

1968 December 28

(DEMETRIADES, J.)

JAYEE PVC PIPES PVT LTD. & OTHERS,

Plaintiffs,

v.

INTERTRUST SHIPPING CORPORATION,

Defendants.

(Admiralty Action No. 96/88).

Sequestration — Appointment of Sequestrator — The Civil Procedure Law, Cap. 6, section 4(2) — Ambit of.

5 *Receiver — Appointment of — The Courts of Justice Law, 1960 (Law 14/60.) section 32 — «Civil proceedings» — Whether an Admiralty action is a civil proceedings — Question determined in the affirmative.*

Words and phrases: «Civil proceeding» in section 32 of the Courts of Justice Law 14/60.

10 *Admiralty — Receiver — Appointment of Marshal as, in respect of goods, under section 32 of the Courts of Justice Law, 1960 (14/60) — Powers and duties of Marshal — The same as if the goods were a ship or cargo under arrest — Marshal entitled to apply to Court for directions in an informal way, e.g. by letter.*

15 Upon ex parte application by the plaintiff made in reliance to section 4(1) of Cap. 6 and section 32 of Law 14/60, the Court ordered the sequestration of certain goods and appointed the Marshal as sequestrator.

20 The goods were stored in 56 containers. The owners of the containers, who are not parties to the action, demanded the unstuffing of the cargo and the delivery of the containers to them.

As a result the Marshal applied by letter served on all the interveners in the proceedings for directions. The application of the Marshal was opposed on the ground, inter alia, that the position of the Marshal in this case is different from the position, when cargo is

under arrest (in which case he owes a duty to the Court) and, therefore, as he is not a party to the proceedings, he is not entitled to apply to the Court, but he should have addressed himself to the plaintiffs, on whose application he was appointed sequestrator.

Held: (1) Section 1(2) of Cap. 6 is inapplicable because its application is confined to matters connected with immovable property. Neither a ship nor a cargo of a ship is immovable property. 5

(2) However, section 32 of Law 14/60 providing, inter alia, for the appointment of receiver is applicable in all cases, provided the order is made in «civil proceedings». In section 2 of the same law, an admiralty action is a civil proceeding. 10

(3) The Marshal is not bound to formally apply to the Court for directions, that is, by filing an application by summons, provided that his letter asking for directions, as in this case, is served on all parties concerned and/or involved in the proceedings. 15

(4) The Admiralty Marshal, when he is appointed as a receiver under the provisions of section 32, has the same rights, obligations and duties as when a ship or cargo is arrested; and it is in his absolute discretion to take such steps as he considers it necessary for the preservation and safe custody of the ship or cargo, as well as steps that will minimise the costs for their preservation and safe custody. 20

Directions accordingly. Costs against interveners, who opposed the application.

Cases referred to: 25

Re Australian Direct Steam Navigation Company, L.R. XX Equity 325.

Application.

Application by the Marshal for directions of the Court as regards the goods stored in 56 containers owned by a Danish firm which is not a party to the action. 30

A. Theophilou, for the plaintiffs.

St. MacBride, for the interveners-receivers of the cargo.

G. Michaelides, for the interveners-owners of the containers.

Cur. adv. vult. 35

DEMETRIADES J. read the following ruling. After the filing of this action the plaintiffs, by an ex-parte application, applied for-

(a) the appointment of the Marshal of the Admiralty Court and/or any other as sequestrator with powers to enter upon and take the goods specified in para. B of the prayer to the writ of summons and to keep them in safety doing everything necessary for their
5 preservation until the final determination of the action and/or further order of the Court; and

(b) that the costs which were to be incurred by the sequestrator to be payable by the plaintiffs and be costs in the cause.

As it appears from the prayer to the writ of summons, the goods
10 for the sequestration of which the order was granted, related to a cargo of 1944 Metric Tons of P.V.C. Resin that was stored in 56 containers owned by a Danish firm not a party to the action.

As a result of a letter dated the 2nd September, 1988, addressed to him by the advocates representing the owners of the containers,
15 and by which the unstuffing of the cargo loaded in their containers and their return to them was demanded, the Marshal, by letter dated the 6th September, 1988, applied to the Court for directions. As a number of people has been given leave to
intervene as parties, directions were given by this Court that copy
20 of the said letter of the Marshal be served on the parties involved in these proceedings.

One of the interveners, that is Messrs. Formosan Rubber Group Inc., Ta Win International Co. Ltd. and Epoch Products Corp., all of Taipei, Taiwan, opposed the application of the
25 Marshal. Their opposition is based on Rules 204, 206 and 211 of The Cyprus Admiralty Jurisdiction Order 1893 which are the Rules that govern the procedure applicable in Admiralty actions.

