

1989 February 9

(A LOIZOU, P.)

SEA ISLAND TRAVEL & TOURS LIMITED,

*Plaintiffs,*

v.

1. M.T. GALAXIAS, NOW LYING AT THE PORT OF LIMASSOL,  
2. UNITED BROTHERS SHIPPING CO INC.,

*Defendants.*

*(Admiralty Action No. 86/88).*

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5 *Admiralty — Action in rem — Warrant of arrest of ship issued upon an ex parte application — Filing of notice of intention to oppose the application — Whether this is a proper procedure — Question pondered, but left open, as, on the merits, the warrant could, on the face of the affidavit, be validly issued.*

10 In this case the Court considered the question whether, following the issue of a warrant of arrest of the ship in an action in rem, the proper procedure to be followed by the defendants, if they desired the discharge of the warrant, is by the filing of an opposition or by a separate application. The Court suggested that the problem should be solved either by a practice direction or a rule of Court.

*Warrant of arrest to remain in force. Costs of the plaintiffs against defendant 1. No order as to costs as regards defendants 2.*

15 *Cases referred to:*

*The Ship «Gloriana» and Another v. Breidi and another (1982) 1 C.L.R. 409.*

**Notice of intention to oppose.**

20 Notice of intention to oppose the application for the issue of the warrant of arrest.

*A. Theofilou, for plaintiffs-applicants.*

*C. Velaris with A. Paschalides, for defendants 1 - respondents 1.*

*L. Papaphilippou, for defendants 2 - respondents 2.*

*Cur. adv. vult.*

A. LOIZOU P. read the following judgment. Upon the filing of an action in rem and in personam against the defendant ship GALAXIAS, as defendants 1, and United Brothers Shipping Co., Inc., of Panama City as defendants 2, I issued a warrant of arrest of the said ship on the basis of an affidavit filed in support of the application for the issue of such warrant, and a number of documents appended thereto as exhibits.

The prayers for relief on the writ are the following:

«A. C£21000.- being money paid and/or payable by the Plaintiffs in their capacity as general agents of the Defendant ship and/or at the request of her Master and/or owners and/or Defendants 2, as charterers, in cash advances, recruitment and repatriation expenses, port charges and overtimes, customs charges and overtimes port agent's fees, bunkering and provisions, telephone and telexes, repairs and other disbursements paid for the ship, and for advertising and promotional expenses for Defendant ship's voyages.

B. C£2970.- being commissions lost on the tickets sold (under a general sale agency agreement dated 17.4.88 by which Plaintiffs were the G.S.A. of the ship) for Defendant ship's first trip which was cancelled due to her inadequacy of equipment and/or inefficiency of documentations and/or due to not being allowed by the authorities to sail for other violations of regulations.

C. C£3692.- being an amount paid in compensation and/or expenses of passengers & travel agencies due to the cancellation of Defendant ship's first voyage Limassol - Alexandria - Limassol which was scheduled on 2.7.88 and the Plaintiffs had to pay under the above agreement of General Sales Agency dated 17.4.88.

D. Damages over C£50000.- for breach of the agreement between the Plaintiffs and the Defendant ship and/or her Charterers (Defendants 2) dated on or about 17.4.88 by which Defendant ship was to be employed, under the G.S.

Agency of the Plaintiffs in the line between the ports of Alexandria - Limassol - Izmir - Limassol - Alexandria for a period of 4 months starting on 2.7.88 when the first voyage was cancelled as above.

5 E. Interest.

F. Costs and interest.»

According to the affidavit the plaintiffs were engaged by the charterers of the defendant ship, that is defendants 2 as general agents of the ship for the sale of tickets under the terms of a written  
10 agreement which is appended as Exhibit (A).

Paragraph 5 of the affidavit reads as follows:

«Further and on instructions from the owners (photocopies Exhibit C ) and the charterers (photocopies Exhibit D ), of the  
15 defendant ship, as well as the master and/or purser of the defendant ship (photocopies Exhibit E ), they proceeded to the appointment of a port agent for the purchase of supplies and bunkers, the effect of several repairs as well as the arrangements for the replacement of members of the crew, paying and/or undertaking to pay several sums as the bundle  
20 of documents - Exhibit Z , as well as C£3500 in cash to the charterers on the 2nd July 1988, for meeting the problems that arose (Exhibit H )»

The warrant of arrest issued contained a clause that the defendant ship should be released by the Marshal upon directions  
25 of the Registrar of this Court on the filing of a security bond on behalf of the defendant ship in the sum of C£30,000 for the satisfaction of any order or judgment to be given in favour of the plaintiffs/applicants. It is obvious from this clause that the amount for the security was confined to the issues which according to the  
30 prayers for relief were alternatively ascribed to the owners of same. Needless to say that on the material before me I was satisfied, as I ought to, that there was a serious question to be tried at the hearing and that on the facts before me there is a probability that the plaintiff is entitled to relief. (See *Anastassiou v. The Ship*  
35 «Mahee» (1982) 1 C.L.R. 343).

The warrant of arrest was fixed on the 9th July 1988 «in case the respondents or anyone interested in the ship decided to move the Court for the release of the ship». This was done by the filing of a Notice of Intention to oppose the application for the issue of the

warrant of arrest and in the accompanying affidavit there are set out that facts relating to the acquisition of the ship and the entering into a Charter-party with defendants 2, denying at the same time that the owners owed anything to the plaintiffs and that any claim they might have should be directed to others and not against the defendant ship or its owners. 5

Extensive argument has been heard from both sides, but I have come to the conclusion that the warrant of arrest on the face of the affidavits filed could validly be issued. The remaining being matters to be determined at the trial. The motion therefore to discharge the order fails. 10

There has been raised the question whether the applicant could validly raise his objection in the form that he did. In that respect reference may be made to the case of *The Ship «Gloriana» and Another v. Breidi and another* (1982) 1 C.L.R. 409, where the question of the proper procedure for opposing the continuance in force of a warrant of arrest or for asking for its discharge was considered, though the nonfiling of an independent application for that purpose was treated as a breach of a formality which did not constitute a fundamental defect. 15 20

In view of the result arrived at on the merits of the application and the direction that the warrant of arrest continues to be in force I do not intend to and indeed I need not delve on this aspect of the case, but I may say here that the matter should be regulated by either a practice direction or by the introduction of a Rule of Court answering a number of questions that inevitably arise by following the one or the other course, one of them being, whether the plaintiffs, at whose instance a warrant of arrest is issued on an ex parte application supported by affidavit or affidavits, will be entitled or not to file a written opposition to the independent application for the discharge of the warrant issued, supported by a fresh application supplementing the material on which the warrant of arrest was issued or not. 25 30

In the result the opposition to the warrant of arrest remaining in force fails and the warrant of arrest should continue to be in force. 35

The costs of the plaintiffs to be born by respondents 1 -

defendants 1. There will be, however, no order as to costs as regards respondents 2 - defendants 2.

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*Opposition fails. Warrant of arrest to remain in force. Order for costs as above.*