

1982 October 27

[HADJIANASTASSIOU, J.]

ANTONIS YIANNI SKATTOU,

Plaintiff.

AND

M/V "KOREIZ" AND ANOTHER,

Defendants.

(Admiralty Action No. 6/81).

Evidence—Privilege—Document headed "without prejudice"—Admissibility in evidence—Principles applicable.

After the institution of the action the plaintiffs addressed a letter to the defendants which was headed "without prejudice" inviting negotiations for a settlement and seeking certain information relevant to the facts of the case, to which the defendants made no reply.

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Upon an application by the defendants to strike out on grounds of total irrelevance, an allegation in the reply allegedly non disclosable because it was headed "without prejudice" made in the contents of an effort to explore the possibility of a settlement:

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Held, that correspondence addressed to an adversary "without prejudice" especially in the context of an effort to ascertain whether there is room for settlement of an action is inadmissible in evidence on grounds of privilege; that the defendants made no reply to plaintiff's letter as they were entitled to do; that no adverse inference can be derived therefrom; that reference to the letter in the pleadings is embarrassing to the defendants; and that, therefore, the application to strike out is justified.

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Application granted.

Cases referred to:

Tenant v. Hamilton [1839] 7 CI paragraph Fin. 122 (H.L.);

Scott v. Drayton Paper Works [1927] 44 R.P.C. 151;

Rabin v. Mendoza [1954] 1 W.L.R. 271;

Cory v. Bretton [1830] 4 C paragraph 462.

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Application.

Application by defendants for an order to strike out an allegation in the reply.

C. Hadjipieras, for plaintiff

5 *St. McBride*, for defendant 2.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. This is an application to strike out, on grounds of total irrelevance, an allegation in the reply allegedly non disclosable because it was
10 headed "without prejudice" made in the contents of an effort to explore the possibility of a settlement.

It is well settled that correspondence addressed to an adversary "without prejudice" especially in the context of an effort to ascertain whether there is room for settlement of an action is
15 inadmissible in evidence on grounds of privilege. (*Tenant v. Hamilton* (1839) 7 CI paragraph Fin. 122 (H.L.), *Scott v. Drayton Paper Works* [1927] 44 R.P.C. 151, *Rabin v. Mendoza* [1954] 1 W.L.R. 271, *Cory v. Bretton* (1830) 4 C paragraph 462). In *Rabin* case Lord Denning had this to say at p. 273:

20 "The question for us to decide is whether that claim for privilege from production is a good claim. This is not an ordinary case of legal professional privilege. The documents were not prepared for the purposes of litigation or for the purposes of obtaining the advice of the solicitors.
25 They were prepared in order to avoid litigation. It is said, however, that, apart from legal professional privilege, there is a separate head of privilege on the ground that the documents came into existence on the understanding that they were not to be used to the prejudice of either party.
30 'Without prejudice' does not appear as a head of privilege in the White Book; but in *Bray on Discovery* at p. 308 it is stated: 'The right to discovery may under very special circumstances be lost by contract as where correspondence passed between the parties' solicitors with a view to an amicable arrangement of the question at issue in the suit
35 on a stipulation that it should not be referred to or used to the defendant's prejudice in case of a failure to come to an arrangement.'"

Indeed the reason behind this rule is that disclosure would inhibit frank communications for a settlement something that should be encouraged.

The plaintiff in this case addressed the letter in question to the defendants after the institution of the action, inviting, (a) negotiations for a settlement and (b) seeking certain information relevant to the facts of the case. The defendants made no reply as they were entitled to do. No adverse inference can be derived therefrom. Reference to the letter in the pleadings is embarrassing for the defendants. Therefore, the application to strike out is justified.

Application granted.