The facts relied upon by the interveners opposing the application of the Marshal are set out in their opposition and I shall
30 hereunder quote them in full:

«(a) On 19.7.88 the plaintiffs themselves applied to the Court for an order appointing inter alia the Marshal of the Admiralty Court as sequestrator with the powers therein requested,

35 (b) for an order that the costs incurred by the sequestrator
TO BE PAYABLE BY THE PLAINTIFFS.

(c) By their affidavit in support the Plaintiffs (through Vasiliki Mastihidou who swore the affidavit) identified the property to

be put in the custody of the Marshal as that being handled by Messrs. Frangoudi & Stephanou (Ltd) which had come into Cyprus on the EVANGELIA and PETER M and they were re-exporting to TAIWAN.

(d) The cargo affected is that covered by the three bills of lading SK1, SK2, and SK3 attached to the affidavit of Stavros Karides who confirms on his oath having spoken to Mr. Sotos M. Demetriou of Frangoudi & Stephanou Ltd and which had arrived on the vessels EVANGELIA and PETER M above referred to. This cargo was shipped by Toufruit SARL of Beirut to the persons presently opposing the 'application' of the Marshal.

(e) The Court on 19.7.88 appointed the Marshal as sequestrator and granted also that part of the order regarding payment of the costs of the sequestrator, and to give practical effect thereto ordered an immediate payment to the Marshal of £1,000.

(f) As can be seen from the bills of lading in question the cargo being carried is respectively 11963 packages of PVC resin in 17 x 20' containers and 1544 packages in 22 x 20' containers.

(g) Reverting to the request for the appointment of a sequestrator contained in the application of the plaintiffs the goods to be sequestrated are those specified in paragraph B of the prayer to the writ. The writ at paragraph B refers to the cargo of PVC resin in the containers described in Appendix A.

(h) The order as given covers resin and containers.

(i) The Marshal has no locus in this matter to seek directions/ authority of the Court to vary the orders applied for by the plaintiffs. He must deal with the Plaintiffs and in this connection and/or merely request of the Plaintiffs money each time he needs it to preserve the goods in sequestration. The order of sequestration is not a warrant of arrest.

Alternatively

(j) The Court ought not to vary the order but to discharge it and the writ as the writ is a nullity and being a nullity there is nothing before the Court of which the Court can take cognizance. The writ is a nullity as it does not comply with

Admiralty Rules 3.5.9 and 11 in that it has not been issued and is ineffective in that the writ does not name a time or date for the appearance of the parties before the Court.

Furthermore

5 (k) As regards the support given to the application by Scandutch 1-5 Partnership the same arguments/facts as set out above apply, as also,

10 (l) the said containers were lawfully delivered to the shippers of the cargo of PVC Resin and their possession in the custody of the shippers/consignees is covered by the relative agreement. The Court had no authority to cause a breach of that agreement and Scandutch 1-5 Partnership has presented no evidence whatsoever before the Court to justify any stripping of the PVC resin from the containers.»

15 Mr. McBride's argument is that although the Marshal was appointed by the Court as sequestrator of the cargo, this does not make him a party in the action entitling him to come to the Court and he further submitted that:-

20 «If he (the Marshal) has any problems, he goes to the person on whose behalf he was appointed and that person, the plaintiffs, move the Court to vary or seek directions on the order they obtained. It is not as if the cargo is under arrest and, therefore, the Marshal owes a duty to the Court. This is purely a case where a plaintiff has applied to the Court for an order -

25 why sequestration I do not know, it should have been probably for custody or preservation - the Court has made the order and if the Marshal, who was appointed as the custodian, has any problems, he consults the person by whom he was appointed and that person moves the Court under the

30 appropriate rule of Court, duly supported by the facts upon which he relies to move the Court, and then the parties either agree or disagree or they dispute the application of the person who applied for the appointment of a sequestrator and the Court deals with the matter accordingly. But what locus standi

35 the Marshal has to come direct to the Court? I have been looking in the rules of Court and I found nothing. So, I object to this application proceeding in the present form.»

The question that poses for decision in view of the arguments put forward by Mr. McBride is what is the effect of an order for the

40 appointment of Marshal of the Court as sequestrator.

Sequestration is defined in section 4(2) of the Civil Procedure Law, Cap. 6, on which the plaintiffs base their application, as

«4(2) The order for sequestration referred to means an order appointing some person or persons to enter upon any immovable property, specified in the order, which is in the occupation of the person against whom the order is made, and to collect, take, and get into his or their hands the rents and profits thereof, and also the goods and movable property of such person, and to keep them for a time specified in the order or until the further order of the Court.»

From the wording of this section it is clear, however, that the plaintiffs cannot rely on it as the provision of this section of Cap. 6 refers only to matters connected with immovable property and neither a ship nor cargo is immovable property.

