

THE OWNERS OF THE SHIP "ZEUS",
Plaintiffs,
and

THE OWNERS
OF THE SHIP
"ZEUS"
v.
THE CARGO
LADEN
ON THE SHIP
"ZEUS"
AND OTHERS

THE CARGO LADEN ON THE SHIP "ZEUS",
and

1. SYRIAMAR OF DAMASCUS, SYRIAN ARAB REPUBLIC,
2. UNICHEM OF DAMASCUS, SYRIAN ARAB REPUBLIC,
Defendants.

(Admiralty Action No. 12/70).

Admiralty—Arrest of property—Cargo—Claim for the agreed freight against cargo laden on board the ship—Claim satisfied by payment of freight after the institution of the present proceedings and before the hearing of the application for the arrest of cargo—Arrest in respect of claims unconnected with cargo refused—

Admiralty process in rem does not permit arrest of other property (other than a ship) of a defendant unconnected with the cause of action in these proceedings—Moreover such arrest must be refused on the basis of the facts of the case.

Admiralty—Arrest of property—At the discretion of the Court—Not mandatory—Rule 50 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction (which Rules were enacted as a Schedule to the Cyprus Admiralty Jurisdiction Order 1893 whereby the English Colonial Courts of Admiralty Act, 1890 was made applicable to Cyprus)— See further infra.

Admiralty—Arrest of property—Law applicable—Rule 50 (supra), Sections 19 (a), 29 (1) (e) (c), (2) (a) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) and the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964)—Cf. Rule 237 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction.

Admiralty—Construction of Rules and Regulations—Rules 50, 60, 203, 208 and 211 of the aforementioned Rules.

Cases referred to :

Staikouras v. The ship "Haralambos" (Admiralty Action No. 16/1969 unreported) ;
The Beldis [1936] P. 51.

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The facts sufficiently appear in the judgment of the Court, dismissing this application for the issue of a warrant for the arrest of the defendant cargo.

Ex Parte Application.

Ex Parte application for the issue of a warrant for the arrest of the cargo laden on m.v. "Zeus" and for an order directing the discharge and sale of such cargo at Famagusta port pending the final determination of an admiralty action whereby the plaintiffs claimed, *inter alia*, the sum of £7,955 being freight due to them for the carriage of the said defendant cargo from Alexandria to a Syrian port.

L. Clerides with G. Economou and E. Lemonaris, for the plaintiffs.

The following decision was delivered by :

TRIANTAFYLLIDES, J. : In this admiralty action, which has been instituted in *rem* and in *personam*, the main claims of the plaintiffs appear, from the record before me, to be as follows :—

" Firstly, for the sum of £7,955, being freight due to the plaintiffs for the carriage of the defendant cargo (4,300 metric tons of cement) from Alexandria to a Syrian port, pursuant to a charterparty dated the 23rd April, 1970.

Secondly, for the sum of £5,850, being damages for the detention of the plaintiffs' ship at the Syrian port of Tartus from the 1st August, 1970, to the 10th August, 1970, due to the breach of an agreement entered into between the 16th October, 1969, and the 4th August, 1970, through an exchange of letters and telegrams.

Thirdly, for the sum of £1,755.725 mils, being expenses incurred by the plaintiffs and arising directly out of the breach by the defendants of the said charterparty up to the 14th July, 1970.

Fourthly, for the sum of £5,004.925 mils, being agreed demurrage owed by the defendants to the plaintiffs in respect of previous calls of the ship at various ports."

This action was instituted on the 22nd August, 1970, and on the same date there were filed by the plaintiffs an

ex parte application for the issue of a warrant for the arrest of the defendant cargo and for an order directing the discharge and sale in Cyprus of such cargo—the ship being at present here, in the port of Famagusta—as well as an *ex parte* application for leave to serve notice of the writ of summons in this action on the two defendants in Damascus.

From the affidavits filed on the 22nd August, 1970, in support of these applications, and from what counsel have stated in Court it seems that the salient facts of this case are as follows :—

Mr. Stratis Validakis, of Piraeus, Greece, is the main shareholder and managing director of the Santa Viernes Shipping Company, Ltd., which was incorporated in Cyprus, has a registered office in Nicosia and owns the ship “Zeus”, which is a Cyprus ship. He is, also, the main shareholder and managing director of the Validakis Shipping Co. Ltd., which is a company incorporated in Greece and is acting as the managers and disponent owners of the said ship.

On the 23rd April, 1970, a charterparty was signed in Piraeus between Validakis Shipping Co. Ltd., as owners of the vessels “ZEUS” and “MINERVA” or substitute vessels, and Syriamar, a Syrian maritime corporation, acting on behalf of Unichem, a Syrian commercial corporation (the two foreign defendants in this action) as charterers.

This charterparty provided about the carriage of a cargo of 60,000 metric tons of cement, in paper bags, in consecutive voyages, to take place monthly from Alexandria, Egypt, to the Syrian ports of Lattakia or Tartous.

According to clause 18 of the charterparty payment of freight would be effected, by irrevocable letter of credit, through the Nova Scotia Bank in Piraeus ; the bank to release what was due for each shipment, after the vessel's sailing from Alexandria, against one cable sent to the bank by the shippers in Alexandria and another cable sent to it by the master of the vessel.

