

1986 March 29

[DEMETRIADES, J.]

MOHAMAD K. ABOU ZHAIR,

*Plaintiff,*

v.

ASSOCIATED LEVANT LINES (CYPRUS) LTD.

*Defendants-Applicants.*

*(Admiralty Action 108/77).*

*Admiralty—Practice—Failure by plaintiff to put up security for costs as ordered—Action dismissed for want of prosecution—The Cyprus Admiralty Jurisdiction Order, 1893, rule 185.*

*Admiralty—Practice—Withdrawal of plaintiff's advocate—No change of advocate and no appearance by the plaintiff in person—To whom and in what form notice of the date of trial of the counterclaim should be given—The Cyprus Admiralty Jurisdiction Order, 1893, rule 237.* 5

The hearing of this case was repeatedly adjourned upon application by the plaintiff's counsel on the ground that he could not get in touch with his client. An application filed by the defendants for security for costs was settled on 6.12.80 and as a result the plaintiff was ordered to give security for costs in the sum of £250. 10  
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On the 20.12.80, when the case was fixed for hearing, both counsel stated that they have agreed that the hearing be adjourned sine die "provided that in the meantime the order for security for costs... is satisfied". As a result the case was adjourned sine die, to be fixed for hearing after an application by either side. 20

On 13.3.84 counsel for the defendants applied for an order dismissing the action for want of prosecution on the ground of plaintiff's failure to put up the security

ordered for costs and for fixing a date for the hearing of the counterclaim.

5      On the 14.1.86 plaintiff's counsel stated that all his efforts to communicate with his client went in vain and applied for leave to withdraw from the case. The Court ruled that this was a proper case for counsel to withdraw from the action.

10      Defendants' counsel argued that by virtue of rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893 failure to put up the security tantamounts to want of prosecution of the action. He further argued that by virtue of the provisions of rule 237 of the same Order the question to whom and in what form notice of trial of the counterclaim should be given is governed by the Rules of the Supreme Court of England, 0.7, rules 1 and 2.

15      *Held*, (1) It appears that the plaintiff has shown no interest in the prosecution of his claim or else he would himself get in touch with his lawyer and inquire about his case. His claim should be dismissed with costs against him.

20      (2) Since in the present case there has been no change of advocate, nor has the plaintiff appeared in person in substitution of his ex-advocate, the defendants shall have to serve notice of trial of the counterclaim on the plaintiff's address of service as this appears to be on the writ of summons (A note under the heading "Service on Discharged Solicitor" of 0.7 r.2(1) of the Rules of the Supreme Court of England at p.53 of the 1952 White Book was cited by the Court with approval). In addition  
25      the defendants should publish in one daily newspaper published in English here the date of trial of the Counterclaim.  
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*Application granted with costs against the plaintiff.*

35      **Cases referred to:**

*La Grange v. McAndrew* [1879] 4 Q.B. 210.

**Application.**

Application by defendants for an order dismissing the claim for want of prosecution on the ground that the plaintiff failed to put up the security for costs ordered and fixing a date for the hearing of the counterclaim. 5

*St. Mc Bride*, for the applicant.

*Cur. adv. vult.*

DEMETRIADES J. read the following ruling. This action was filed as far back as 1977 and by it the plaintiff was claiming - 10

“(a) Damages for losses which he sustained by reason of the breach by the defendants of a Gencon Uniform General Charter dated 2nd August, 1976 in respect of the ship *Borealis ex Beitmory*.

(b) Further or alternatively damages for negligence. 15

(c) An order of the Court directing the defendants or their agents to return to the plaintiff a bank guarantee dated 8th September, 1976 issued by the Chartered Bank No. 547/66 as security for the payment of demurrages under the aforesaid charterparty. 20

(d) Further or other relief.

(e) Interest at 9% per annum.”

On the 28th May, 1977, counsel for the plaintiff filed the petition in the action after directions given by a Judge of this Court but as no appearance was entered by the defendants counsel for the plaintiff filed, on the 22nd June, 1977, an application by which he applied for judgment in default of appearance. 25

Before this application was heard counsel appearing for the defendants filed an answer to the petition and in addition a counterclaim. 30

The action was repeatedly fixed for hearing, but on each

date that it was so fixed the hearing was adjourned on the application of counsel for the plaintiff as he could not get in touch with his client.

