

1980 July 31

[A. Loizou, J.]

LOYALTY SHIPPING COMPANY LIMITED,
Plaintiffs,

v.

MARIOS THEODOTOU,
Defendant.

(Admiralty Action No. 342/77).

*Contract—Principal and agent—Disclosed principal—Booking note—
Signed by defendant-as agent for a disclosed principal—Defendant
not personally liable.*

5 The claim of the plaintiffs against the defendant was for
damages for breach of a charterparty and/or booking note, and/
or agreement entered into on July 23, 1977, which, so far as
relevant, ran as follows and it was signed by M. Theodotou
(the defendant) as “merchant” and by the Loyalty Shipping
Company Limited (the plaintiffs) as “carriers”.

10 “It is hereby agreed between Loyalty Shipping Co. Ltd.,
hereinafter called the carrier, and Mr. Mario Theodotou,
of Marsif Co. Ltd., hereinafter called the merchant, that
the carrier shall reserve space for and the merchant shall
ship the following goods:

.....

15 The merchant’s representatives at loading port are Mr.
Mario Theodotou, of Marsif Co. Ltd., 19 Demosthenis
Severis Avenue, P.O.Box 1651, Phone 49449, Nicosia,
Cyprus”.

20 There was evidence before the Court that the negotiations that
led to the above agreement were made by Marsif Company Ltd.,
an Egyptian firm, represented by its general director who
instructed and authorised the defendant to sign on behalf of the
said company the booking-note in question. This was to the
knowledge of the plaintiffs.

25 *Held*, that the defendant is not personally bound by the said

agreement as he has not contracted personally but acted on behalf of the principal; and that, therefore, the action against him must be dismissed.

Action dismissed.

Admiralty Action.

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Admiralty action for damages for breach of charterparty and/or booking note and/or agreement for the carriage of cement by sea from Larnaca-Limassol to Alexandria-Port Said.

E. Vrahimi (Mrs.), for the plaintiffs.

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P. Demetriou, for the defendant.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The claim of the plaintiff Company against the defendant is for damages for breach of charterparty and/or booking note and/or agreement dated the 23rd July, 1977, for the carriage of cement by sea with the ships "AYIOS GEORGHIOS" and/or "AYIOS DEMETRIOS" and/or "PAULINE", from Larnaca-Limassol to Alexandria-Port Said.

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It is the case for the plaintiffs that on or about the 23rd July, 1977, an agreement in writing was entered into between the plaintiffs and the defendant by which it was agreed that the plaintiffs should reserve space for and the defendant should ship cement in bags between 500 to 700 tons, 5% more or less at Captain's option in the vessels "AYIOS GEORGHIOS", "AYIOS DEMETRIOS", "PAULINE" or substituted vessels, for carriage from Larnaca-Limassol to Alexandria-Port Said.

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Shipments would commence on the 5th August, 1977, and the freight was agreed at U.S. \$ 8.50 FIOST prepaid payable in dollars in free transferable currency. It was further agreed that in case both parties concerned were satisfied from the execution of the first shipment, consecutive voyages would follow up to the completion of the carriage of 8.850 tons of cement until the end of 1977 at a monthly rate of carriage of about 2,000 tons. This agreement headed as "Booking Note" has been produced as *exhibit 1*. Its term 1 reads as follows:-

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"It is hereby agreed between Loyalty Shipping Co. Ltd., hereinafter called the carrier, and Mr. Mario Theodotou,

of Marsif Co. Ltd., hereinafter called the merchant, that the carrier shall reserve space for and the merchant shall ship the following goods:

.....”

Term 5 thereof reads as follows:

5 “The merchant’s representatives at loading port are Mr. Mario Theodotou, of Marsif Co. Ltd., 19 Demosthenis Severis Avenue, P.O.Box 1651, Phone 49449, Nicosia, Cyprus”.

10 and it is signed by M. Theodotou as “merchant” and by the said Loyalty Shipping Co. Ltd. as “carrier”.

In compliance with the said agreement, the plaintiffs made available their ship “AYIOS DEMETRIOS” which was loaded with 500 tons of cement and carried same to Alexandria, Egypt.

15 In order to continue the carriage of cement as agreed, the plaintiffs sent on or about the 25th August, 1977, “AYIOS GEORGHIOS” which has bigger cargo capacity than “AYIOS DEMETRIOS”. She remained, however, for 25 days in Cyprus without being loaded as the defendant failed to make available any cement cargo for loading. The plaintiffs for this breach 20 of the aforesaid agreement claim C£19,223.195 mils damages as per the particulars in the statement of claim.

It is the case for the defendant that he never entered into any agreement as alleged by the plaintiff Company, his contention being that the alleged agreement was knowingly to the plaintiff 25 Company made between them and Marsif Co. Ltd., a foreign Arab Company and it was signed by him in his capacity of an authorized agent and/or representative of the said Company only and in no other capacity. It was alleged that due to the delay of the plaintiffs in sending the ship, the cement allotted 30 to Marsif Co. Ltd. by the suppliers was sold to other merchants with the result that they lost their turn and had to wait for new allotment, particularly after the accidental breakage of the suppliers’ factory. It was also alleged that after the delay and after communicating with Mr. Louis Constantinides (D.W.2), 35 the Managing Director of Romulus Shipping Co., who were acting as the agents of the plaintiff Company, a captain by the name of Nikiforos was sent by the ship’s agent, on behalf of the plaintiffs, in order to discuss the question of the delay in the

shipment; there were negotiations for a settlement and eventually it was agreed that the plaintiffs would be free to do whatever they wanted with their ship whilst the shippers should pay 1,000.- U.S. dollars in full and final settlement.

