

1989 August 14

(DEMETRIADES, J.)

FRESCA FOODS LTD.,

Plaintiffs,

v.

GUARDIAN ROYAL EXCHANGE ASSURANCE CO. LTD.
OF LONDON, THROUGH THEIR AGENTS IN CYPRUS
MESSRS CH. M. THEOCHARIDES LTD ,

Defendants.

(Admiralty Action No. 33/75)

5 *Insurance — Marine insurance — Goods lost before shipment during and by reason of the Turkish invasion — As the insurance documents are very clear and unambiguous that the goods would be covered against war risks after their loading on the ship, the claim by the insured against the insurance company has to be dismissed.*

10 This action was based on an allegation for fraudulent or reckless representation of the managing director of the defendant's agent and on the terms of the insurance policy, which the plaintiff had taken from the defendants in respect of goods to be carried by sea from Cyprus to U.K. The Court did not find the evidence, as regards the alleged fraud or reckless representation, credible.

15 Furthermore, in interpreting the relevant documents, the Court found that clearly the goods, which had been lost during the Turkish invasion whilst lying at the port of Famagusta were not covered by was risks prior to their loading.

Action dismissed with costs.

Admiralty action.

20 Admiralty action for compensation for goods which never reached their destination as the ship on which they were to be loaded left as a result of the outbreak of the coup d' etat that took place on 15.7.1974 and the events that followed the Turkish invasion.

A. HadjiIoannou, for the plaintiffs.

P. Polyviou, for the defendants.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. According to
 the original petition filed by the plaintiffs, their allegation was that 5
 they had applied to the defendants to have a consignment of
 goods that was to be shipped to the United Kingdom, insured a-
 gainst Marine Risks as per Institute Cargo Clause (All Risks) valid
 from warehouse to warehouse, including theft, pilferage, non-
 delivery, short delivery, shortage and the cost of recartoning and re- 10
 labeling, but excluding the risk of blowing of tins. The insurance
 policy also covered War Risks, SR (Institute Strikes Riots and Civil
 Commotions Clauses) and CC Risks (Cargo clauses (All Risks)).

At the material time the goods had already been removed from
 the warehouse of the ship's agents and were at all material times 15
 lying on the quay of Famagusta Harbour.

It is the allegation of the plaintiffs that the goods never reached
 their destination as the ship on which they were to be loaded left as
 a result of the outbreak of the coup d' etat that took place on the
 15th July, 1974, and the events that followed as a result of the 20
 Turkish invasion.

The plaintiffs then submitted a claim to the defendants for
 compensation in accordance with the terms and conditions of the
 insurance cover issued to them.

By their Answer the defendants admitted that the goods were 25
 not loaded on the ship; that Famagusta Town and Harbour has, as
 from 14th August, 1974, been under the occupation and control
 of the Turkish army and that it may be presumed or inferred that
 the goods have been lost as a result of war risks. However, they
 allege, and I quote paragraphs 5 and 6 of their Answer which 30
 read:-

«5.

(a) 'War risks' are excluded from the Institute Cargo
 Clauses (All Risks) Cover in respect of marine by the F.C.
 & S. Warranty in Clause 12 of the Institute Cargo 35
 Clauses.

(b) Although the said cover includes 'War Risks S.R. and C.C. Risks' this does not give cover against war peril on land.

5 (c) Clause 2(a)(i) of the Institute War clauses 1.1.71 provides that the insurance against War Risks shall not attach prior to being on board an overseas vessel.

6. The respondents further allege that inasmuch as the goods at the time of their alleged or presumed loss were still on land and before loading on board the 'FRONTIER' at 10 Famagusta there was no cover even though the period of insurance is from warehouse to warehouse».

Photocopies of the relevant insurance documents are appended to this judgment.

The original Petition was filed on the 31st December, 1975.

15 According to the evidence of P.W. 1 Christos Vassiliades, one of the Managers of the plaintiffs, he gave the instructions for the insurance of the goods to Mr. A. Kyprianou, the Managing Director of Ch. M. Theocharides Ltd., the agents of the defendants in Cyprus, and had told him that he wanted the insurance to cover 20 all risks, war risks, riot risks and, also, to cover the goods from warehouse to warehouse.

For reasons that are to be found in the file, the action did not proceed to be set down for hearing.

25 On the 15th March, 1979, Counsel for the defendants made the following request to the Court:

«(a) The case has been fully prepared by Counsel for the defendants for the hearing of the 30th March, 1979.

30 (b) The defendants intended to adduce evidence by calling as a witness Mr. Andreas Kyprianou, deceased, the Managing Director of Ch. M. Theocharides Ltd., the agents of the defendants in Cyprus, and in fact the late Andreas Kyprianou has given a written statement to the defendants' Counsel.

35 (c) Regretfully the said Andreas Kyprianou died on the 5th March, 1979, and it has been established by defendants' Counsel that for the moment there is nobody in the office of the defendant's Agency office, with the exception of junior female

staff, who can give evidence in this case and the defendants' case will be prejudicially affected if they are deprived of the possibility of adducing evidence which is a necessity as aforesaid.