5 This action came before me on the 6th December, 1980, after an application was made by counsel for the defendants for security for costs. On this date counsel appearing for both parties made the following joint statement:

10 "Application settled as follows: The plaintiff-respondent undertakes to give security for costs in the sum of £250.- in a form to be agreed between counsel, but within three months from today. This order will not stay the proceedings and the action will proceed with the hearing which is fixed for the 20th December, 1980, or to any other day till the completion of  
15 the plaintiff's case."

On the 20th December, 1980, the following statements were made in Court:

20 "*Mr. Papaphilippou*: I informed last night Mrs. Psillaki that I am not ready to proceed with the hearing today and we have agreed that the hearing be adjourned sine die provided that in the meantime the order for security for costs, ordered on the 6th December, 1980, is satisfied.

*Mrs. Ioannou*: That is so and I claim no costs.

25 *COURT*: Case adjourned sine die, to be fixed for hearing after an application by either side."

As a result, the action was adjourned sine die with an order that it was to be set down for hearing after an application of either party.

30 Neither of the parties moved the Court to set the action down for hearing until the 13th March, 1984, when counsel for the defendants applied to the Court for -

35 "(a) an order dismissing the claim of the plaintiff for want of prosecution having failed to put up the security ordered for costs.

(b) fixing a date for the hearing of the counterclaim.”

This application for the defendants was repeatedly adjourned by consent because plaintiff's counsel could not communicate with his client.

On the 14th January, 1986, counsel for the plaintiff asked for leave to withdraw from the case because, as he stated, all his efforts to locate his client for the last two years and communicate with him for further instructions went in vain. He further stated that his last letter to his client informing him of that day's appearance had been returned to him. 5 10

In the light of the circumstances of the case, I ruled that this was a proper case for counsel for the plaintiff to withdraw from the action.

Having reached the above decision, two questions pose before me: 15

- (a) The dismissal of the action for want of prosecution as the plaintiff has failed to comply with the order of the Court directing him to give security for costs, and
- (b) whether notice of the date on which the hearing of the counterclaim will be heard should be given and if so in what form and to whom. 20

With regard to the first question counsel for the defendants submitted that by virtue of the provisions of rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893, failure to put up the security ordered by the Court tantamounts to want of prosecution, which is a good reason for the dismissal of the action. In support of his argument counsel relied on the case of *La Grange v. McAndrew*, [1879] 4 Q.B. 210, in which it was held that a Judge has a discretion to make an order dismissing the action, though the defendant had not abandoned the order for security for costs. 25 30

In the present case, it appears that the plaintiff had shown no interest in the prosecution of his claims or else he would himself get in touch with his lawyer and inquire about his case. 35

In the circumstances, I feel that the plaintiff's claim should be dismissed with costs against him.

5 The second issue that poses for decision is whether the defendants, if and when they apply to have their counter-claim set down for hearing, they have to give notice of trial and if so to whom and in what form.

10 Counsel for the defendants argued that as rule 237 of the Cyprus Admiralty Jurisdiction Order, 1893, provides that "in all cases not provided by these Rules, the practice of the Admiralty Division of the High Court of Justice of England, so far as the same shall appear to be applicable, shall be followed". Order 7, rules 1 and 2 of the Rules of the Supreme Court of England apply. In particular, he referred me to the note under the heading "Service on Discharged Solicitor" of O.7, r. 2(1), which appears at p. 15 53 of the 1952 White Book and which reads:

20 "In High Court proceedings a solicitor can only be discharged from liability to receive service of proceedings by the substitution on the record of another solicitor, or of the party in person (see preceding note). After such a discharge has been effected and entered on the record the discharged solicitor cannot be served, nor can he accept service. See *R. v. Justices of Oxfordshire*, [1893] 2 Q.B. 149, followed in *R. v. Justices of Leitrim*, [1900] 2 Ir. R. 397."

30 In the light of this and of the authorities cited therein, I am inclined to agree with the proposition that since in the present case there has been no change of advocate, nor has the plaintiff appeared in person in substitution of his ex-advocate, the defendants shall have to serve notice of trial on the plaintiff's address for service as this appears to be on the writ of summons. In addition, the defendants, in view of the circumstances, should publish in one of the daily newspapers published in English here the date the 35 Court will fix their counterclaim for trial.

Costs of this application will be costs against the plaintiff.

*Order accordingly.*