

1978 November 18

[MALACHTOS, J.]

MEGAS HADJIEVANGELOU (No. 2),

*Applicant-Plaintiff,*

v.

1. DORAMI MARINE LTD.,
2. THE SHIP "DORAMI" EX "HELLIAR HOLM",
3. ANDREAS STAVROU MAKRIS,
4. KYRIACOS PETROU,

*Respondents-Defendants.*

*(Admiralty Action No. 87/77).*

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5 *Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63)—Order prohibiting dealing with ship—It can be made irrespective of who is the owner at the time of the order—Section 30 of the Law—Who is an "interested person" within the meaning of this section—Claim for a declaration that plaintiff is the beneficial owner of 40 shares in the defendant ship and alternative claim for damages for breach of contract—Plaintiff not an interested person within the above section—Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd. (1976) 10*

10 *J.S.C. 1499 followed—But even assuming that applicant is an interested person he is not entitled to the said order because he was given security for his claim, to the kind and extent of which he agreed, and the ship was released from arrest.*

15 *Admiralty—Arrest of property—Giving bail to secure release—Effect in law of giving bail.*

20 By an agreement dated 12th November, 1976 between the parties to this action the plaintiff was appointed master of the defendant 2 ship at the monthly salary of U.S. Dollars 2,500 payable monthly in advance with effect from the 7th November, 1976. It was further agreed that by the payment of 40% of U.S. Dollars 64,000 *i.e.* 25,000 dollars by the plaintiff, he would be entitled to become the beneficial owner of 40 out of 100 shares in the said ship.

Plaintiff alleged that he paid in advance the sum of U.S. Dollars 11,317 in pursuance of the said agreement and took his appointment as master of the said ship as from 7th November, 1976; and that he incurred disbursements in his capacity as master of the said ship amounting to C£3,000; and that if to these amounts there were added his claim of U.S. Dollars 12,500 for wages it becomes evident that he has paid more than 40% of the sum of 64,000 Dollars, which was the consideration for his becoming the owner of 40 shares in the said ship. 5

By the present action the plaintiff claimed a declaration of the Court that he is the beneficial owner of 40 shares in the defendant 2 ship and in addition he had an alternative claim for damages for breach of contract. 10

As a result of the transfer of the ship to Andreas Makris Shipping Co. Ltd. the plaintiff applied and obtained an order\* for the addition of the new owner as a 5th defendant as well as for the amendment of the writ of summons. 15

Following the arrest of the defendant ship at the instance of the cargo owner in another action (No. 84/77) and the settlement of that action, the present plaintiff, who was a caveator in the said action, agreed to accept as security a sum of C£12,000 for her release with reservation of his rights to file an application to obtain an order under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63). The said security was furnished on the 4th April, 1977 in the form of a bank guarantee and the defendant ship was released. 20

By means of this application, based on section 30\*\* of Law 45/63 (*supra*) plaintiff applied for an order prohibiting any dealing with the defendant ship or any share therein until the final determination in the action, as additional security to the one already given by the existing defendants, or alternatively, that the said security be increased to a larger amount. 30

Counsel for the applicant contended that on the basis of what was decided in the *Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.* (1976) 10 J.S.C. 1499 the order 35

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\* See p. 545 *ante*.

\*\* Quoted at pp. 560-61 *post*.

applied for should be granted as the applicant is a person interested in the ship herself since he is entitled to be registered as owner of 40% shares of the owning company, defendant 1.

5      On the other hand counsel for the respondent argued that the application should be dismissed as the present owners were not parties to the present action at the time this application was filed, and as the applicant has accepted a security which was given for the release of the ship.

10      *Held*, (1) that as the action is in rem against the ship and the wording of section 30 of the Law is clear to the effect that the order applied for is made prohibiting any dealing with the ship or any share therein, the order under the said section can be made irrespective of the fact that the new owners were at a later stage added as co-defendants and irrespective of who is  
15      the owner at the time of the order.

(2) That section 30 of Law 45/63 does not apply to mere creditors or claimants of damages against the owners of the ship and that "interested person" in this section means a person who is interested in the ship herself (see *The Tokio Marine*,  
20      *supra* at p. 1507); that on the facts of this case it is doubtful whether the applicant can be considered as an interested person within the meaning of the said section 30; and that, accordingly, the discretion of the Court will not be exercised in his favour by granting the Order applied for.

25      (3) That once security has been given in an action in rem against a ship and the ship was released on being bailed out, the plaintiff in the action is not entitled for the same claim either to arrest the ship again or to obtain an Order under section 30 of the Law or be given double security under any  
30      other procedures; that, therefore, even if it is assumed that the applicant is an interested person within the meaning of section 30, again he would not have been entitled to the Order applied for as he was given security for his claim to the kind and extent of which he agreed and the ship was released from  
35      arrest; and that it is immaterial whether the applicant reserved his right to apply under the said section 30 because he reserved a right which he no longer had after the ship was bailed out.

