

1982 June 22

[HADJIANASTASSIOU, J.]

MIDDLE EAST ACCOUNTING CO.,

*Plaintiff,*

v.

- 1. COMARINE LIMITED,
- 2. TRAFRUME LINES S.A.,

*Defendants.*

*(Admiralty Action No. 461/78).*

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*Admiralty—Practice—Unconditional appearance—Subsequent addition of new plaintiff on the application of plaintiff and with the consent of defendants—No direction, upon the approval of the joinder, entitling the defendant to enter a conditional appearance—Defendant has no right to condition his appearance subsequently.*

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The defendants in the above action at first entered a conditional appearance but at a later stage they entered an unconditional appearance and they reserved, at the same time, the right to raise at the trial an issue of substantive jurisdiction. Subsequently on the application of the plaintiffs and with the consent of the defendants Edward Kerope Kasparian of Beirut, was added as plaintiff. When service of the amended proceedings was effected on the defendants they sought to enter a conditional appearance to the claim of the new plaintiff.

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*On the question whether the defendants could enter a conditional appearance:*

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*Held*, that having regard to the unconditional appearance entered by the defendant, in the first place and the absence of any direction, upon the approval of the joinder, entitling the defendant to enter a conditional appearance, the defendant has no right to condition his appearance subsequently which is, for all purposes, an appearance in the cause; accordingly the application must fail.

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*Application dismissed.*

**Application.**

Application by defendants for leave to enter a conditional appearance to the claim of the added plaintiff.

*L. Papaphilippou*, for the plaintiffs.

5 *Fr. Saveriades*, for defendant 1.

*M. Vasiliou*, for defendant 2.

*Cur. adv. vult.*

10 HADJIANASTASSIOU J. read the following ruling. Before dealing with the substance of the application, it may be appropriate to refer to the background of the case as a necessary aid for a proper evaluation of the issue posing for consideration.

15 The defendant, at first entered a conditional appearance, a stand that he abandoned at a later stage, submitting to the jurisdiction by entering an unconditional appearance, reserving at the same time the right to raise at the trial, an issue of substantive jurisdiction in the sense of the competence of the court to take cognizance of the dispute. Subsequently, an application was made for the addition of a plaintiff, for the sake of the effective and final determination of all issues relevant to the dispute, pursuant to the provisions of rules 29 and 30 of the Cyprus Admiralty Rules. These rules give a wide jurisdiction to the court to sanction the joinder of a party, if it is judged necessary, in the interest of the effective determination of the dispute. Rule 29 reproduces in substance Order 16 r. 11 of the old English Rules of the Supreme Court. In the White Book  
20 in a note explanatory of the rule, it is stated that the discretion to order a joinder does not authorize departure from the framework of the cause, as originally defined. The joinder was allowed without the imposition of any special terms, as the Court might impose in its discretion. In fact, the joinder was  
25 made by the consent of the plaintiff and defendants 1 and 2.  
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35 When service of the amended proceedings was effected upon the defendants, he claimed a right to enter a conditional appearance to the claim of the new plaintiff. And what I must resolve, is whether such an option is open to the defendant. The answer is, in my judgment, in the negative, having regard to the unconditional appearance entered by the defendant, in the first place, and secondly, absence of any direction upon the approval of the joinder, entitling the defendant to enter a conditional appear-

ance. In the absence of such a liberty, the defendant has no right to condition his appearance subsequently which is, for all purposes, an appearance in the cause. From that cause, there can be no substantial departure for the reasons above indicated. After all, the addition was ordered for the complete disposal of the cause previously defined. The party added is the owner of the plaintiff firm. 5

For the reasons above given, the application is dismissed with costs in favour of the plaintiffs.

*Application dismissed with costs.* 10