

1984 November 8

[HADJIANASTASSIOU, J.]

LA SOCIETE MAURITANIENNE D' ASSURANCES ET DE
REASSURANCES AND ANOTHER,

Plaintiffs,

v.

MARANAR SHIPPING CO. LTD., AS OWNERS AND/OR
CHARTERERS OF THE SHIP "MARANAR",

Defendants.

(Admiralty Action No. 316/79).

*Admiralty—Practice—Costs—Security for costs—Plaintiffs resident
abroad—Directed to give security for costs in the sum of £750.—
Rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893.*

5 The plaintiffs, foreign companies established and resident
abroad, brought an action against the defendants, a local com-
pany, for damages suffered by them under a contract of carriage
of goods by sea.

Upon an application by the defendants for security for costs:*

10 *Held*, that bearing in mind that the plaintiffs are non resident
and taking into consideration the costs that could normally
be incurred in a case of this nature, it is directed that plaintiffs
give security for costs on an amount of £750.—

Application granted.

* The application was founded on rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893 which reads as follows:

"If any plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision) or any defendant making a counterclaim is not resident in Cyprus the Court or Judge may, on the application of the adverse party, order him to give such security for the costs of such adverse party as to the Court or Judge shall seem fit; and may order that all proceedings in the action be stayed until such security be given".

Application.

Application by defendants for an order directing the plaintiff to give security for costs.

Chr. Christofides, for *L. Papaphilippou*, for applicants.

C. Hadjioannou, for respondents. 5

Cur. adv. vult.

HADJIANASTASSIOU J. read the following ruling. In the present case according to the petition the plaintiffs No. 1 are having their registered office at Nouakchott Mauritanie and are the insurance company who covered the consignment, the subject matter of this action and who paid for the loss and damage to it and have been subrogated to the rights of plaintiffs No. 2 by operation of law and by a document of subrogation dated 2nd February, 1979. The plaintiffs No. 2 are and were at all material times the consignees and/or owners of the consignment subject matter of this action and the holders and or indorsees of the relevant bill of lading referred to hereinbelow. Indeed, the defendants are and were at all material times the owners and/or occupiers and/or operators and/or possessors of the ship "MARANAR". 10 15 20

By a contract of carriage evidenced by bill of lading No. 1 dated 13th November, 1978, issued at Huelva by the master and/or agents of the ship "MARANAR" the defendants agreed and undertook to carry on board the said ship 36,420 bags of cement belonging to plaintiffs No. 2 from Huelva to Nouakchott Mauritanie and there to deliver same in the same good order and condition as they were received on board the said ship on or about the 13th day of November, 1978. The defendants in breach of the aforesaid contract of carriage and/or in breach of their duty as bailees and/or acting negligently failed to deliver the aforesaid consignment at Nouakchott in the same good order and condition as they received same at Huelva. On 13th December, 1978 it was short delivered, and they delivered another part damaged to such an extent that it was a total loss, thereby causing to the plaintiffs loss and damage. The plaintiffs have repeatedly demanded payment of the total amount of loss but the defendants failed to pay any sum or any sum against it so far, despite the fact that the vessel's master and/or his representative signed documents admitting the loss 25 30 35

of the said goods in circumstances described therein. On 8th April, 1981, the answer of the defendants was given and in effect they denied paragraph 4 of the petition and they denied that the plaintiffs or either of them was entitled to their claim or to
5 any sum at all.

Indeed, on 11th April, 1981, the defendants filed an application dated 11th April, 1981 and it was fixed for hearing on the 4th May, 1981. In this application the applicants applied for (a) an order directing the plaintiffs to give security for the
10 defendant's costs within twenty-one days from the date of such order, in the sum of £1,000 by depositing in Court or Bank Guarantee; (b) an order staying proceedings until security for costs is given by the plaintiff; and (c) an order directing that in default of security for costs this action shall stand dis-
15 missed with costs. The application was based on the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction Rules 185, 203 to 212 and 237.

The facts relied upon are set forth in the accompanying affidavit of Simos Papadopoulos who had this to say:

20 "On the face of proceedings, the plaintiffs appear to be foreign companies, established and resident abroad, and in particular in Mauritania and Nouakchott.

From the pleadings filed in this action the facts which lead to the filing of the present action took place abroad.

25 I am informed by the defendant and I believe that all the witnesses of the defendant, are persons residing abroad and they will incur expenses for travelling to Cyprus, such as air tickets, hotel accommodation and subsistence.

30 I am advised by defendant's advocates and I believe that the following witnesses are necessary to give evidence in support of the defence:

- (a) The master of the ship "MARANAR"
- (b) The mate of the said ship
- (c) The manager of the defendant company and of
35 the said ship.

All three witnesses are receiving a high salary and will have to travel to Cyprus from abroad in order to give

evidence. More particularly the master and mate of the vessel, due to the nature of their employment at the time of the hearing may have to travel from a great distance from countries of the Far East or the United States, depending on the actual place their vessel will be travelling. 5

The hearing of this case is estimated to last at least for three sessions.

A bill of costs is produced which shows an estimate of defendant's costs in the action, which amount to £1,550.250 mils. 10

Therefore, I apply on behalf of the defendants as per their application".

