

SOTERIOS KALOYRIAS,

*Plaintiff.*

SOTERIOS  
KALOYRIAS

v.

v.  
SHIP "REA"

THE SHIP "REA" NOW LYING IN THE PORT  
OF LIMASSOL,

*Defendants.*

(Admiralty Action No. 171/76).

5 *Admiralty—Arrest of property—Security—Principles applicable—  
Amount of security—Inadequate—Increased and terms thereof  
varied—Whether security should be increased to cover fully all  
the damages that defendants may suffer as a result of the order of  
arrest.*

*Admiralty—Practice—Arrest of property—Application to vary terms  
of order for arrest of property—Properly made under r. 211 of  
the Cyprus Admiralty Jurisdiction Order, 1893—Rules 165–167  
not applicable.*

10 *Injunction—Interlocutory injunction—Terms and conditions on grant  
of—Principles applicable.*

Plaintiff instituted legal proceedings against the defendant  
ship whereby he claimed the equivalent in Cyprus pounds of  
242,500 drachmas for, *inter alia*, salaries and supplies to the ship.

15 At the same time upon an *ex parte* application, based mainly  
on rules 50\* and 205\* of the Cyprus Admiralty Jurisdiction  
Order, 1893, he obtained an order of the Court for the arrest of  
the defendant ship. One of the terms of such order was that  
the plaintiff should furnish security in the sum of £500.—

20 Subsequently the defendants applied for an order of the Court  
ordering the cancellation of the warrant of arrest and ordering  
the plaintiff to furnish increased and/or sufficient security to  
cover the damage of the defendants which was the result of the  
issue of the warrant of arrest.

25 Defendants contended that the order of arrest should be

\* Quoted at p. 441 *post*.

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rescinded as the security given by plaintiffs is without real value and is inadequate or, in the alternative, the amount of £500 to be raised substantially and its terms to be varied as the respondent is a foreigner without any property in the Republic.

Plaintiff, besides his argument that no good cause has been shown by the defendants justifying the Court to interfere with the order of arrest, contended that the application is bad in law as it is based on rule 211\* and not on rules 165 to 167\*\* of the Cyprus Admiralty Jurisdiction Order, 1893. 5

*Held*, (1) The application to rescind the warrant of arrest was properly made under rule 211. 10

(2) No doubt the owners of the ship will suffer damages as a result of the order but not to the exorbitant amount of £10,000 as alleged. (After stating the principles governing grant of interlocutory injunctions—*vide pp. 444–445 post*). Applying these principles to the facts and circumstances of this case, I have come to the conclusion that the amount of £500.—is inadequate. Furthermore the terms under which security was entered should be varied. 15

(3) The amount of security should not be increased to cover fully all the possible damage that the defendants may suffer as a result of the order of arrest so that to make it less onerous for them and to encourage them to sit at rest on their rights. Amount of security increased to £750. Terms upon which security to be entered varied (*see p. 445 post*). 20 25

*Order accordingly.*

*Observations* with regard to the need to reveal all the facts in proceedings such as the present.

Cases referred to:

*Grade One Shipping Ltd. (No. 1) v. The Cargo on Board the Ship "CRIOS II"* (reported in this Part at p. 323 *ante*); 30

*American Cyanamid Company v. Ethicon Ltd.* [1975] 1 All E.R. 504.

### Application.

Application for an order of the Court (a) ordering the cancellation of the warrant of arrest of the ship "Rea" as the security 35

\* See p. 444 *post*.

\*\* See p. 443 *post*.

filed was without real value and/or insufficient and (b) ordering the plaintiff to furnish within ten days either in cash or by a bank guarantee increased security.

*G. Mitsides*, for the applicants.

5 *M. Vassiliou*, for the respondents.

