

1984 August 14

[DEMETRIADES, J.]

TAKIS TH. PAPADOPOULOS,

*Plaintiff.*

v.

THE OWNERS OF THE SHIP "ROMANA" EX "DIANA",  
*Defendants.*

(Admiralty Action No. 413/83).

*Admiralty—Practice—Discovery of documents—Interrogatories—Discovery ordered even though documents in the possession of the defendants were before the Court because discovery shall be made by affidavit with regard to the particular application and not to any other proceedings in the action—Rule 93 of the Cyprus Admiralty Jurisdiction Order, 1893—Claim for necessary goods and materials applied to the defendant ship—Defendants alleging that vessel bought by alleged new owner before the commencement of the action—Plaintiff alleging that owners described in their petition are the beneficial owners of the ship—Proper that interrogatories be delivered and be answered by alleged new owner.*

The plaintiff in this Action claimed payment of the sum of £3,551.235 mils as the agreed or reasonable price for necessary goods and materials supplied to the defendant ship at the defendants' request. By the answer which the defendants filed in reply to the petition of the plaintiff they alleged that at the time of the commencement of the action the owner of the ship was a certain Jamal El Din A.K. Tayib Al Raffii, of Tripoli, who had, on the 19th July, 1983, purchased her free of encumbrances; that the claims raised in the action did not create maritime lien and/or a cause of action in rem and that at the time of the filing of the action the ship was not owned by any person who may have been personally liable to the plaintiff. In the petition the plaintiff alleged that the defendants were three persons of Tripoli, Lebanon, none of them being the person alleged in the answer to be the owner of the ship and that these persons at all relevant times to the action were and still are the beneficial owners of the

ship, which sails under the flag of Lebanon, a fact that is admitted by the defendants-respondents.

Upon an application\* by the plaintiff for discovery of documents and for interrogatories it was argued for the defendants that all documents in their possession were before the Court; that the interrogatories were designed to prove a cause of action not pleaded; that they will not save but will add to the costs; and that they were unreasonable and unnecessary.

*Held*, that though all documents which are in the possession of the defendants are before the Court discovery shall be made by affidavit with regard to this particular application and not to any other proceedings in the action (see rule 93 of the Cyprus Admiralty Jurisdiction Order, 1893); and that therefore it is hereby ordered that the respondents and the alleged by them owner of the ship make discovery on oath of all documents which are in their possession or power relating to any matter raised by the pleadings.

(2) That in the light of the averments in the pleadings and, in particular, the allegation of the defendants that the vessel had been bought by the alleged new owner before the commencement of the action, and in view of the allegations made in the petition that the described in it owners are the beneficial owners of the ship, this is a proper case in which to direct that the interrogatories applied for be delivered and be answered by *Jamal El Din A.K. El Tayib Al Raffii* within 30 days from to day.

*Application granted.*

#### **Application.**

Application by plaintiff for an order that the defendants and the intervener make and file an affidavit within 15 days of such order stating what documents are or have been in their possession or power relating to the matters in question in the present action and for leave to deliver to the intervener the interrogatories shown in the document attached to the application and that the intervener answer the interrogatories on affidavit within 15 days.

*Gl. Talianos*, for the applicant-plaintiff.

*N. Kanias*, for the respondents-defendants.

*Cur. adv. vult.*

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The application is quoted in full at pp. 499-500 post.

DEMETRIADES J. read the following ruling. This is an application by which the applicant-plaintiff in the above action applies for an Order that:-

- 5 (a) The defendants and the intervener make and file an affidavit within fifteen (15) days from the date of such Order stating what documents are in their possession or power and what documents have been in their possession or power relating to the matters in question in the present action.
- 10 (b) The plaintiff have leave to deliver to the intervener in this action Jamal El Din A.K. El Tayib Al Raffii the interrogatories shown in the document attached to the application and that the said intervener answer the interrogatories on affidavit within fifteen (15) days.

15 The said interrogatories read as follows:-

"1. Have you paid any money for the purchase of the ship?  
And if yes -

- (a) To whom was such payment made?
- (b) When and where was the payment made?
- 20 (c) How was such payment made?
- (d) If by cheque, on which Bank was the cheque drawn upon?
- (e) If by transfer of funds through a Bank, through which Bank was the money transferred and to which Bank was it transferred to?
- 25 2. Give the name and address of the person or persons or company who managed the ship and its business since its alleged purchase by you.
- 30 3. If at or at any time prior to the time of the institution of these proceedings the ship was under the management of a person or persons or company other than yourself, you are required to answer the following questions:
- (a) Who appointed such manager and when?
- (b) Who acted for the owners and who acted for the managers in concluding the appointment?
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- (c) Was the appointment made in writing or by word of mouth?
4. Has the ship been commercially employed since its alleged purchase by you? If yes -
- (a) State the voyages which the ship has done prior to the institution of these proceedings - 5
- (b) State the nature of the business in which the ship was engaged -
- (c) State the name and address of the person or persons or company to whom the proceeds from such business were paid - 10
- (d) State the name and address of the person or persons or company who paid for the incidental expenses in the employment of the ship.
5. Have you prior to the institution of these proceedings been paying from your own accounts and with your own money the expenses for the maintenance and operation of the ship?" 15

