

1985 November 26

[SAVVIDES, J.]

WILLIAMS AND GLYN'S BANK PLC.,

*Plaintiff,*

v.

THE SHIP "MARIA" NOW LYING AT THE PORT  
OF LARNACA,

*Defendants.*

*(Admiralty Action No. 59/82).*

5 *Admiralty—Practice—Ex parte application for the substitution  
of plaintiffs by the applicants—Based on rules 30, 203,  
237 of the Cyprus Admiralty Jurisdiction Order 1893, on  
0.16, r. 11 of the English Rules of the Supreme Court and  
on the inherent powers of the Court—Application dis-  
missed—Directions that it be made by summons.*

10 The applicants are the Royal Bank of Scotland, plc.  
which by virtue of the Royal Bank of Scotland Act, 1985  
succeeded to the rights of the plaintiffs. By virtue of the  
same act the applicants have the same rights, powers and  
remedies for claiming or enforcing any right of the plain-  
tiffs, which has become a right of the applicants, as if it  
had at all times been a right of the applicants; furthermore  
15 any claim, action or proceeding pending or existing by  
or in favour of the plaintiffs as on 29.9.85, does not abate  
or discontinue but the same may, on and from 30.9.85,  
only be continued prosecuted and enforced by or in favour  
of the applicants.

20 In view of the above the applicants filed the present ex  
parte application for the substitution of the plaintiffs by  
them and for the continuation of the action in their own  
name. The application was based on Rules 30.  
203 and 237 of the Cyprus Admiralty Juris-  
25 diction Order 1893, on the English Rules of the Supreme  
Court 1883 Order 16, rule 11 and Order 17, rule 4

and on the inherent powers and jurisdiction of the Court

*Held, dismissing the application:*

(1) Rule 30 of the Cyprus Admiralty Rules corresponds to 0.16 rule 11 of the English R.S.C. whereas rule 34 corresponds to 0.17 of the English R.S.C. (the Old R.S.C. in force on 15.8.60). Applications under 0.16, r. 11 have to be made by summons, whereas applications under 0.17, rule 4 are made ex parte. 5

(2) This application is based on Rule 30 of the Cyprus Admiralty Rules and, therefore, in the light of the corresponding English provisions, it had to be made by summons. 10

(3) In the light of all the circumstances of the case and the fact that these proceedings have been strongly contested all along, directions are given that the application be made by summons. 15

*Application dismissed.*

*No order as to costs.*

**Ex-parte application.**

Ex parte application by the Royal Bank of Scotland, plc., for an order of the Court that they be made a party to this Admiralty action as plaintiffs in substitution of Williams and Glyn's Bank plc. 20

*E. Montanios*, for the applicants.

*Cur. adv. vult.*

SAVVIDES J. read the following decision. By this ex-parte application the applicants, the Royal Bank of Scotland, plc., a public company incorporated under the Companies Act 1948 - 1980, apply for an order of the Court that they be made a party to this action as plaintiffs in substitution of Williams & Glyn's Bank plc., present plaintiffs in the above action. 25 30

The plaintiffs Williams & Glyn's Bank plc., of London, are a company incorporated under the Companies Act 1948 - 1967 of the United Kingdom as a company limited

by shares and re-registered under the Companies Act of 1980 as a public limited company. They brought the above intituled action claiming against the defendant ship the sum of U. S. Dollars 7,202,465.28, plus interest by virtue  
5 of a mortgage on the defendant ship granted in their favour. The hearing of the action has already commenced and will be continued in February, 1986.

According to the contents of an affidavit sworn on behalf of the applicants, pursuant to the provisions of the Royal  
10 Bank of Scotland Act, 1985, of the United Kingdom, and in particular sections 5(1) and 6(1) thereof and pursuant to a notice published in the London Gazette of the 9th September, 1985, in accordance with section 3 of the Act,  
15 all the rights of the plaintiffs, were as from the 30th September, 1985, transferred to the applicants and the applicants succeeded to the rights of the plaintiffs. Further by section 11(1) of the Act and the Notice, as from the 30th September, 1985, the applicants have the same rights,  
20 powers and remedies for claiming or enforcing any right of the plaintiffs which, by virtue of the Act, has become a right of the applicants, as if it had at all times been a right of the applicants. Furthermore, by virtue of the same sub-section any claim, action or proceeding which on the  
25 29th September, 1985, was pending or existing by or in favour of the plaintiffs, does not abate or is discontinued or in any way prejudicially affected by reason of the provisions of the Act, but the same may, on and from the 30th September, 1985, only be continued, prosecuted and enforced by or in favour of the applicants if as and when  
30 it might have been continued, prosecuted and enforced by or in favour of the plaintiffs if the Act had not been passed.

In view of the above, the applicants filed the present application for the substitution of the plaintiffs by them, and for the continuation of the action in their own name.

35 A written consent dated 17th October, 1985 signed by the Director and General-Manager of the applicants, duly certified, has been filed to the effect that they consent to be substituted as plaintiffs in the action in the place of the existing plaintiffs. Also, a copy of the London Gazette of  
40 the 9th September, 1985 containing the Notice mentioning

the 30th September, 1985, as the appointed date, has been annexed in the affidavit in support of this application.

The application is based on the Rules of the Supreme Court in its Admiralty Jurisdiction, rules 30, 203 and 237 and also on the English Rules of the Supreme Court, 1883. Order 16, rule 11 and Order 17, rule 4 and on the inherent powers and jurisdiction of the Court. 5

Counsel for applicants in addressing the Court expounded on the powers of the Court to make an order for the substitution of parties and submitted that in the circumstances of the present case these applicants have shown good cause for their substitution in the place of the original plaintiffs. He further submitted that by virtue of the provisions of Order 17, rule 4 an order to that end may be obtained on an ex-parte application. 10 15

Under the provisions of rule 30 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction the Court may at any stage of the proceedings, order that the name or names of any party or parties be struck out or that the names of any persons who are interested in the action or who ought to have been joined either as plaintiffs or defendants or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the action, be added. Furthermore, Rule 34 of the same Rules provides that where by reason of death or bankruptcy or any change occurring during the continuance of the action the interest or liability of any party to the action shall have devolved upon any person or persons the Court or Judge may by order direct that the action be continued by or against the person or persons upon whom such interest or liability shall have devolved. 20 25 30

Rule 30 of the Cyprus Admiralty Rules corresponds to Order 16, rule 11 of the English R.S.C., whereas rule 34 corresponds to the English R.S.C. 17 (the old R.S.C. in force on the 15th August, 1960, the Independence Day of the Republic of Cyprus). 35

Reading from the Annual Practice, 1960, the equivalent English rules and the notes thereto, it is clear that applications under Order 16, rule 11, have to be made by sum- 40

mons, whereas applications under Order 17, rule 4, are made ex-parte.

5 As I mentioned earlier, this application was based on rule 30 of the Cyprus Admiralty Rules, and as such, bearing in mind the corresponding provisions of the English Rules, it had to be made by summons.

10 Bearing in mind all the circumstances of the present case and the fact that these proceedings have been strongly contested all along, I make directions that the application be made by summons.

In the result, the ex-parte application is hereby dismissed and directions are given for an application to be made by summons in case the applicants wish to pursue this matter further.

15 There will be no order for costs.

*Application dismissed.  
No order as to costs.*