based upon an analysis of the factors cited by Dr. Unan as relevant to the determination, that the M/V Ahmetbey was not "Ready to Sail" at the time of the June 6th arrest. Dr. Unan himself testified that there must be no obstacle to sail for a ship to be "Ready to Sail." There is no dispute that Odin was under an obligation to its charterer to complete its delivery of cargo while at port in Philadelphia. This obligation represented a clear obstacle to the M/V Ahmetbey's ability to continue its voyage.<sup>8</sup> The Court therefore concludes that, under Turkish law, the M/V Ahmetbey was not "Ready to Sail" when it was arrested on June 6th.<sup>9</sup>

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<sup>8</sup> Mr. Aral did testify that, hypothetically, the charterer whose goods the M/V Ahmetbey was delivering on June 6, 2003 could have agreed to allow the ship to sail before the cargo was fully discharged. However, Mr. Aral admitted that there was no such agreement in this case. (N.T. 9/25/03 at 28-29.)

<sup>9</sup> The testimony of Judge Kasar does not alter the Court's conclusion. Judge Kasar did testify that a ship which had received a new charter assignment but which was still discharging cargo from its previous assignment would be "Ready to Sail" under Turkish law. (N.T. 9/24/03 at 114). However, this statement appears to represent Judge Kasar's own opinion based on his personal analysis of the relevant factors. Dr. Unan's testimony indicates that such analysis is the job of the presiding judge, not a legal expert, and that bright line rules cannot be drawn. (See N.T. 9/24/03 at 130). Moreover, because of the difficulties that occurred in translating Judge Kasar's testimony, it is not

D. Whether Plaintiff, HSH Nordbank, is a Valid Successor in Interest to the Mortgage

Defendants assert that Plaintiff has no standing to bring this lawsuit pursuant to Turkish law, as it did not enter into the First Mortgage or the 1995 loan agreement with Odin, and has not established that it is the successor in interest to the party that did. It is not disputed that the First Mortgage and the 1995 loan agreement were entered into by Odin and Hamburgische Landesbank Girozentrale (HLG). Oliver Brandt testified that Plaintiff HSH Nordbank was formed by a merger between HLG and another German bank on or about June 2, 2003, that this merger was properly recorded and registered in Germany, and that the public relations office of HLG sent a letter to all customers, including Odin, informing them of this fact. (See N.T. 9/23/03 at p. 33 & Pl's Ex. B.) Defendants did not dispute these assertions at trial, and the Court has no reason to question their validity. Furthermore, Ms. Yerlikaya testified that she notified the Turkish registration office by letter of the change in the name of the bank. (N.T. 9/24/04 at 60-61). Defendants did not submit any evidence to contradict Ms. Yerlikaya's testimony on this subject, and the Court finds it to be credible. Ms. Yerlikaya further testified that no

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entirely clear if Judge Kasar clearly understood the content of the questions that were asked of him, or if his answers were translated in an accurate and complete manner. (See e.g. N.T. 9/24/03 at 115-17). The Court therefore can accord little weight to Judge Kasar's testimony.

more was required under Turkish law for Plaintiff to succeed HLG's interests under the First mortgage and the 1995 loan agreement. (N.T. 9/23/03 at 60-61.) The Court therefore concludes that Plaintiff is a valid successor in interest to the First Mortgage and 1995 loan agreement between HLG and Odin, and has standing to bring this suit.

### **III. CONCLUSIONS OF LAW**

1. Defendant Odin is currently in default under the terms of the 1995 loan agreement, and this default has never been excused, entitling Plaintiff to recover the entire sum of money loaned under the agreement, plus interest, costs and attorney's fees.

2. The First Mortgage on the M/V Ahmetbey, entered into on August 31, 1995, is a preferred mortgage under the terms of the Ship Mortgage Act, 46 U.S.C. § 31301, et seq., giving this Court jurisdiction under United States law to decide this dispute and enforce the mortgage.

3. The enforcement of the First Mortgage on the M/V Ahmetbey in this Court, by sale of the vessel or otherwise, is valid under Turkish law.

4. Based upon an analysis of all relevant factors, the Court concludes that the M/V Ahmetbey was not "Ready to Sail" under Turkish law when it was arrested on June 6, 2003.

5. Plaintiff, HSH Nordbank, has standing to enforce the terms of the First Mortgage on the M/V Ahmetbey and the 1995 loan agreement in this Court.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HSB NORDBANK : CIVIL ACTION  
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 v. :  
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 M/V Ahmetbey, :  
 ODIN DENIZCILIK : NO. 03-3520

ORDER

**AND NOW**, this 6th day of October, 2003, for the reasons stated in the accompanying memorandum, **IT IS HEREBY ORDERED** as follows:

- 1) Judgment is entered in favor of Plaintiff and against Defendants in the preliminary amount of \$805,591.73, to be amended by motion to include additional per diem interest subsequently accrued.
- 2) The M/V Ahmetbey shall be sold by the United States Marshal in accordance with the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, and Plaintiff shall recover its judgment from the proceeds of such sale. Such sale shall occur at the earliest possible date.

- 3) Upon the sale of the vessel, all crew members of the M/V Ahmetbey currently on board the vessel shall be repatriated immediately.
- 4) Within 10 days of the sale of the M/V Ahmetbey, Plaintiff shall submit an affidavit regarding the attorney's fees and costs that it has incurred in connection with this action. Upon approval by the Court, these fees shall be added to the amount of the judgment in this action.

BY THE COURT:

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John R. Padova, J.