

1989 August 11

(DEMETRIADES, J)

EDDY BREIDI AND ANOTHER,

Plaintiffs,

v.

THE SHIP «GLORIANA», NOW LYING IN THE PORT
OF LIMASSOL AND OTHERS,

Defendants.

(Admiralty Action No. 13/80).

Admiralty — Jurisdiction — Sale of goods — Action for damages for non delivery by purchaser against seller — Outside ambit of admiralty Jurisdiction.

Admiralty — Negligence — Bill of Lading — Issue of, in the name of the shipper and not in the name of the owner of the goods — In the circumstances the master of the ship did not act negligently. 5

Admiralty — Arrest of ship — Damage caused thereby — Arrest unjustified — Damages recovered on a counterclaim filed in the action, in which the ship had been arrested.

The facts of this case sufficiently appear in the judgment of the Court. 10

Action dismissed with costs. Judgment on the Counterclaim of the first defendants for 3,000 U.S. Dollars, but with no order as to costs. 15

Admiralty action.

Admiralty action for damages for loss for non-delivery of cargo and/or for breach of contract of affreightment and/or for negligence and/or for breach of contract of carriage and/or breach of contract for the sale of goods loaded on defendant ship on or about 14.1.80. 20

D. Demetriades, for the plaintiffs,

C. Hadjiloannou, for defendants No. 1.

L. Demetriades with St. Nathanatel, for defendants No. 3.

Cur. adv. vult.

5 DEMETRIADES J. read the following judgment. The plaintiffs, who are business-men in Lebanon, had agreed to enter into a joint venture with a certain Mr. Robert Anid for the purchase of a considerable number of T.V. sets from the third defendants.

10 As it appears from the evidence, the two plaintiffs were to finance the deal and Mr. Anid, P.W. 2, was to handle the negotiations for the purchase of the T.V. sets well as their transportation to Beirut and their sale in Lebanon.

15 The plaintiffs claim that the third defendants failed to deliver to them the T.V. sets that they had sold to them. It is to be noted that the obligation of the third defendants, if they are to be held in breach of the alleged agreement of sale, was to deliver the goods to the plaintiffs «free German Border» (see the original and all amended Letters of Credit which are exhibits in this action). Their transportation from the German Border to Beirut was the
20 responsibility and at the costs of the plaintiffs.

The plaintiffs further claim that the first defendants, although they had entered into a contract of affreightment for the carriage from Ravenna to Beirut of the T.V. sets they had bought from the third defendants, they were negligent in accepting on board the
25 cargo which although it belonged to them, the Bill of Lading was issued in the name of the third defendants as shippers.

By their writ of summons the plaintiffs claim against all defendants damages for «loss for non-delivery of cargo and/or for breach of contract of affreightment and/or for negligence and/or
30 for breach of contract of carriage and/or for breach of contract for the sale of goods now loaded on defendant ship and/or otherwise on or about 14.1.80».

It is, I think, pertinent here to mention that the action against the second defendants, that is the cargo, was dismissed after a Ruling
35 of the Full Bench of this Court (see in this respect *The Ship «GLORIANA» and Another v. Eddy Breidi & Another*, (1982) 1 C.L.R. 409.

By their prayer in the Petition filed in the action, the plaintiffs claim:

«A. U.S. Dollars 1,244,116.71 or the equivalent amount in Cyprus Currency as per para 32(A-F) of the Petition for damages for non-delivery of cargo and/or breach of contract of Affreightment and/or carriage of goods by Sea and/or for Negligence and/or otherwise. 5

B. U.S. Dollars 27,607.36 or the equivalent amount in Cyprus Currency as per paras 14 and 28 of the Petition (Above) and/or for total failure of consideration and/or for breach of contract of carriage and/or otherwise». 10

In para 32 of the Petition the plaintiffs enumerate the particulars of the damage they allege they suffered. This paragraph reads:-

«A. Loss of 20 per cent as expected profits and/or reasonably profits from the resale of the non-delivered cargo described by Bill of Lading No. 20 dated 22.12.79 and in the Invoice dated 14.12.79 expressly made known to the Ship owner or to Defendant No. 1 that delivery should have taken place before 23.12.79 in view of the New Year Holidays. 15
U.S. Dollars 588,760.00 20

B. Insurances in respect of above described cargo DM 30,501.93 + 64,009.65. Total DM 94,511.64 equivalent in U.S. Dollars 57,402.00. 30

C. Expenses and travelling during negotiations, telexes, phone calls, legal fees and auditors expenses. U.S. Dollars 108,094.15 35