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The following judgment was delivered by:—

15 MALACHTOS, J.: The plaintiff in this Admiralty Action, who was at all material times to the present proceedings the master of the defendant ship, instituted on 30.10.76 legal proceedings claiming as stated in the writ of summons, the equivalent in Cyprus pounds of 242,500 drachmas for salaries, supplies to the defendant ship, overtime work, costs for his repatriation and damages for loss of employment.

15 At the same time upon an *ex parte* application based mainly on rules 50 and 205 of the Cyprus Admiralty Jurisdiction Order 1893, accompanied by affidavit, he obtained an order of this Court for the arrest of the defendant ship which at the time was anchored in the port of Limassol and the case was fixed for the 8th November, 1976, in case it was decided to show cause against  
20 the said order.

These rules read as follows:

25 "50. In an action in rem any party may at the time of, or at any time after the issue of the writ of summons, apply to the Court or a Judge for the issue of a warrant for the arrest of property.

The party so applying shall before making his application file in the Court an affidavit containing the particulars prescribed by the following rules.

30 Such application shall be in writing signed by the person making the application or his advocate and shall be filed by the Registrar.

35 205. The Court or Judge may, on proof of urgency or other peculiar circumstances, make a temporary order, notwithstanding that no notice of the application has been given, on such terms, as to the furnishing of security or otherwise, as shall appear to be just".

One of the terms ordered by the Court was that the plaintiff

should furnish security in the sum of £500.— On the above date, when the case was called there was no appearance on behalf of the defendant ship and this Court ordered that the warrant of arrest issued on the 30th October, 1976, to remain in force till final determination of the action.

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On 14.11.76 an appearance was entered on behalf of the defendant ship and her owner company, namely, Aphromar Navigation Co. Ltd., which is a company formed and incorporated in Cyprus.

On 21.12.76 an application by summons accompanied by affidavit was filed on behalf of the defendants claiming—

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(a) an Order of the Court ordering the cancellation of the warrant of arrest of the ship "REA" as the security filed was without real value and/or insufficient; and

(b) an Order of the Court ordering the plaintiff that within ten days furnish to the Court either in cash or by a bank guarantee increased security and/or sufficient security to cover the damage of the defendants which was the result of the issue of the warrant of arrest of the ship "REA".

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This application was opposed by the plaintiff who filed an opposition accompanied by an affidavit.

At the hearing of the application on 27th December, 1976, both counsel called no witnesses and relied on the affidavits in support of the application and opposition, respectively. In the affidavit in support of the application it is stated, *inter alia*, that the respondent by virtue of a contract of employment dated 14.7.76 entered the service of the applicants on board the ship "REA" for a monthly salary as regards voyages within the Greek territorial waters of 20,000 drachmas and as regards voyages outside the Greek territorial waters for a monthly salary of 40,000 drachmas. That the respondent collected from the ship's agents the sum of £1,019.— and that he is a foreigner and has his usual place of abode outside Cyprus, having no property in Cyprus whatsoever.

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Finally, it is stated in the said affidavit that the damage the applicants will suffer as a result of the order of arrest is great and amounts to a sum more than £10,000.—

5 Counsel for applicants submitted that the Order should be rescinded as the security given by the respondent is without real value and is inadequate or, in the alternative, the amount of £500.— ordered by the Court to be raised substantially and its terms to be varied as the respondent is admittedly a foreigner without any property in the Republic of Cyprus.

10 Counsel for the respondent, on the other hand, besides his argument that no good cause has been shown by the applicants justifying the Court to interfere with the order of arrest, submitted that the application is bad in law as it is based on rule 211 and not on rules 165 to 167 of the Cyprus Admiralty Jurisdiction Order 1893.

15 I must say straight away that I find no merit in this submission. A mere glance at the wording of these rules shows clearly that they are applicable only to appeals to the Court for review of an order or judgment issued by a Judge of this Court.

These rules read as follows:

20 " 165. Save where by these Rules is otherwise provided, any party may apply to the Court to review any order made by a Judge not being a final order or judgment disposing of the claim in the action.