On 4th May, 1981, Mr. Hadjioannou applied for a further adjournment of this case to enable him to try and meet up to an extent the security asked for by the other side and to consult his clients regarding the amount of the security asked for. On 8th June, 1981, Mr. Hadjioannou made this statement: "I regret the delay, but unfortunately, we have not as yet instructions from our clients and I believe that my learned colleague will not object to a further adjournment and I apply for a date for hearing". As there was no opposition the case was fixed for hearing on the 1st December, 1981, at 10.00 a.m. In the meantime Mr. Hadjioannou on behalf of his clients opposed the application of the defendants and gave notice that the plaintiffs intended to oppose the above application made by the defendants. The opposition was based on the Cyprus Admiralty Jurisdiction Order 1893 rules 203-212, 185 and 237. In an affidavit dated 28th November, 1981, Mr. A. Gregoriades prayed for the dismissal of the application with costs, and had this to say: 15 20 25 30

"I am advised and verily believe that the power of the Court to order security for costs to be given is discretionary and such power ought not to be exercised if its sole purpose is to delay or hinder the plaintiffs from obtaining the relief to which they are entitled and this is especially so when the plaintiffs claim is admitted or there is no defence to it. 35

I am advised and verily believe that the plaintiffs claim is good and genuine based on loss and damage to goods

covered by bill of lading No. 1 which I produce and marked exhibit 1.

5 In the present case there are two documents both dated 13.12.1987 signed by the Master of the ship "MARANAR" owned by the defendants and in which the Master of the ship admits were lost in the sea during discharging operations and that on receipt of the cargo on board the vessel by the stevedores it was ascertained that 1807 bags were torn and 1369 bags were hooked making a total of lost bags due to damage of 3276. Photocopies of these documents are produced and marked exhibits 2 and 3 respectively".

Furthermore, Mr. Hadjioannou made this statements

15 "I am advised and verily believe that the defendant's answer to the plaintiffs petition does not disclose any defence to the claim.

I am further advised and verily believe that none of the witnesses alleged in the affidavit in support of application will be necessary and in any event they are not entitled to their costs.

I am further advised and verily believe that the defendants estimation of costs is grossly exaggerated".

On 1st December, 1981, Mr. Christofides counsel for the defendants made this statement: "This is an interim decision, and we have agreed, subject to your approval, to write our addresses, and subject to the directions of the Court to argue certain points which we consider as being important. I shall be delivering my written address within seven days". In the light of this statement Mr. Hadjioannou also informed the Court that he would prepare his reply within a period of fifteen days. This case inevitably was adjourned to the 22nd December, for further directions.

On 4th December, 1981, the written address of Mr. Papphilippou was made available to the Court but counsel for the plaintiffs applied for further time to prepare his written address and gave reasons for not doing so earlier. The case inevitably was adjourned to the 18th January, 1982, to enable counsel to do so. On 18th January, 1982, Mr. Hadjioannou filed his written address and stated that it was better for the case to be

fixed for clarification and evidence so that certain documents which were in the possession of the other side might be produced and to further clarify the said points in Court. Indeed, Mr. Valiantis, appearing on behalf of the defendants, informed the Court also that a reply might be required and the case inevitably had to be adjourned once again and was fixed for clarification on 30th October, 1982. On that date Mr. Hadjioannou made the following statement: "The documents necessary to be considered in the termination of this application are in the possession of the defendants as we have sent them before the action for the purpose of settlement of the claim. I, therefore, suggest that this case is adjourned for fifteen days so that these documents may be produced by the other side". Indeed, Mr. Christofides stated that the documents were not with him, but he added that he would produce them in due course. In the light of these statements inevitably the Court had to grant a further adjournment and the case was adjourned to the 16th November, 1982. On that date counsel for the defendants made this statement: "I humbly submit that the documents sought to be put in by the other side are irrelevant for the purposes of this application". On the contrary, Mr. Hadjioannou argued that the question of relevancy is for the Court to decide, and further stated that he relied on those documents in his affidavit in the opposition, and his address in writing, and he applied for an order for their production as they are necessary to be before the Court. With that in mind, and in a ruling the Court had this to say: "Having listened to both counsel and because there was a statement by Mr. Christofides that he would produce the documents in due course, I find it very strange to say the least, that another counsel has received instructions to the opposite, and in accordance with the principles I have formulated earlier in many cases, the documents in question should be produced and to be in the hands of the Court within a period of one month". Inevitably the case had to be fixed once again for further directions on the 16th December, 1982 at 9.30 a.m. Indeed, on 17th November, 1982, the defendants produced three documents viz., the original bill of lading No. 1 dated 13.11.1978, the original document entitled PROCES VERBAL DE CHUTE EN MER DATED 13.12.1978 and the original document entitled ETAT DES RESERVES dated 13.12.1978.

On 19th March, 1983, Mr. Christofides, counsel for the defendants, in his address, having stated that he adopted fully his written address, he referred to the fact that both plaintiffs are resident abroad, and that the defendant company is only registered in Cyprus. He further argued that in accordance with the Cyprus Admiralty Jurisdiction Order, 1893, a non-resident may be ordered to give security for costs.

Indeed, Order 185 reads as follows:

“If any plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision) or any Defendant making a counterclaim is not resident in Cyprus, the Court or judge may, on the application of the adverse party, order him to give such security for the costs of such adverse party as to the Court or judge shall seem fit; and may order that all proceedings in the action be stayed until such security be given”.

Bearing in mind that the plaintiffs are non resident and guided by the costs that could normally be incurred in a case of this nature, I direct that plaintiffs give security for costs on an amount of £750.-.

Such security may be supplied either by making a payment of the money in Court or by providing an appropriate bank guarantee. Security must be given within two months, and pending the filing of such security the proceedings should be stayed.

Order as above.