(d) The defendants are making efforts to find and appoint a Manager of their Agency whom the defendants' Counsel will brief about this case soon after his appointment. 5

(e) Counsel for the defendants request that this case, subject to the Court's convenience, be refixed before summer vacations, because it is fair for the plaintiffs that they should not be unduly inconvenienced by the death of the said andreas Kyprianou». 10

On the 22nd April, 1980, the plaintiffs applied for the amendment of their Petition claiming an alternative prayer based on fraud and/or misrepresentation and/or negligent statement by the deceased Kyprianou. This application was based on an affidavit sworn by Mr. Vassiliades, in which he alleged that - 15

«

2. By a misunderstanding that occurred during the time I was giving instructions to our counsel, the full facts were not placed before him and so the Writ of Summons and the Petition, drafted by him, do not contain the full facts and/or grounds on which the action should have been based. 20

3. Therefore the amendments sought by the attached application are necessary for determining the real questions in controversy between the parties». 25

In their amended Petition the plaintiffs allege the following:

«3A. Further and/or in the alternative the Plaintiffs allege that they were induced to enter into the above agreement relying on the representations and statements of Defendants' Agent in Nicosia that they would in any case be covered for all risks, including that of war, from warehouse in Famagusta to warehouse at the place of the destination of the goods. 30

3B. The said representations were made as above without any reservation or limitation by the said Agent of the Defendants. On the contrary he assured the plaintiffs that he was doing so after consultations with his principals in London. 35

3C. The said representations were made or caused to be made by the Defendants well knowing that they were false and untrue and/or they were made by them recklessly not caring whether they were true or false.

5 3D. The defendants made or caused to be made the said representations in order to induce the plaintiffs to enter into the above agreement.

10 3E. By means of the said representations and acting on the faith thereof and in the belief that the same were true, the plaintiffs were induced to enter into the above agreement.

The defendants by their new Answer denied these allegations of the plaintiffs.

15 On the 11th February, 1981, counsel for the defendants, by letter asked the plaintiffs for the following further and better particulars:

20 «We refer to the above action and to the amended petition you filed by order of the Court dated 11.6.80 and shall be obliged if you let us have within 10 days the following further and better particulars to which we believe we are entitled in law, making thus any application to the Court for such particulars unnecessary.

25 In para 3A. you refer to certain 'representations and statements' of the defendants' agent that the petitioners would in any case be covered 'for all risks'. Please state with full particulars the exact content of such representations, the time they were made, the place they were made, by whom and to whom they were made and also whether they were in written form or merely oral. Is there any documentary evidence of these representations and statements?

30 In para 3C. you allege that the said representations were false and untrue and/or reckless. What matters do you rely on in pleading this? Are you alleging that there has been fraud, in other words that the policy of insurance has been extracted by deceit, that it is void or voidable and that you will therefore be seeking a remedy in tort? Does your allegation that the insurance policy was preceded by fraudulent or reckless statements amount to a repudiation of the insurance policy in question so that you no longer regard it as in existence? In any

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case are you relying on the representations and statements that you are now pleading as amounting to events furnishing a new cause of action or do you merely regard them as amplifying the terms of the insurance policy?»

To this letter the plaintiffs responded by letter dated the 27th February, 1981: 5

«We refer to your letter of the 11th February 1981 by which you request further and better particulars of our allegations set out in paras 3A and 3C of the amended petition filed by order of the Court and inform you the following: 10

A. The representations referred to in para 3A of the Amended Petition were made orally on the 19.7.74 by the late Mr. Andreas Kyprianou Managing Director of the Guardian's insurance Agency in Nicosia, to Mr. Christos Vassiliades one of the Directors of the plaintiffs at the office of the Agency in Nicosia. 15

B. The late Mr. Kyprianou stated clearly to the said Mr. Vasiliades that the policy covered the carriage of the goods in question from Famagusta Warehouse to Manchester Warehouse and thence to the final Warehouse for all risks including war risks. 20

C. This sort of insurance was specifically requested by Mr. Vassiliades in the past and it was repeatedly made by the defendants' Agency in Nicosia, in connection with goods belonging to the plaintiffs, after they had obtained leave to do so by their Head Office in London. 25

On 13.7.74 Mr. Vassiliades rang up Mr. Kyprianou and requested to insure the goods in question against all risks including war risks, from Warehouse to Warehouse and he answered O.K. On 19.7.74 the request was repeated by Mr. Vassiliades and the assurances were given by Mr. Kyprianou as stated above in paras A and B. 30

Referring to the 2nd part of your letter by which you request particulars of para 3C of the Amended petition, we can say with respect, that it refers to legal points which will be argued at the hearing of the Petition and not to facts for which you are entitled to seek particulars. 35

In our view all the material facts on which we will rely at the hearing for substantiating our legal grounds are sufficiently pleaded in the Petition».

5 By their amended Petition and the evidence given by the plaintiffs' witness Mr. Vassiliades, it appears that two issues pose for decision -

(a) Were the plaintiffs induced to enter into the insurance Contract as a result of the fraudulent or reckless representations of the late Mr. Kyprianou, as these are set out in paragraphs 3A to 3E
10 of the amended petition?

(b) If the answer to (a) above is in the negative, what is the true construction of the terms of the Insurance Contract that covered the transportation of the goods?

15 Having heard the evidence adduced, oral and documentary, as well as the arguments of counsel, I have come to the following conclusions:

As regards (a) above, having in mind the correspondence exchanged between the plaintiffs and the defendants, the fact that the question of fraudulent representations was never raised prior
20 to the death of the late Kyprianou and that this issue was only raised more than a year after his death, I find that the allegations made by Mr. Vassiliades in this respect are an afterthought, because it was most unnatural for this witness, whilst the case was coming and going before the Court for hearing, to recollect the
25 alleged true events after the death of the late Kyprianou. In the result, this issue fails.

As regards now the second issue, I find that the insurance documents are very clear and unambiguous in that war risks were
30 only covered by the policy issued after the goods were to be loaded on the ship. In the result this claim also fails.

In the light of the above, the action is dismissed with costs in favour of the defendants. Costs to be assessed by the Registrar.

Action dismissed with costs.