Thereupon a document (*exhibit 2*) was prepared and signed 5
by Cpt. Nikiforos which (uncorrected) reads as follows:-

“I the undersigner Captain Nikiforos from Loyalty shipping Greece, and Partner of M/V ‘AGIOS GEORGIOS’ declare that I have received from Messrs. Marsif the amount of One Thousand U.S. Dollars for demourage of M/V ‘AGIOS 10
GEORGHIOS’ for her first trip from Larnaca to Alexandria. As vessel was not been loaded with Ciement as was been agreed with Messrs. Marsif Nicosia,

Marsif And Romulus Shipping services Are not Engaged with First Voyage of M/V AGIOS GEORGHIOS, Vessel 15
can load any cargo Available from Cyprus ports.

The above amount was been cashed by Mr. L. CONSTANTINIDES AGAINS disbersement Of account Agios Georghios and Agios Demetrios.

CAPTAIN NIKIFOROS ./.” 20

The description in term 1 of the Booking-Note, *exhibit 1*, of “the Merchant”, i.e. the one of the two contracting parties therein, as “Mr. Marios Theodotou of Marsif Co., Ltd.,” and in term 5 of “the Merchant’s representatives at loading port” as being “Mr. Mario Theodotou of Marsif Co., Ltd.,” was 25
obviously an ambiguity capable of explanation and evidence was adduced in order to remove the doubt raised thereby and to show that the parties knew that the apparent “merchant” was acting as agent for a disclosed principal whose identity on the document itself could be further clarified by the introduction 30
of the evidence.

The evidence adduced was that of Theodoros Kouloukas for the plaintiff company, who is one of its directors and who negotiated and signed the Booking-Note, *exhibit 1*, on the one hand and the defendant himself and Louis Constantinides, 35
managing director of Romulus shipping company, who took part in the negotiations of the agreement in question and for the carriage of cement between the plaintiff company and Marsif

Company Ltd., as he put it, on whose behalf its managing director Dr. Nassif, an Egyptian was negotiating, with himself acting as an interpreter from arabic and English. In fact Romulus Shipping Services Ltd., is described in the additional
5 clauses to the Booking-Note, *exhibit* 1, as "owners agents", and further down as the agents of the vessel.

According to this witness captain Kouloukas and himself came to Nicosia at the invitation of Dr. Nassif in order to conclude the agreement for the carriage of the cement in
10 question. After some progress was achieved with the negotiations between the plaintiff company represented by captain Kouloukas and Marsif Company Ltd., represented by Dr. Nassif, Dr. Nassif excused himself as he had to leave and said that the defendant would sign the contract on his behalf, its
15 terms having already been agreed with Dr. Nassif before he left.

From the evidence adduced it is clear that the negotiations were made and the transaction was concluded with Marsif Company Ltd., the Egyptian firm, represented at the negotia-
20 tions by Dr. Nassif, its general director, who instructed and authorised the defendant to sign on behalf of the said company the Booking-Note in question. This was to the knowledge of captain Kouloukas, P.W.1. who was acting at the time on behalf of the plaintiff company. This is born out from the evidence of the defendant himself and Louis Constantinides, the Managing
25 Director of Romulus Shipping Services Ltd., which was claimed to be acting as agents of the plaintiff company, but to say the least and on the admission of captain Kouloukas, as the ship's agent. The fact that the defendant signed the said agreement as agent for a disclosed principal is further born out by the way
30 he was described in terms 1 and 5 of the said Booking-Note.

On this factual aspect of the case the only conclusion in law to be reached is that the defendant is not personally bound by the aforesaid agreement as he has not contracted personally but acted on behalf of the principal and that appears clearly to have
35 been the intention of the parties. That can be deduced from the terms and nature of the Booking-Note in question and its surrounding circumstances. The defendant could not be held personally liable on this contract as he had not contracted personally and therefore the present action against him must be
40 dismissed.

Having reached this conclusion I need not examine in detail the alternative defence that all differences were settled by the agreement reached with captain Nikiforos and embodied in the document, *exhibit 2*, earlier referred to in this judgment. Suffice it to say that captain Nikiforos acted on behalf of the plaintiff company, being its "Port Captain"; he came to Cyprus, brought certain spare parts, supervised the first shipment of cement and received payment of the freight of that shipment. Though captain Kouloukas denied any authority to captain Nikiforos to settle any dispute on behalf of the plaintiff company, yet the question of ostensible authority arises in this case. But as I said I need not examine that aspect in view of the conclusion already reached on the question of the personal liability of the defendant.

For all the above reasons this case is dismissed but in the circumstances I make no order as to costs.

Action dismissed. No order as to costs.