

1989 July 29

(A LOIZOU, P.)

ARIZONA SHIPPING CO. LTD.,

Plaintiffs,

v.

ARMANDO MASSAR MARINE SERVICES LTD.,

Defendants

(Admiralty Action No. 15/88).

5 *Admiralty — Jurisdiction — Claim against agent of ship for misusing money belonging to the shipowner — The English Administration of Justice Act, 1956, section 1(i)(h) — As plaintiffs' said claim is neither a claim arising out of any agreement for the carriage of goods by sea nor from the use or hire of a ship, the claim falls within the Jurisdiction of the ordinary Courts — Action dismissed for want of jurisdiction.*

10 In this case the Court dismissed the action for want of jurisdiction, having first reached the conclusion on the basis of the petition that the plaintiffs' claim is against the agent of their ship for misusing money belonging to them.

Action dismissed with costs against the plaintiffs.

Preliminary objection.

15 Preliminary objection raised by defendants that the subject matter of this action does not fall within the admiralty jurisdiction of this Court.

L. Papaphilippou, for the applicants-defendants.

C. Saveriades, for the respondents-plaintiffs.

Cur. adv. vult.

20 A. LOIZOU P. read the following judgment. The defendants have raised by way of preliminary objection the question that the subject matter of this action does not fall within the Admiralty

jurisdiction of this Court They base their objection on the facts of the case as they appear in the file of the action and the petition

The plaintiffs, a Company duly incorporated under the Laws of the Republic were at all material times the owners of the vessel «MAYA», registered on the Cyprus Register

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As set out in paragraph 4 of the Petition «Following the institution of certain legal actions in the Supreme Court of Cyprus (Admiralty Jurisdiction) in or about June, 1984, defendants deducted from vessel's earnings collected by them the sum of £5,000 and informed owners that the said moneys were paid in court to secure the vessel's release from the various orders for the arrest of the vessel in the said actions».

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In October 1987, the plaintiffs inquired at the Registry of the Supreme Court where they were informed that the relevant actions had been dismissed in July 1984, and the money lodged as security were returned to the defendants

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It is the case for the plaintiffs that the defendants in breach of the terms of their employment failed to return to the plaintiffs the aforesaid sum of five-thousand pounds collected by them from the Registry of the Supreme Court in July 1984 and «kept plaintiffs in full ignorance of such collection»

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The plaintiffs then called upon the defendants to pay to their advocates the aforesaid sum but the defendants failed and/or refused to pay to the plaintiffs or their advocates same or at all Furthermore the defendants and without any authority and ignoring, as the plaintiffs allege, their express instructions to pay the moneys direct to their advocate at Limassol paid to the vessel's ex-captain the sum of six thousand U S dollars «apparently in an attempt by defendants to secure a release of the balance of two-thousand three-hundred and fifty pounds and all accrued interest»

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According to paragraph 9, the above payment came to the knowledge of the plaintiffs after the institution of this action, whereupon the plaintiffs instituted legal proceedings in Beirut against the said captain and secured the return of the said sum of six-thousand U S dollars and the plaintiffs claim:-

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«A Payment of the sum of £2,350 -

B Damages for conversion by the defendants of the sum £5,000 - and/or for breach of agreement of employment, as explained above

C. Interest at such rate and for such period as the Honourable Court may think fit.

D. An account of all moneys collected by the defendants for the benefit of plaintiffs.

5 E. An order for payment by the defendants of the amount found to be due on the taking of such account».

10 It is the contention of the plaintiffs that the moneys claimed derived from the carriage of goods by sea that is from the use of the ship and thereafter these moneys were used for the ship. On the basis therefore of the Administration of Justice Act of 1956, section 1(1)(h) which provides that, «any claim arising out of any agreement relating to the carriage of goods in a ship or from the use or hire of a ship», these moneys derive from the use of the ship were used for the ship and consequently the subject matter of this
15 action falls within the Admiralty jurisdiction of this Court.

In my view this is a pure case of conversion of money by an agent having nothing whatsoever to do with the aforesaid statutory provision, namely section 1(1)(h) invoked by the plaintiffs. The plaintiffs' claim is neither a claim arising out of any
20 agreement relating to the carriage of goods in a ship nor from the use or hire of a ship. It is clearly a case where the agent of a ship allegedly misused money that belonged to the ship-owner and therefore it falls within the jurisdiction of the ordinary Courts of the land and not within the Admiralty jurisdiction of this Court which is derived from Section 19(a) and Sections 29(1) and 29(2)(a) of the
25 Courts of Justice Law (Law No. 14 of 1960), as amended, as regards the Law applicable which is that which was in force in England on the 15th August 1960, as may be modified, by any law of the Republic.

30 For all the above reasons the defendants' objection succeeds and the action is dismissed for want of jurisdiction with costs in favour of the defendants.

Action dismissed with costs against plaintiffs.