The present application is based on rules 93 and 91 of the Cyprus Admiralty Jurisdiction Order, 1893. 20

The defendants-respondents opposed the application and put forward the following allegations:

- "1. The documents which are in the possession of the defendant ship ROMANA ex DIANA and her owner Jamal El Din A.K. El Tayib Al Raffii are before the Court, filed with the affidavit of Neophytos D Kanas in support of the opposition dated 7.1.1984. 25
2. The interrogatories 1 to 5 are designed to prove a cause of action not pleaded. The applicant is really looking for a case rather than trying to establish one which he has already alleged. 30
3. The interrogatories will not save but will add to the costs.
4. The interrogatories are oppressive and/or scandalous and/or irrelevant and/or relate to the evidence and/or credit of the defendants. 35

5: The application is unreasonable. The interrogatories are not necessary and/or not necessary for disposing fairly of the action.

6: Without prejudice to the above the defendant ship Romana ex DIANA and her owner Jamel El Din A.K. El Tayib Al Raffii allege that the answers to the interrogatories which might be relevant are contained in the documents filed with the affidavit of Neophytos D. Kaniyas in support of the opposition dated 7.1.1984".

10: By his action the plaintiff claims payment of the sum of £3,551.235 mils as the agreed or reasonable price for necessary goods and materials supplied to the defendant ship at the defendants' request.

The pleadings in the action have been closed and by the answer which the defendants filed in reply to the petition of the plaintiff they allege that at the time of the commencement of the action the owner of the ship was a certain Jamal El Din A.K. Tayib Al Raffii, of Tripoli, who had, on the 19th July, 1983, purchased her free of encumbrances, that the claims raised in the action do not create maritime lien and/or a cause of action in rem and that at the time of the filing of the action the ship was not owned by any person who may have been personally liable to the plaintiff. In the petition the plaintiff alleges that the defendants are three persons of Tripoli, Lebanon, none of them being the person alleged in the answer to be the owner of the ship and that these persons at all relevant times to the action were and still are the beneficial owners of the ship, which sails under the flag of Lebanon, a fact that is admitted by the defendants-respondents.

30: In the course of the hearing counsel for the applicant-plaintiff abandoned his request for the information asked for in paragraph 3 of the interrogatories.

With regard to the request of the plaintiff for discovery of documents counsel for the defendants argued that the documents concerned were already in the possession of the plaintiff, as they are appended as exhibits to an affidavit filed by counsel on the 7th January, 1984. This affidavit, however, was filed in support of other interlocutory proceedings not connected with the present application of the plaintiff.

Rule 93 of the Cyprus Admiralty Jurisdiction Order, on which the applicant relies for his prayer for discovery of documents, provides:

"The Court or Judge may, on the application of any party to an action and without notice to any other party, order that any other party shall make discovery, by affidavit, of all documents which are in his possession or power relating to any matter in question therein."

Counsel for the defendants argued that all documents which are in their possession are before the Court, but in the light of the wording of rule 93 it is clear that discovery shall be made by affidavit with regard to this particular application and not to any other proceedings in the action. In any event, the documents appended to the affidavit of counsel dated 7th January, 1984, are in Arabic, a language unknown to the Court, they are uncertified photocopies and no translation accompanies them.

In the light of the above, I order that the respondents and the alleged by them owner of the ship make discovery on oath of all documents which are in their possession or power relating to any matter raised by the pleadings. This discovery should be made within thirty (30) days from today, and if the documents are in a foreign language other than English or Greek, they should be accompanied by a translation certified as a true one by an authorised organ or person.

I now come to the objection of the defendants-respondents as regards the request for interrogatories. I have already set out the allegations relied upon by the defendants in refusing to give answers to these interrogatories. The arguments put forward by counsel in his address in support of the refusal to answer these interrogatories were not at all persuasive so that I can refuse to make an order to that effect. In addition, these allegations are not substantiated by any affidavit.

In the light of the averments in the pleadings and, in particular, the allegation of the defendants that the vessel had been bought by the alleged new owner before the commencement of the action, and in view of the allegations made in the petition that the described in it owners are the beneficial owners of the ship, I

find that this is a proper case in which to direct that interrogatories 1, 2, 4 and 5 be delivered and be answered by Jamal El Din A.K. El Tayib Al Raffii within thirty (30) days from today.

Orders accordingly.

- 5 Respondents to pay the costs of the application.

*Order and order for costs as above.*