

1981 May 12

[A. LOIZOU, J.]

THE OWNERS OF CARGO LADEN ON BOARD THE SHIP
“TINA” AND OTHERS,

Plaintiffs.

v.

VENTMARE MARITIME COMPANY LTD.,

Defendants.

(Admiralty Action No. 85/81).

Injunction—Interlocutory injunction—Action for damages for breach of contract of carriage of goods by sea—Money representing freight in the hands of third persons kept on behalf of the defendants—Injunction restraining its alienation or transfer until further order—Section 32 of the Courts of Justice Law, 1960 (Law 14/60)—Cf. section 45(1) of the English Supreme Court of Judicature (Consolidation) Act, 1925. 5

The plaintiffs as owners of the cargoes loaded on board the ship “TINA” at Limassol for carriage to Dubai and/or Bahrain brought an action for damages for breach of contract against the defendants; plaintiffs alleged that the said cargoes were delivered to the defendants in good condition for carriage in like order to the aforesaid destinations and the freight for the said agreed carriage was paid and the relevant bills of lading were marked freight prepaid; and that the defendants, in breach of the contract of affreightment failed to carry and/or deliver the said cargoes at the respective ports of destination and as a result the plaintiffs suffered damages and losses. 15

When the plaintiffs received information that Messrs. S. Ch. Ieropoulos and Co. Ltd. were paid all freights in respect of the vessel’s said voyage and that part of the said amount was still held by others as agents on behalf and/or for the account of the defendants, such part being C£7,462,925 mils they filed an application for an order restraining the defendants from collecting and/or “transferring out of the jurisdiction and/or 25

5 otherwise dealing with a sum in the region of C£10,000 which has been collected and/or received on their behalf and/or is otherwise kept on their behalf and/or for their account by the agents in Limassol Messrs. S. Ch. Jeropoulos Co. Ltd., and further preventing the said S. Ch. Jeropoulos Co. Ltd., from parting and/or otherwise dealing with the said amount until 15 days after judgment in this action and/or until further order".

10 The application was based on rules 202-212 and 237 of the Cyprus Admiralty Jurisdiction Order, 1893, on section 32* of the Courts of Justice Law, 1960 (Law 14/60), on sections 4 and 9 of the Civil Procedure Law, Cap. 6 and on the general practice and inherent jurisdiction of the Court.

15 The defendants had no property in Cyprus, apart from the said amount and it was claimed that it would be difficult or impossible to do justice at a later stage unless the order applied for was granted.

20 *Held*, that considering the circumstances of this case this Court is justified in granting the order applied for; accordingly it is ordered that the amount of C£7,462.925 mils collected and/or received on behalf of the defendants and/or otherwise kept on their behalf and/or for their account by Messrs. S. Ch. Jeropoulos Co. Ltd. be kept by them and not be alienated or transferred to anybody and/or be parted with until further order of this Court (see *Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd. and Others* (1976) 1 C.L.R. 302).

Application granted.

Cases referred to:

Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd., and Others (1976) 1 C.L.R. 302 at p. 308.

* Section 32, so far as relevant, provides as follows:

"32(1) Subject to any rules of Court every Court, in the exercise of its civil jurisdiction, may, by order, grant an injunction (interlocutory, perpetual or mendatory) or appoint a receiver in all cases in which it appears to the Court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith:

Provided that an interlocutory injunction shall not be granted unless the Court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage".

Application.

Application by plaintiffs for an order restraining the defendants from collecting and/or transferring out of the jurisdiction and/or otherwise dealing with a sum in the region of C£10,000.— which has been collected on their behalf by Messrs S. Ch. Jeropoulos Co. Ltd. until 15 days after judgment in an action for breach of contract or until further order. 5

St. McBride, for the applicants.

A. LOIZOU J. gave the following judgment. By this action the plaintiffs as owners of goods and/or as shippers and/or as consignees and/or holders of the bills of lading under which the said goods were loaded on board the vessel "TINA" at Limassol for carriage to Dubai and/or Bahrain claim:— 10

Damages for breach of contract and/or breach of duty as bailees and/or carriers for reward and/or otherwise and/or negligence of the defendants and/or their servants and/or their agents in respect of deviation of the said vessel and/or damage to the said goods and/or non delivery and/or delay in delivery of the said goods at the port of discharge. 15