*Application dismissed.*

Cases referred to:

- Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.* (1976) 10 J.S.C. 1499 (to be reported in (1976) 1 C.L.R.);  
*The Christiansborg* [1885] 10 P.D. 141 at p. 155;  
*Reederei Schulte & Bruns Baltic Schiffahrts v. Ismini Shipping Co. Ltd.* (1975) 1 C.L.R. 433; affirmed on appeal (1977) 7-8 J.S.C. 1284 (to be reported in (1976) 1 C.L.R.);  
*The "Hartlepool"* [1950] 84 Lloyd's Rep. 145 at p 146.

**Application.**

Application by the plaintiff for an order of the Court prohibiting any dealing with the ship "DORAMI" ex "HELLIAR HOLM" made under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63).

- G. Cacoyiannis*, for the applicant.  
*A. Poetis*, for the respondents.

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. This is an application by the plaintiff in this Admiralty Action for an Order of the Court prohibiting any dealing with the ship "DORAMI" ex "HELLIAR HOLM" or any share therein until the final determination of the action as additional security to the one already given by the existing defendants by Order of the Court dated 24/3/77 or, alternatively, that the said security be increased to a larger amount.

The relevant facts appear in the file of the case and in the affidavit sworn by the applicant in support of the application and are the following:

By an agreement in writing dated 12th November, 1976, entered into between defendants 3 and 4 on the one hand in their capacity as directors of defendant 1 company and/or in their personal capacity, and the plaintiff on the other hand, the plaintiff was appointed master of the defendant 2 ship "DORAMI" ex "HELLIAR HOLM" at the monthly salary of U.S. Dollars 2,500 payable monthly in advance with effect as from the 7th November, 1976. It was also agreed between the parties that by the payment by the plaintiff of 40% of U.S. Dollars, 64,000 *i.e.* 25,000 dollars, the plaintiff would be entitled to become the beneficial owner of 40 out of 100 shares in the

said ship. It is the allegation of the plaintiff that he paid in advance the sum of U.S. Dollars 11,317 in pursuance of the said agreement and took his appointment as master of the said ship as from 7th November, 1976, and skippered her from  
5 England to Cyprus where he arrived on or about the 18th March, 1977.

The plaintiff further alleges that he received nothing as against his salary and in addition he incurred disbursements in his capacity as master of the said ship amounting to C£3,000.-  
10 over and above the sum which was provided by the owners of the ship for such expenses. He claims in this action wages for five months which amount to U.S. Dollars 12,500. If to this amount the sum of 11,317 Dollars already paid by him under the said agreement is added, it makes a total of 23,317  
15 Dollars. Adding to this amount the sum of C£3,000-, which he claims for disbursements, it becomes evident that the plaintiff has paid more than 40% of the sum of 64,000 Dollars being the consideration for his becoming the owner of 40 shares in the said ship.

20 By the present action the plaintiff is claiming a declaration of the Court that he is the beneficial owner of 40 shares in the defendant 2 ship and in addition he has an alternative claim for damages for breach of the above contract.

On 24th February, 1977, a registered letter was sent to defen-  
25 dant 1 Company by plaintiff's advocate whereby the said company was called upon to take proper action within seven days in order to carry out its obligation undertaken by the aforesaid agreement. As defendants 1, 3 and 4 failed to perform their part of the said agreement within the aforementioned time,  
30 the present action was filed on 22nd March, 1977

It is further the allegation of the plaintiff that at the time he was instructing his advocates for the commencement of the present proceedings he was under the impression that defendant 2 ship was still owned and registered in the name of defendant 1  
35 company whose directors are Andreas Stavrou Makris and Kyriakos Petrou, defendants 3 and 4 in this action respectively. Andreas Stavrou Makris is also a director of Andreas Makris Shipping Co. Ltd. of Larnaca and a subscriber of 90 shares out of 100, the subscriber of the remaining 10 shares being  
40 Chrystalla A. Makri, who is his wife.

A few days after the present action was filed the plaintiff was informed that on the 9th March, 1977, the defendant 2 ship was sold and transferred by defendant 1 company to Andreas Makris Shipping Co. Ltd. As a result of this transfer the plaintiff applied and obtained an Order of this Court for the addition of Andreas Makris Shipping Co. Ltd as a 5th defendant as well as for the amendment of the writ of summons. 5

Upon the arrival of the ship in Cyprus she was arrested by the cargo owner who brought Action No. 84/77 against the defendant ship and her owning company. 10

The present plaintiff entered a caveat in that action against the release of the ship.

