

1983 March 7

[A. LOIZOU, J.]

MANCHESTER LINES LTD. AND ANOTHER,
Plaintiffs,

v.

VIAMAZ COACH INDUSTRY LTD.,
Defendants.

(Admiralty Action No. 148/82).

*Admiralty—Practice—Addition of co-defendant—Principles applicable
—Discretion of the Court—Addition refused because it will have
effect of adding a new cause of action.*

*Admiralty—Practice—Third party notice—Issue of—Principles appli- 5
cable—Issue of third party notice refused because no prima facie
case has been made out.*

The plaintiffs No.1, as owners and/or operators of the vessel
"Royal Prince" and plaintiffs No.2 as the agents of the vessel
brought an action against the defendants claiming:

- (A) The return to them of the goods carried by sea from 10
Manchester to Limassol by virtue of bill of lading
issued at Manchester on 10th October 1980, and which
the defendants wrongfully took possession of at
Limassol on or about 31st October 1980.
- (B) Damages in the sum of £1235.31 (stg) value of the 15
said goods.

The defendants by means of an application under rules 29,
30, 231, 203-212 and 237 of the Cyprus Admiralty Jurisdiction
Order sought an order joining Albert Jagger Ltd. as third party
and/or as co-defendants in this action on the ground that the 20
proposed defendants supplied them with goods which were
not of a certain standard and which they were entitled to reject.

Held, that leave to add a co-defendant may be refused where

the addition of a defendant will have the effect of adding a new cause of action; that the claim of applicants is a matter between the present defendants and their suppliers and there does not exist a cause of action between the plaintiffs-respondents in this application and the firm of Albert Jagger Ltd., nor is it necessary to join them as defendants to enable this Court to make an effectual adjudication concerning all matters in dispute: in fact, if they were to be added the Court should be adding a new cause of action and not dealing with the action as it stands between the existing parties: accordingly the application for the addition of a co-defendant must fail.

(2) That if a prima facie case is made out which would bring the matter within rule 11 of Order 16 a, leave will be granted to issue the third party notice and the Court will not in granting leave consider the merits of the claim, but will leave these matters and objections of the plaintiff to be dealt with upon the application for directions under rule 7. But even if there does exist a prima facie case an application will be refused where the result will be to embarrass or delay the plaintiff; that in the present case there is no difficulty in concluding that neither a prima facie case is made in the case in view of the fact that the defendants have not acquired a title in the goods by having paid for the bills of lading and therefore their claim is in no way connected with that of the present plaintiffs: accordingly the application for the issue of a third party notice must fail.

Application dismissed

Cases referred to:

- Atenas v. The Ship "Sonja"* (1972) 1 C.L.R. 153;
Raleigh v. Goschen [1898] 1 Ch. 81;
Amon v. Raphael Tuck and Sons Ltd., [1956] 1 Q.B. 357.
Miquel Sanchez and Compania S.L. v. The Result [1958] P. 174
 at p. 184;
Photiou v. Azevedo and Guimaraes Ltd., (1980) 1 C.L.R. 531;
Chrysostomou and Another v. Plovdiva and Another (1981)
 1 C.L.R. 130.

Application.

Application by defendants for an order joining Albert Jagger Ltd. as third party and/or as co-defendants and for an order

directing that service of the notice and/or order and/or the writ of summons be made through his agents in Cyprus.

P. Demetriou, for the applicants.

St. McBride, for the respondents.

Cur. adv. vult. 5

A. LOIZOU J. read the following judgment. By this application the applicants/defendants seek (a) an order joining Albert Jagger Ltd., as third party and/or as co-defendants in this action; (b) order of the Court directing that service of the notice and/or of the order and/or of the writ of summons be made through his agent in Cyprus Messrs. Apost Agencies Limited 10, Adrias Street, Nicosia; (c) any other remedy the Court might think fit. 10

In this admiralty action the two plaintiffs are described as being plaintiffs No. 1, the owners and/or operators of the vessel "ROYAL PRINCE" and plaintiffs No. 2, a company registered in Cyprus, the agents of the vessel here and/or of plaintiffs No. 1 and/or under a personal responsibility to see to the correct delivery of the cargo carried on board the vessel. 15

Their claim is for: 20

(A) The return to them of the goods carried by sea from Manchester to Limassol by virtue of bill of lading 5076210 issued at Manchester on 10th October 1980, and which the defendants wrongfully took possession of at Limassol on or about 31st October 1980. 25

(B) Damages in the sum of £1235.31 (stg) value of the said goods.

(C) Legal interest and costs.