Interest and costs. 20

The plaintiffs/applicants, having received information "that Messrs. S. Ch. Jeropoulos and Co. Ltd. were paid all freights in respect of the vessel's said voyage and that part of the said amount is still held by others as agents on behalf and/or for the account of the defendants, such part being C£7,462,925", and as they allege to have a good cause of action against the defendants, filed the present application seeking an order of the Court "restraining the defendants from collecting and/or transferring out of the jurisdiction and/or otherwise dealing with a sum in the region of C£10,000 which has been collected and/or received on their behalf and/or is otherwise kept on their behalf and/or for their account by the agents in Limassol Messrs. S. Ch. Jeropoulos Co. Ltd., and further preventing the said S. Ch. Jeropoulos Co. Ltd., from parting and/or otherwise dealing with the said amount until 15 days after judgment in this action and/or until further order". 25 30 35

The application is based on the Cyprus Admiralty Jurisdiction Order 1893 rules 203 to 212 and 237, on the Courts of Justice

Law No. 14/60 section 32 and on the Civil Procedure Law Cap. 6 sections 4 and 9 and on the General Practice and Inherent Jurisdiction of the Court.

5 The facts briefly as appearing from the affidavit filed in support of this application are as follows:

10 The plaintiffs as owners of the cargoes loaded on board the ship "TINA" at Limassol for carriage therefrom to Dubai and/or Bahrain and/or as shippers and/or consignees and/or as holders of the bills of lading which are set out in a schedule attached to the said affidavit, allege that the said cargoes were delivered to the defendants and/or their servants, and/or agents in good condition for carriage in like order to the aforesaid destinations. The freight for the said agreed carriage was paid and the relevant bills of lading are marked "Freight prepaid". The defendants in breach of the contracts of affreightment contained in and/or evidenced by the said bills of lading and/or in breach of their duty as bailees and/or carriers for reward and/or otherwise failed to carry and/or deliver the said cargoes at the respective ports of destination.

20 It is the contention of the applicants/plaintiffs that the said ship in breach of the contracts of affreightment and/or otherwise deviated from the agreed and/or customary and/or specified route and in fact called at Djibouti where she was arrested and therefore unlikely to proceed to its destination. As a result of the above the plaintiffs, it is claimed, have suffered and are suffering great damages and losses. The defendants have no property in Cyprus, apart from the said amount, and it is claimed that the order applied for should be granted in the circumstances, for if not so granted it would be difficult or impossible to do justice at a later stage.

35 I have had the opportunity of dealing with a similar situation in the case of *Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd. and others*, (1976) 1 C.L.R. p. 302 where after referring to the Law and the development in England with regard to the corresponding section 45(1) of the Supreme Court of Judicature (Consolidation) Act, 1925, I had this to say at p. 308:

"No doubt, this is a power to be sparingly exercised and in the context of the aforesaid pronouncements and on

proper facts justifying the exercise of the Court's discretion in order to help the plaintiffs avoid suffering grave injustice.

This is the first time, as advised, that section 32 came up for interpretation in the present context, although it was on the Statute Book since 1960. The only other case where an effort was made to restrain a Bank from remitting the money out of the jurisdiction, is to be found in *Sophocles Mamas & Carl Borgward*, 1962 C.L.R. p. 209, but the appellant in that case applied under section 4(1) of the Civil Procedure Law, Cap. 6 and relying on the case of *Cyprus Palestine Plantations v. Olivier and Co.*, 16 C.L.R. 122 the Court held that section 4(1) was not applicable and that the Court had no power under section 4 of the said Law to make an order affecting property not itself the subject of the action, but as I have already said, section 32 was not considered and therefore there is no precedent on the subject. It is relevant, therefore, to see what are the facts and circumstances of this case that would justify the granting of the order applied for".

Considering the circumstances of this case I have come to the conclusion that I am justified in granting the order applied for and I hereby order that the amount of £7,462.925 mils collected and/or received on behalf of the defendants and/or otherwise kept on their behalf and/or for their account by Messrs. S. Ch. Jeropoulos Co. Ltd., be kept by them and not be alienated or transferred to anybody and/or be parted with until further order by this Court; the applicants to enter into a recognizance in the sum of £2,000.-to the satisfaction of the Registrar of this Court, being answerable in damages to the defendants against whom the order has been made; this application is fixed on the 16th May 1981*, at 9.30 a.m. for the defendants and the said Messrs S. Ch. Jeropoulos and Co. Ltd., to appear and challenge this order, if they so wish.

Application granted.

* On this date the defendants entered an appearance through their counsel; they did not, however, move the Court to discharge this order but accepted its continuance in force.