	D. Banking expenses, opening Letter of Credit amendment twice of Letter of Credit and interests.	U.S. Dollars 45,074.53
5	E. Expenses due legal fees, trips and interests, Banking commission.	U.S. Dollars 76,687.11
10	F. Direct Investments, Show-room Keymoney, Show-room Rent, Furnitures, Warehouse Keymoney and Warehouse Rent.	U.S. Dollars 368,098.15
	TOTAL IN U.S. Dollars	U.S. Dollars 1,244,116.71*

15 Paragraphs 14 and 28 of the Petition give particulars of the claim of the plaintiffs under prayer B and they read as follows:

20 «14. The Plaintiffs as a result of their agreement with Defendant No. 1 and/or with the Shipowner Mr. Ibrahim T. Chouery to carry for reward aforesaid 42 containers from Ravena to Beirut have prepaid to the Ship 'GLORIANA' and/or the Shipowner by way of freights the sum of L.L. 90,000 equaling to U.S. Dollars (rate 3.26.) = 27607.36.

25 28. It is the allegation of the Plaintiffs that the Defendant No. 1 is not entitled to the freights prepaid (para. 14 above) as the purpose and object for which this amount was paid failed and/or not performed by the Defendant No. 1 and/or the defendant No. 1 failed to obey the instructions of the plaintiffs though she has agreed to carry aforesaid cargo from Ravena to Beirut in breach of the aforesaid agreement of carriage and/or the consideration for which the amount of freights prepaid failed and this amount should be returned to Plaintiffs for want of consideration and/or otherwise».

35 Having in mind the allegations made in the petition and, particularly, the prayer claimed in it, I find that no claim is made by the plaintiffs against the third defendants for breach by the latter of the alleged agreement to sell the T.V. sets to them.

In any event, having gone through the evidence adduced before me, both oral and documentary, I find that no cause of action in the Admiralty Jurisdiction of this Court arises against the third defendants, as the cause of action claimed by the plaintiffs against them is not one envisaged by the Administration of Justice Act 1956 which gives jurisdiction to the Court to try Admiralty Actions either in rem or in personam or both of them. As another Court may have jurisdiction to try the claim of the plaintiffs against the third defendants, I do not propose to deal further with the evidence adduced and which relates to this issue. 5 10

Having reached the above conclusion, the issue that poses for me to decide is the liability of the first defendants for the alleged non-delivery of the T.V. sets to the plaintiffs.

In deciding that issue, I have to sum up in brief the evidence that led to these proceedings. 15

The plaintiffs allege that through their partner Mr. Anid, they had entered into an agreement to buy a number of T.V. sets from the third defendants at a certain price on terms and conditions which were to be incorporated in an irrevocable and confirmed Letter of Credit. 20

A Letter of Credit was originally issued but its terms, as it appears from the exhibits before me, were repeatedly changed at the request of the third defendants, to which changes the plaintiffs and/or Mr. Anid consented. However, the last request by the third defendants for the amendment of the terms of the Letter of Credit, which was to the effect that certain T.V. sets were to be shipped without a PAL/SECAM Decoder, was never answered by the plaintiffs. 25

As a result, the third defendants never received, and this is an admitted fact by the plaintiffs, the value of the T.V. sets that the third defendants had agreed to sell to the plaintiffs. 30

The plaintiffs allege that due to the negligence of the Master of the first defendant, the ship, the Master issued a Bill of Lading naming the third defendants as the shippers despite the fact that the T.V. sets stuffed in the containers were the property of the plaintiffs. 35

Mr. Anid in giving evidence alleged that the owner of the ship was well aware of the fact that -

(a) he was to load on his ship cargo that was stuffed in containers that were to be transported from the Border of Germany to Ravenna Port by the Panalpina Company,

5 (b) these containers were stuffed with T.V. sets belonging to the plaintiffs, and

(c) he was to deliver them to him at Beirut port.

10 However, I can see no negligence committed on the part of the Master of the ship in that the way bill issued by Panalpina, the company that transported the containers from Nuremberg to Ravenna, named as shippers the third defendants. In this way bill, which is exhibit No. 30 before me, it is stated that the goods were stowed in 42 containers, 20 ft. long each, whilst in the written acknowledgment at the oral agreement reached between Mr. Anid and Mr. Choueri, the owner of the ship, 45 containers are
15 mentioned (see exhibit No. 2).