The facts as pleaded in the petition from which these claims arise are that a certain Albert Jagger Ltd., of Walsall England, contracted with plaintiffs 1, to put on board their aforesaid vessel a cargo of sever bales of auto spare parts to the value of £1235.31 (stg) to be carried from Manchester to Limassol, there to be delivered to the holder of the original bill of lading referred to in the said petition. In respect of these goods and/or their carriage, plaintiffs 1, issued, signed and delivered to 35

the said shipper in duplicate two original bills of lading at Manchester whereby inter alia the said goods were consigned "to order" and gave also an unsigned copy thereof. The name and address of defendants appeared thereon under the word "notify". The said original bills of lading were duly endorsed by the shipper and sent to the Bank of Cyprus Ltd. to be released to the defendants upon payment by them at the Bank of Cyprus Ltd. of the price of the said goods. The unsigned copy of the said bill of lading was sent to the defendants for their information only.

As alleged in the petition the defendants did not pay for the value of the said goods or take up from the Bank of Cyprus or at all the said original bills of lading or ever became entitled to receive from the plaintiffs or either of them the said goods and/or without having first paid the price thereof.

However, on or about 31.10.1980 the defendants by themselves, their servants and/or agents presented to a servant of plaintiffs No. 2 the unsigned copy of the said bill of lading and wrongly obtained a delivery order for the said goods which amounted to a constructive delivery of the said goods to the defendants and/or by which the defendants obtained possession of the said goods to which possession they were never entitled and for which they had never paid.

It is further alleged in the petition that the defendants through their servants or agents misrepresented themselves to the plaintiffs No. 2 as the owners of the cargo and/or as indorsees and/or holders of and/or the persons entitled to receive the goods under the said bill of lading and the plaintiffs No. 2 on the basis of such misrepresentation delivered to the defendants or their servants or agents a delivery order for the said goods which amounted to a constructive delivery of the goods to the defendants and/or by which the defendants then took possession of the said goods.

In the alternative it is claimed that the said copy of the bill of lading was accepted by plaintiffs 2 under a mistaken belief that it was the original bill of lading and delivered the goods. The original bills of lading which should have been produced by the defendants were left at the Bank to be taken by them after having paid for them so as to obtain a bill of lading and there-

fore become entitle as the holder of the bill of lading to take delivery of the goods from plaintiffs 2.

As the plaintiffs failed in their obligations regarding the delivery of the goods against the originals of the bill of lading they were compelled to pay and by having released the said goods to the defendants without the production of the original bill of lading suffered loss and damage in the sum of the value of the said goods which they were obliged to pay and did pay to the shippers for them, hence the action against the defendants based on misrepresentation and/or mistake and/or for damages for fraud and/or otherwise. 5 10

The facts relied upon by the applicants in respect of this application appear in the affidavit attached thereto dated the 3rd December 1982.

It is alleged therein that seven bales purportedly with the goods ordered to Albert Jagger Ltd., were delivered to them on the 31st October 1980 and upon inspection they found out that they did not correspond to the description made in the order and immediately thereupon they "rejected the goods and gave notice of nonacceptance to the above Albert Jagger Ltd., invited them to collect the nonaccepted goods and refused to pay their invoiced value of £1259.50 C.I.F. value, Limassol. They further allege that "the said Albert Jagger Ltd., were not entitled to be paid by them or by anybody this sum towards the value of the goods which were not accepted and not delivered in Law". Paragraphs 7, 8 and 9 contain in effect the grounds upon which the application is relied: 15 20 25

"7. It is the allegation of the defendants that the plaintiffs wrongly paid, if they have paid, any sum to the said Albert Jagger Ltd. and therefore they cannot demand recovery from the defendants of money wrongly and mistakenly paid. 30

8. The difference in substance lies firstly between the defendants and Albert Jagger Ltd. and subsequently the claim of the plaintiffs should be decided between all parties including Albert Jagger Ltd. 35

9. I strongly believe that the subject matter of the action should be tried between the three parties concerned

i.e. the plaintiffs, the defendants and Albert Jagger Ltd. and therefore its fair and just to bring in Albert Jagger Ltd. as codefendant or as a third party”.

5 This application is based on Orders 29, 30, 231, 203–212 inclusive, of the Cyprus Admiralty Jurisdiction Order, 1893 and of course on Order 237 which introduces the practice of the Admiralty Division of the High Court of Justice of England in all cases not provided by our Rules.

Orders 29 and 30 read as follows:

10 “29. Any number of persons having interests of the same nature arising out of the same matter may be joined in the same action whether as Plaintiffs or as Defendants.