However, section 32 of the Courts of Justice Law (Law 14/60), on which the plaintiffs also rely, does provide for the appointment of a receiver without the limitation that such appointment must refer to immovable property.

Section 32 of the Courts of Justice Law (Law 14/60), gives power to the Courts, in the exercise of their civil jurisdiction, to appoint a receiver. Section 32 reads:

«32.- (1) Τηρουμένου οιουδήποτε διαδικαστικού κανονισμού έκαστον δικαστήριον, εν τη ασκήσει της πολιτικής αυτού δικαιοδοσίας, δύναται να εκδίδη απαγορευτικόν διάταγμα (παρεμπόπτον, διηνεκές, ή προστακτικόν) ή να διορίζη παραλήπτην εις πάσας τας περιπτώσεις εις ας το δικαστήριον κρίνει τούτο δίκαιον ή πρόσφορον, καίτοι δεν αξιούνται ή χορηγούνται ομού μετ' αυτού αποζημιώσεις ή άλλη θεραπεία:

Νοείται ότι παρεμπόπτον απαγορευτικόν διάταγμα δεν θα εκδίδεται εκτός εάν το δικαστήριον ικανοποιηθή ότι υπάρχει σοβαρόν ζήτημα προς εκδίκασιν κατά την επ' ακροατηρίω διαδικασίαν, ότι υπάρχει πιθανότης ότι ο ενάγων δικαιούται εις θεραπείαν, και ότι εκτός εαν εκδοθή παρεμπόπτον απαγορευτικόν διάταγμα, θα είναι δύσκολον ή αδύνατον να απονεμηθή πλήρης δικαιοσύνη εις μεταγενέστερον στάδιον.

..... »

5 «32.-(1) Subject to any Rules of Court every court, in the exercise of its civil jurisdiction, may, by order, grant an injunction (interlocutory, perpetual or mandatory) or appoint a receiver in all cases in which it appears to the court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith:

10 Provided that an interlocutory injunction shall not be granted unless the court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage.

..... »)

15 As it can be seen from the wording of section 32, there is no restriction as to the type of property for which a Court exercising civil jurisdiction is empowered to appoint a receiver.

However, one may ask whether the Admiralty Court exercises «civil jurisdiction». Section 2 of Law 14/60 defines the words «civil proceeding» as:-

20 «‘πολιτική διαδικασία’ περιλαμβάνει οιαδήποτε διαδικασίαν άλλην ή ποινικήν διαδικασίαν.»

(«‘civil proceeding’ includes any proceeding other than criminal proceeding.»)

25 Therefore, the Admiralty Court does have the same powers as any other Court not being a Court having jurisdiction to try criminal cases and thus to appoint a receiver.

According to the opinion expressed by Sir G. Jessel M.R. in the case of *In re Australian Direct Steam Navigation Company* L.R. XX Equity 325 at pp. 326 to 327:-

30 «The term ‘sequestration’ has no particular technical meaning; it simply means the detention of property by a Court of Justice for the purpose of answering a demand which is made. That is exactly what the arrest of a ship is.»

35 I am in full agreement with the above statement of Sir Jessel M.R. because in the case of arrest and sequestration, as well as in the case of a Court appointing a receiver, the purpose of the Court order is to preserve the property under the custody of the Court

until the claim of the plaintiff is finally determined. In my view, it is immaterial if a ship or cargo can be released from arrest after the filing in the Registry of a security because the effect of that security is to preserve the property under the custody of the Court in lieu of the ship or the cargo. Therefore, it is my opinion that the Admiralty Marshal, who is an officer of the Supreme Court in its Admiralty Jurisdiction, can, whenever he deems it fit, apply for directions as to how he can proceed to execute the services and duties required of him in furtherance of the best interests of the parties in a litigation 5 10

I am further of the view that the Marshal is not bound to formally apply to the Court for directions, that is by filing an application by summons provided that his letter asking for directions as in this case, is served on all parties concerned and/or involved in the proceedings 15

To sum up, I find that the Admiralty Marshal, when he is appointed as a receiver under the provisions of section 32 of the Courts of Justice Law (Law 14/60), has the same rights obligations and duties as when a ship or cargo is arrested and that it is in his absolute discretion to take such steps as he considers it necessary for the preservation and safe custody of the ship or cargo, as well as steps that will minimise the costs for their preservation and safe custody 20

In the present case, the Marshal - receiver - is authorised to take all steps that are necessary for the preservation and custody of the cargo at the minimum expense and if he considers it necessary, to destuff the cargo from the containers in which they are stuffed (and which are not the subject of these proceedings) in which case he should allow their owners to take possession of them 25

In the result, the opposition of the interveners opposing the application of the Marshal is dismissed and they must pay any costs resulting from their opposition, whether these are Marshal's expenses and/or for this litigation 30

Order accordingly