

1988 February 25

(MALAHTOS, J.)

PERICLES CHIMONIDES,

Plaintiff,

v.

1. UNION INSURANCE SOCIETY OF CANTON LTD.,

2. GLYKYS BROTHERS LTD.,

Defendants.

(Admiralty Action No. 93/79).

5 *Admiralty — Writ of Summons — Service of — Defendants out of the Jurisdiction — Leave obtained ex parte to serve such defendants (defendants 1 in this action) by leaving a copy with their Claim Settling Agents in Cyprus (defendants 2) — Latter's authority did not include acceptance of judicial process — Application to set aside such service on the first defendants — Granted.*

10 *Admiralty — Marine insurance policies issued abroad by the first defendants — Action based on such policies — As such policies were not issued by the second defendants (who were the Claim Settling Agents in Cyprus of the first defendants with limited authority) either personally or as agents of the first defendants, the action as against them has to be dismissed.*

The facts of this case appear sufficiently in the judgment of the Court.

15 *Application to set aside service of writ of summons on the first defendants - granted. Action against the second defendants dismissed. Costs against plaintiff.*

20 **Application.**

Application by defendant for an order of the Court that the service of the writ of summons and/or the action be set aside.

A. *Markides*, for applicants - defendants.

G Arestis for P L Cacoyannis & Co for the respondent -
plaintiff.

Cur adv vult

MALACHTOS J read the following judgment In this action the
plaintiff/respondent on the 12th April, 1979, instituted legal 5
proceedings before this Court in its Admiralty Jurisdiction claiming
against the defendants/applicants.

(a) U S Dollars \$33,137.50 (or its equivalent in Cyprus pounds) or
thereabouts, being the insured value of a cargo of 10
62 cartons containing 20 500 yards 100% Cotton Corduroy
material,
30 cartons containing 9 466 yards Polyester/Cotton
Corduroy material, and
15 cartons containing 4 558 yards 100% Cotton Corduroy 15
material,

shipped by the Wai Cheong Company of Hong Kong, Rm 903, Po
Sang Bank Bldg No 33, Argyle Street, Kowloon, on board the S/
S «EVER HANDSOME» on or about 7 10 1978 for carnage from
Hong Kong to Limassol Cyprus, and delivery thereof to the
Plaintiff payable by the Defendants to the Plaintiff under the terms 20
of three Marine Insurance Policies Nos. KSDO/0008, KSDO 78/
0009, KSDO 78/0010, all dated 2 10 1978, issued by the
Defendants through their Hong Kong Agents in which policies the
Plaintiff was at all material times fully interested, such cargo of
Corduroy material having been totally lost and/or destroyed and/ 25
or stolen and/or never delivered to the Plaintiff and/or otherwise,

(b) A declaration that the goods as described in the Policies
referred to in relief (a) above, were the goods as so described
therein namely cotton corduroy material (100% cotton, or 30
polyester/cotton as the case may be) which were so insured from
warehouse to warehouse and shipped at Hong Kong (after leaving
the supplier's warehouse) per S/S «EVER HANDSOME» on or
about 7th October, 1978 and that the Defendants should not be
heard to say or that they be estopped from saying that the said
goods were goods other than the goods so described in the said 35
policies,

(c) Alternatively to (a) and (b) above, the same amount as is
claimed in (a) above by way of damages for negligence, and/or
negligent misstatement and/or for fraud and/or for
misrepresentation and/or for deceit or otherwise in falsely and/or 40
negligently and/or fraudulently representing, by the issue of the
said policies, to be insuring the goods as so described therein

whereas in truth and in fact what was so insured was not the goods so described but rubbish, such goods never having left the supplier's warehouse and never been shipped per S/S «EVER HANDSOME», the Plaintiff having relied on such representation thereby suffering damage; and/or

(d) The same amount by way of damages for conspiracy and/or breach of contract and/or for negligence and/or for fraud and/or otherwise;

(e) Interest and costs.

10 At the same time, the plaintiff by an ex parte application, based, as stated therein, on Rules 20, 23, 24 and 25 of the Cyprus Admiralty Jurisdiction Order 1893 and Order 5, rule 7, of the Civil Procedure Rules, applied and obtained an Order for leave to serve the writ of summons on defendant No. 1 by leaving a
15 copy thereof with the Claim Settling agents of this defendant in Cyprus, Messrs. Glykys Brothers Ltd. of Nicosia, who are defendant 2 in the action.

On the 30th June, 1979, the appointed day, the defendants appeared before the Court and on their application were given
20 leave to enter a conditional appearance, as they intended to apply to set aside the issue and services of the writ.