In view of the fact that Action No. 84/77 was on 24/3/77 settled between the parties, the present plaintiff as a caveator agreed to accept as security a sum of C£12,000.- for her release, with reservation of his rights to file an application to obtain an order under section 30 of Law 45/63. The Marshal was then directed by the Court to release the ship upon directions from the Registrar on filing a bank guarantee as security by or on behalf of the ship in the sum of C£12,000.-for the satisfaction of any order or judgment for the payment of money made against the ship or her owners in favour of the caveator who is the plaintiff in Action No. 87/77 against the defendant ship and her owners. 15 20

On the 4th April, 1977, a letter of guarantee was filed with the Registry of this Court by the Cyprus Popular Bank for the sum of C£12,000.- and so the defendant ship was released. 25

Section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63) on which the present application is based reads as follows: 30

“ The Supreme Court may, if the Court thinks fit (without prejudice to the exercise of any other power of the Court), on the application of any interested person make an order prohibiting for a time specified, any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions the Court may think just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act 35

in the case as the justice of the case requires; and the Registrar, without being made a party to the proceedings, shall on being served with an official copy thereof obey the same.”

5 Counsel for applicant argued that on the basis of what was decided in the *Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.* (1976)\* 10 J.S.C. 1499, the Order applied for should be granted by the Court as the applicant is a person interested in the ship herself since he is entitled to be  
10 registered as owner of 40% shares of the owning company, defendant 1 in this action.

On the other hand, counsel for the respondents argued that the present application should be dismissed as the present ship-owners were not parties to the present action at the time  
15 the application under consideration was filed.

I must say straight away that this contention of counsel cannot stand, irrespective of the fact that the new owners were at a later stage added as co defendants, as the action is in rem against the ship and the wording of section 30 of the Law is clear to  
20 the effect that the Order applied for is made prohibiting any dealing with the ship or any shares therein irrespective of who is the owner at the time of the Order.

Another contention of counsel for the respondents is that the present application is vexatious and the applicant is estopped  
25 having accepted the security which was given for the release of the ship. The fact that there was a statement on behalf of the applicant reserving his right to file an application under section 30 of Law 45/63, does not entitle him to obtain an order under the said section.

30 Finally, he submitted, that even if we accept the allegations of the applicant contained in his affidavit in support of the application as correct, the application cannot succeed as the whole claim is covered by the bank guarantee.

As to who is an interested person within the meaning of  
35 section 30 of the Law, it was decided in the case of *Tokio Marine, supra*. At page 1507 of this report we read:

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\* To be reported in (1976) 1 C.L.R.

“ No doubt, the applicants in both the *La Blanca* and the *Beneficial Finance Corporation supra*, were creditors of the ship-owners but were interested in the ship herself. They were not mere creditors of the owners of the ship. In all cases either before or after the 1894 Act where an Order prohibiting any dealing with a ship was made by the Court, the applicant was interested in the ship herself. 5

I am now, therefore, of the view that section 30 of the *Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963*, does not apply to mere creditors or claimants of damages against the owners of the ship and that ‘interested person’ in this section means a person who is interested in the ship herself. He may be a legatee or heir or a creditor. Whether he is an interested person within the meaning of the said section, is a question depending on the facts of the particular case.” 10 15

On the facts of the case in hand it is doubtful whether the applicant can be considered as an interested person within the meaning of section 30 of the Law and so I am not going to exercise my discretion in his favour by granting the Order applied for. 20

Even if we assume that the applicant is an interested person within the meaning of the said section, I again think that he would have not been entitled to the Order applied for as he was given security for his claim to the kind and extent of which he agreed and the ship was released from arrest. It is immaterial whether the applicant reserved his right to apply under section 30 of the Law. In my view he reserved a right which he no longer had after the ship was bailed out. 25

The present case falls within the four corners of the *Christiansborg* [1885] 10 P.D. 141 where Fry L.J. had this to say at page 155: 30

“What is the effect of giving bail? It seems to me that bail is the equivalent of the res..... The result of the giving of bail is the release of the ship. Now, what is the meaning of releasing a ship under the circumstances? It appears to me that the meaning of it is, that she is released from all rights and claims against her in respect of the collision, which is the cause for which her owners have been compelled to give the bail.” 35 40



Over and over again it has been held that once a ship has been arrested and bailed or security has been furnished the ship's release has been purchased and she is free from further arrest in any country in respect of the said claim. (The "*Hartle-*  
5 *pool*" [1950] 84 Lloyd's Rep. 145 at page 146). This means that once security has been given in an action in rem against a ship and the ship was released on being bailed out, the plaintiff in the action is not entitled for the same claim either to arrest  
10 the ship again or to obtain an Order under section 30 of the Law or be given double security under any other procedures.

The above principles were followed in the case of *Reederei Schulte & Bruns Baltic Schiffahrts v. Ismini Shipping Co. Ltd.* (1975) 1 C.L.R. 433, by the trial Judge and were approved on appeal from this case by the Full Bench of this Court. The  
15 report appears in (1977)\* 7 to 8 J.S.C. 1284.

For the above reasons the application is dismissed with costs to be assessed at the end of the proceedings.

*Application dismissed with costs.*

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\* To be reported in (1976) 1 C.L.R.