15 30. The Court or Judge may at any stage of the proceedings and either with or without an application for that purpose being made by any party or person and upon such terms as shall seem just, order that the name or names of any party or parties be struck out, or that the names of any person or persons who are interested in the action or who ought to have been joined either as Plaintiffs or
20 Defendants or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all question involved in the action be added”.

25 Order 231 refers to the forms that have to be used in such proceedings, and Orders 203–212 to the procedure in respect of applications.

30 In the case of *Artemis v. The ship “Sonja”* (1972) 1 C.L.R. p. 153 I had the opportunity to deal extensively with the aforesaid Orders regarding the addition of a defendant and the principles applicable thereto. I pointed out that rule 30 corresponds in all material respects to Order 9, rule 10 of our Civil Procedure Rules and to Order 16, rule 11 of the Old English Rules of the Supreme Court which order is applicable also in admiralty actions in England. In the Revised English Rules
35 of the Supreme Court, Order 16, rule 11, was renumbered as Order 15, rule 6 (*Annual Practices of 1964–1982*) and has not materially been changed in substance.

I referred therein to a number of authorities which I need

not reproduce here as it is sufficient for the determination of this application to say that under this rule the Court retains a discretionary power to refuse the order and may elect to deal with the matter as regards the rights of the party before it; also that the powers given by it are wisely exercised, but if serious embarrassment would be caused to the plaintiff the order may be refused, though generally speaking, the Court will make such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all matters in dispute. Leave, however, may be refused where the addition of a defendant will have the effect of adding a new cause of action. (See *Raleigh v. Goschen* [1898] 1 Ch. 81). Also the words "cause or matter" to be found in the English and Civil Procedure Rules and which correspond to the word "action" in rule 30, have been interpreted as meaning the action as it stands between the existing parties (see *Amon v. Raphael Tuck and Sons Ltd.*, [1956] 1 Q.B.; *The Result* [1958] P. 174 at p. 184). Furthermore the Court has no jurisdiction under this rule to order third parties to be added as defendants where the cause or matter is not liable to be defeated by the nonjoinder, where the third parties were not persons who ought to have been sued in the first instance and where the third parties were not persons whose presence as defendants was necessary to enable the Court effectually to adjudicate on all the questions involved. (See *Miquel Sanchez and Compania S.L. v. The Result* [1958] P. 174.

The point therefore for determination is whether the aforesaid principles apply to the facts of the present case. What is claimed by the applicants/defendants is that the party proposed to be added as a defendant supplied them with goods which were not of a certain standard and which they were entitled to reject, but that is a matter between the present defendants and their suppliers and there does not exist a cause of action between the plaintiffs/respondents in this application and the firm of Albert Jagger Ltd., nor is it necessary to join them as defendants to enable me to make an effectual adjudication concerning all matters in dispute. In fact, if I were to add them it would be adding a new cause of action and not dealing with the action as it stands between the existing parties. But even if I were to find that in Law Albert Jagger Ltd. could have been joined as defendants, I would still refuse the application and exercise my discretion against it as that would definitely embarrass

the plaintiffs who have already paid to them what they ought in Law to have paid, namely the value of the goods wrongly delivered to the defendants

5 I turn now to the question whether third party notice should be issued to them. I had the opportunity of dealing with this matter in the case of *Elos Photiou v Azevedo and Gumanacs Ltd.* (1980) 1 C.L.R. 531 and repeat the legal principles governing this issue in the case of *Maroulla Paraskeva Chrysostomou and another v. Plovitza and another* (1981) 1 C.L.R. p. 130
 10 and I feel that no useful purpose will be served if I repeat them again as these are well established principles and there is nothing to call for any change of approach or clarification. It is sufficient to say that if a prima facie case is made out which would bring the matter within rule 11 of Order 16 a, leave will be
 15 granted to issue the notice and the Court will not in granting leave consider the merits of the claim, but will leave these matters and objections of the plaintiff to be dealt with upon the application for directions under rule 7. But even if there does exist a prima facie case an application will be refused where the
 20 result will be to embarrass or delay the plaintiff.

In the present case I have no difficulty in concluding that neither a prima facie case is made in the case in view of the fact that the defendants have not acquired a title in the goods by having paid for the bills of lading and therefore their claim is
 25 in no way connected with that of the present plaintiffs. Also and even if there does exist a prima facie case I would still refuse the third party notice to be issued as that would certainly embarrass the plaintiffs and delay their claim. The claim of the applicants, if any, can be properly pursued by separate
 30 proceedings and in considering all the circumstances of the case I am not prepared to exercise in any event my discretion in favour of granting the issue of a third party notice to Albert Jagger Ltd.

35 For all the above reasons this application is dismissed with costs.

Application dismissed with costs.