On the 28th day of August, 1979, the defendants filed an application based, as stated therein, on the Cyprus Admiralty Jurisdiction Order 1893, Rules 21, 23, 24, 25, 203, 207 and 208
25 and on sub paragraph (a) of section 19 of the Courts of Justice Law of 1960, Law 14/60 and on the General Law and the inherent jurisdiction of the court claiming, as stated therein, the following remedies:-

1. An order of the Court that the service of the Writ of Summons
30 and/or the Action on the First of the above Applicants be set aside and/or that the proceedings as against them be set aside on the following grounds, namely:-

(a) The service of the Writ of Summons and/or copy thereof
35 on the First Defendants could not and was not properly effected by serving the same on the Second Defendants.

(b) The action against the Second Defendants, who are the only parties within the Jurisdiction, must plainly fail, and consequently the Honourable Court has no Jurisdiction to entertain the matters complained of.

2. An Order of the Court that the Service of the Writ of Summons and/or the Action on the Second Defendants-Applicants and/or the proceedings against them be set aside for lack of Jurisdiction by the Honourable Court.

Paragraphs 2 to 5 of the affidavit in support of the application sworn by Evelthon Glykys, a Director of the second defendants, a company formed and incorporated in Cyprus, with limited liability under the Companies Law, Cap. 113, read as follows: 5

«2. By a letter dated 30.11.1969 the ‘Institute of London Underwriters’ appointed the Second Defendants as ‘Claim Settling Agents’. Photocopy of this letter is attached herewith marked Exhibit A, 10

3. One of the members of the ‘Institute of London Underwriters’ are ‘The Union Insurance Society Of Canton Ltd.,’ i.e. the First Defendants. 15

4. The Second Defendants did not have and do not have any agents in Hong Kong.

5. The Second Defendants did not issue either directly or indirectly any of the Insurance policies referred to in the Writ of Summons. Indeed and in respect of the matters complained of by the Plaintiff Pericles Chimonides no contractual relationship ever existed as between the said Plaintiff and the Second Defendants.» 20

Counsel for applicants in arguing his case made reference to the letter of appointment of the second defendants as claim settling agents in Cyprus by the Institute of London Underwriters, particularly paragraphs 8 and 12 thereof, which read as follows: 25

(8) Heavy or Unusual Claims

All claims exceeding £1,000 (or equivalent) must be submitted to the Institute, or in the case of Companies Own Policies, to the Company concerned, prior to settlement, with the further proviso that all unusual claims must also be submitted for approval. When forwarding to the Institute claims that you have not settled you should give a brief indication of your reasons for withholding payment. 35

(12) Judicial Proceedings, Arbitration etc.

Your appointment as Claim Settling Agents does not carry

5 with it any Power of Attorney and your authority does not extend to the acceptance on behalf of the subscribing Companies of Service of any Judicial proceedings, Notice of Appointment of Arbitrators or Notice of Arbitration in respect of which it will be necessary to obtain specific instructions in each case from this Institute (or from the Company concerned in the case of Companies own policies). Similarly, abandonment must not be accepted on Underwriters behalf unless express agreement is first obtained through this Institute or the Company concerned.

10 Counsel for applicants submitted that it is clear from the letter of appointment of defendants 2 that no proper service could be effected on the said defendants either in their personal capacity or as agents of defendants No.1. He also submitted that even if we assume that defendant No.2 is the agent of defendants No.1 then in the present case the service is bad in law as defendants 1 are carrying on business abroad and the contract of insurance was also concluded outside the jurisdiction of this Court. This is clear from the provisions of Order 10, rule 2. of the Rules of the Supreme Court in England before 1960, which are applicable in Cyprus.

25 From the affidavits in support of the application and the opposition and the other evidence adduced, it is clear that defendants No.2 are special agents of the London Underwriters as claim settling agents with very limited authority, which does not carry with it any power of attorney and does not extend, among other things, to the acceptance of any judicial proceedings. The three marine insurance policies on which the action is based, which were issued at Hong Kong outside the jurisdiction of this Court on 2.10.78, were not issued by defendants 2 either personally or as agents of defendant No.1 as alleged by the plaintiff respondent. So, the present application should succeed.

30 In the result, it is hereby ordered that the service and the writ of summons on both defendants be set aside and the action against the 2nd defendants be also dismissed.

35 On the question of costs, the plaintiff respondent is ordered to pay the costs of this application to the applicants to be assessed by the Registrar on the scale applicable on the date of the hearing of the application.

Order accordingly.