20 Having this in mind and the telex dated the 22nd December, 1979, exhibit No. 11, sent by Mr. Choueri to the plaintiffs and Mr. Anid, it is clear that the Master of the ship, in issuing the Bill of Lading and naming in it the third defendants as the «shippers», was not acting negligently. Exhibit No. 11 to which there was no response by the plaintiffs and/or Mr. Anid, reads as follows:-

WEKLAW 21182LE

355 1732

21/12 16.32

25 WEKLAW 21182LE

550878 RA MAR I

GOOD MORNING

FROM

RA-MAR RAVENNA

30 ATTENTION: Mr Eddy Breidi, Mr. Roger Dagher, Mr. Robert Anid.

Surprised your telex of 20.12.79 contents of which I reject completely, as I have no agreement with your goodselves whatsoever and the only agreement I have was with Mr. Anid.

35 My Vessel is berthed in Ravenna for loading your alleged cargo as for my agreement with Mr. Robert Anid to load 45 CTS. on fios terms but apparently there is no cargo whatsoever available.

Available in Ravenna in the name of Mr. Anid non even under your name.

Since I have completed my obligation in hinging my vessel in ballast for loading the cargo agreed upon with Mr. Anid and my vessel is awaiting on the berth in Ravenna port ready in all respects for loading, I invite Mr. Anid at once to present his cargo for shipment as per agreement, otherwise I hold him fully responsible for freight, dead freight, demurrage and all other expenses arising to non shipment of the 45 cts.

5

With all reserves.

Ibrahim Tanios Choueri - Owner M/V Gloriana.

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550878 RA MAR I
WEKLAW 21182LE

In the light of my above findings, the action against the first defendants fails.

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Defendants No. 1, as well as the third defendants, counterclaim against the plaintiffs as follows:

Defendants No. 1 counterclaim the sum of U.S. Dollars 100,000 for loss and damage suffered by them as a result of the unwarranted and unjustified, as they allege, arrest of the ship.

20

Defendants No. 3 counterclaim as follows:

«COUNTERCLAIM

8.

9. As a result of the unjustified arrest the Defendants incurred expenses opening a Security Bond in the sum of £200,000.- ordered by the Court on 16.1.1980 for the release of Defendants 1 and 2 and have since been incurring expenses.

25

PARTICULARS

Commission of the National Bank of Greece on the sum of £200,000.- from 18.1.1980 todate £3,800.-

30

10. The Defendants will continue to incur further expenses by reason of the setting up of the aforesaid guarantee.

11. And the Defendants counterclaim against the plaintiffs:-

(A) The sum of £3,800.- as hereinabove set out in paragraph 9.

(B) General Damages as hereinabove set out in paragraph 10».

5 The claims of the two defendants arise as a result of the arrest of the ship and the cargo loaded on it whilst lying in the port of Limassol.

10 The first defendants called Mr. Stavros Pissarides, the Manager of the firm Orphanides and Murat, the agents of the defendant ship. This witness said that the ship was under arrest for two days and that from his experience a ship of the capacity of the defendant ship could earn between U.S. Dollars 1,500 to 2,000 gross per day. This witness, however, was not in a position to say what the daily cost of running the ship would be.

15 Having considered the matter, I am prepared to allow this defendant the sum of U.S. Dollars 3,000 as damages suffered as a result of the arrest of the ship.

20 I come now to the counter claim of the third defendants. These defendants claim that as a result of the unjustified arrest (apparently of the cargo), they have incurred expenses for «opening a security bond in the sum of £200,000.- ordered by the Court on 16.1.80 for the release of defendants 1 and 2 and have since been incurring expenses».

25 I feel that at present there is no material before me on which to decide the amount of damages to which the third defendants may be entitled. I, therefore, reserve this issue until these defendants take proper steps to prove their claim.

30 Having found that the plaintiffs' action against the first and third defendants fails, I feel that I must proceed and assess the damages to which they might have been entitled had they been successful as regards their claim against the first defendants.

35 I have earlier referred to the particulars of damage that the plaintiffs alleged that they have suffered. Particulars B. to F. are either too remote or they were expenses necessary for bringing in the profit. For instance, items C., E. and F. (except the warehouse rent) are unconnected with the claim of the plaintiffs against either of the defendants. It is obvious from the evidence of Mr. Anid that these were expenses made for the plaintiffs eventually securing

the exclusive agency of the products of the third defendants in Lebanon.

Mr. Anid in giving evidence stated that the gross profit that they expected to make from the sale of the T.V. sets would be about 40% of the purchase price and that the net, after deduction of expenses and costs, would be 20%.

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This evidence stands uncontradicted and, therefore, had I given judgment in favour of the plaintiffs, I would have allowed the plaintiffs the equivalent of this percentage of the sale price in Dollars.

10

For all the above reasons, the action against both defendants is dismissed with costs.

There will be judgment in favour of defendants No. 1 for \$3,000.00 but there will be no order as to costs.

*Action against both
defendants dismissed.
Judgment in favour of
defendants 1 for \$3,000.00.
No order as to costs.*

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