

1989 August 11

(DEMETRIADES, J.).

SEA TRAVEL YACHT CHARTER LTD.,

Plaintiffs,

v.

THE VESSEL «SHER-KHAN», LYING AT THE PORT OF LIMASSOL,

Defendants.

(Admiralty Action No. 153/82).

Admiralty — Arrest of ship — Application for her discharge — Applicant must show that the warrant for arrest was issued on insufficient grounds — In this case the facts relied upon could justify, perhaps, the setting aside of the service of the warrant, but not the issue of the warrant.

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The application for discharging the arrest of the ship was based on the following allegations, i.e. that the security filed was not in accordance with the terms of the order, that the order was drawn up before the filing of the security and the order was executed at Paphos and not at Limassol as is provided. The principle applied by the Court in dismissing the application appears sufficiently in the hereinabove headnote.

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Application dismissed with costs.

Application.

Application by defendants for an order discharging the arrest of the vessel «Sher-Khan» and directing her release.

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M. Montanios, for the applicants - defendants.

G. Michaelides, for the respondents - plaintiffs.

Cur. adv. vult.

DEMETRIADES J. read the following ruling. By this application the applicants-defendants apply for an order discharging the arrest of the ship and directing her release.

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The facts on which the application is based appear in sub paragraphs (ii) - (vi) of paragraph 3 of the affidavit filed in support of the application and they read:-

5 (ii) The Bank Guarantee for £1,500.- which was filed on 17.7.1982 on behalf of the Plaintiffs by National Bank of Greece S.A. is not the security bond ordered by the Court on 15.7.1982 in that it was given only for a limited period i.e. until 16.1.1983 and in that its wording and scope did not comply with the said Court Order.

10 (iii) Contrary to the aforesaid Court Order, the warrant of arrest was drawn up before the Plaintiffs filed a security bond on the sum of £1,500 i.e. it was drawn up on 15.7.1982 and on this day the Registrar of the Court wrote to the Admiralty Marshal enclosing such warrant.

15 (iv) Whereas the said order commanded and authorised the Admiralty Marshal to arrest the Defendant ship while lying at the Limassol port, the Marshal unlawfully arrested her while lying at the port of Paphos.

20 (v) The said warrant of arrest was not served by the Marshal or his officer and the Marshal has not, immediately after service, forwarded a certificate of service to the Registrar of the Court, as it appears from the record of these proceedings.

 (vi) The said warrant of arrest was served on the Defendant ship at the Port of Paphos and not at the Port of Limassol.

25 Counsel for the applicants argued that the warrant of arrest must be discharged for three reasons:

30 (a) The bank guarantee given in compliance with paragraph 4(c) of the Order was for a limited duration, i.e. it expired on 16.1.1983 instead of being of unlimited duration. The fact that prior to its expiration the bank gave another one which gave coverage till the final determination of the action is immaterial.

 (b) The drawn up order issued by the Registry was dated 15.7.1982 and the bank guarantee was filed on 17.7.1982. This was in breach of the terms of paragraph 4(c).

35 (c) The order was executed at Paphos and not at Limassol Port as the order provided.

 For a warrant of arrest to be discharged and the ship to be

released, it must be shown that the warrant of arrest was issued on insufficient grounds. Though the grounds put forward by the applicants may show good cause for discharging the service of the order of the warrant of arrest, something to which I am not called upon to decide, I find that no grounds at all were put forward for the discharge of the warrant of arrest for the release of the ship. .5

For these reasons, the application is dismissed with costs.

Application dismissed with costs.