25 166. Any party desiring to apply to the Court for a review of any order made by a Judge shall within seven days of the making of the order file a notice in writing stating that he desires to apply to the Court for a review of the order and requesting that a day may be fixed for the hearing of his application, and the Registrar shall fix a day accordingly.

30 Every such application shall be entitled in the action and shall be signed by the party making the application or his advocate and may be in the Form M in Schedule I hereto.

35 167. Upon the hearing of the application, the Court may confirm, set aside, or vary the order of the Judge, or may make such order as in the opinion of the Court should have been made, or such further order as the nature of the case may require."

In the case in hand I hold the view that the application was properly made under rule 211, which provides that:

"The Court or Judge may, on due cause shown vary or rescind any order previously made."

Before proceeding to consider this application I must remark that although the merits of the case are not in issue, yet it is advisable that counsel should, in preparing the relevant affidavit in support of the application or opposition, as the case may be, reveal all the facts of their case as these facts are useful material for the Court in dealing with applications of this nature to arrive at the right and just conclusion. In the present case I must say that the affidavits sworn on behalf of the parties are far from complying with these requirements. In particular the affidavit sworn on behalf of the respondent, besides the repetition of the concise statement of his claim in the writ of summons, contains almost nothing else, although in paragraph 1 thereof it is stated that the affiant knows very well the facts of the case.

In addition to the facts stated in the affidavit in support of the application it has been established from the evidence given in cross examination by Mr. Symos Papadopoulos, who swore the affidavit in support of the application, when he was made available by virtue of rule 117 of the Cyprus Admiralty Jurisdiction Order 1893, as well as from statements made by counsel for applicants, that the ship in question is a yacht valued between £5,000 to £15,000.— and that the respondent plaintiff received from the agents of the ship, namely, N.A. Sitas & Co. of Limassol, the sum of £1,019. Furthermore, this yacht was used to transport about 30 passengers at the time to and from Lebanon during the civil war there in the summer months of 1976.

No doubt the owners of the ship, as a result of the order of arrest, will suffer damages but not to the exorbitant amount of £10,000.— as alleged, but much less taking into consideration the relevant facts and in particular the fact that when the respondent left the ship, the summer season was almost over.

The principles governing applications of this nature are enunciated in a judgment of this Court in Admiralty Action No. 83/76, *Grade One Shipping Ltd. (No. 1) v. The Cargo on Board the Ship "CRIOS II"* (reported in this Part at p. 323 ante), where reference is made to the *American Cyanamid Company v. Ethicon Ltd.* [1975] 1 All E.R. 504. At page 509 of this report it is stated "that the object of the interlocutory injunction is to

protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection  
5 must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the  
10 defendant's favour at the trial. The Court must weigh one need against another and determine where 'the balance of convenience' lies".

Applying the above principles to the facts and circumstances of this application, I have come to the conclusion that the  
15 amount of £500 ordered as security is inadequate. Furthermore, the terms under which security was entered should be varied. However, the amount of security should not be increased to cover fully all the possible damage that the applicants may suffer as a result of the order of arrest so that to make it less  
20 onerous for them and to encourage them to sit at rest on their rights.

The Order, therefore, made on 30th October, 1976, is varied as follows:

The respondent—plaintiff or anybody on his behalf to enter  
25 into a recognizance in the sum of £750.— to be answerable in damages to the defendant ship or her owners against whom the order of arrest was made. This amount to be secured either by a guarantor who is a resident of the Republic of Cyprus, to the satisfaction of the Registrar, or by a bank guarantee or by  
30 a deposit in Court.

Taking into consideration the difficulties that the respondent may encounter in securing the said amount under the above terms he is given time till the 15th January, 1977, to comply. Failure to do so then the Order of arrest will automatically  
35 lapse subject to the payment of all fees, dues and charges incurred in respect of the arrest and custody of the said ship.

The applicants are entitled to the costs of this application to be assessed at a later stage.

*Order accordingly.*