After the ship “Zeus” had sailed from Alexandria, on the 18th August, 1970, for Latakia, with its present cargo of 4,300 metric tons of cement, her master sent a cable to the bank according to clause 18 of the charterparty but the charterers failed to honour their obligation and release, thus, the amount due for the shipment.

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As a result the ship deviated from its course and sailed to Famagusta, on instructions of the plaintiffs, in order to make possible the institution of the present proceedings ; she arrived at Famagusta on the 20th August, 1970.

In his affidavit, sworn on the 22nd August, 1970, and filed in support of the application for the arrest of the defendant cargo, Mr. Validakis stated that such arrest was being applied for in respect of the claim of the plaintiffs for the unpaid freight ; he did not refer, in this connection to any of the other claims set out in the writ of summons (and which have been already mentioned in this decision).

Then, by a further affidavit, sworn and filed two days later, on the 24th August, 1970, when the *ex parte* applications of the plaintiffs, for a warrant of arrest and for leave to serve notice of the writ of summons, were to be heard, Mr. Validakis stated that the arrest of the cargo was prayed for in respect, also, of the said other claims of the plaintiffs, in view of the fact that by clause 11 of the charterparty in question it had been agreed that the plaintiffs would have a lien on the cargo " for freight, dead-freight, demurrage and damages for detention ".

The hearing of the two *ex parte* applications was not completed on the 24th August, 1970, and it was adjourned for continuation to the 26th August, 1970.

On that date and on the 29th August, 1970, further adjournments were granted, on the application of counsel for the plaintiffs, with a view of the possibility of an out-of-Court settlement.

On the 5th September, 1970, counsel for the plaintiffs stated that though negotiations were still continuing no final settlement had yet been achieved and they applied that the case be fixed for further hearing regarding the application for the arrest of the cargo. It was so fixed for the 8th September, 1970 ; on that date plaintiffs' counsel addressed further the Court on the issue of the arrest of the cargo and in concluding their address they, also, made submissions regarding the application for leave to serve abroad notice of the writ of summons.

Prior to the 8th September, 1970, there took place a most significant development : The whole claim of the plaintiffs for freight for the defendant cargo (claim (a) in the writ of summons) was satisfied through payment.

The warrant for the arrest of the cargo has been applied for under rule 50 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction.

The material, for the purposes of this decision, part of such rule reads as follows :—

“ In any action in *rem* any party may at the time of, or at any time after the issue of the writ of summons, apply to the Court or a Judge for the issue of a warrant of arrest of property.”

It has been submitted by learned counsel for the plaintiffs that this rule is a mandatory provision and, thus, there is no room thereunder for the exercise of any judicial discretion as to whether to grant or refuse the warrant for the arrest ; and it was contended, in this respect, that such a warrant is invariably issued in England once it is applied for.

Counsel for the plaintiffs have referred to what, allegedly, happens in England, because it is laid down by section 19(a) of the Courts of Justice Law, 1960 (Law 14/60) —when read together with the relevant provisions of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64)—that this Supreme Court shall have exclusive original jurisdiction “ as a Court of Admiralty vested with and exercising the same powers and jurisdiction as those vested in or exercised by the High Court of Justice in England in its Admiralty jurisdiction on the day immediately preceding Independence Day ” (Independence Day being the 16th August, 1960).

Also, regarding the law to be applied by the Supreme Court in the exercise of such jurisdiction, sub-section (2) (a) of section 29 of Law 14/60 provides that “ subject to paragraphs (c) and (e) of sub-section (1) ” it shall be “ the law which was applied by the High Court of Justice in England in the exercise of its Admiralty jurisdiction on the day preceding Independence Day as may be modified by any law of the Republic ”.

Paragraph (c) of sub-section (1) of section 29 refers to the application of the common law and the doctrines of equity and paragraph (e) of the same sub-section provides that there shall be applied :

“ the Acts of Parliament of the United Kingdom of Great Britain and Northern Ireland which were applicable to Cyprus immediately before Independence Day, save in so far as other provision has been made or shall be made by any law made or becoming applicable under the Constitution and in so far as they are not inconsistent with, or contrary to, the Constitution.”

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By the Cyprus Admiralty Jurisdiction Order, 1893, the Colonial Courts of Admiralty act, 1890, in England, was made applicable to Cyprus, and our aforementioned Admiralty Jurisdiction Rules were enacted as a Schedule to such Order and they have remained in force ever since.

Rule 237 of the Rules provides that "In all cases not provided by these Rules, the practice of the Admiralty Division of the High Court of Justice in England, so far as the same shall appear to be applicable, shall be followed".

The cumulative effect of the foregoing is that in this case there has to be applied, in relation to the issue of the arrest of the defendant cargo, our already quoted rule 50 of our Admiralty Jurisdiction Rules; it is therefore, unnecessary to examine in this decision what exactly is the position in England under the relevant provisions there regarding the issuing of warrants for arrest in admiralty actions in *rem*.

Construing the text of rule 50 on its own, as well as in the context of the Rules of which it forms part (and, in particular, reading it together with rules 60, 203, 208 and 211 of these Rules) I have no difficulty in holding that under such rule this Court does possess and has to exercise a judicial discretion as to whether to issue or refuse a warrant for the arrest of property.

Counsel have stated that there does not exist any reported case in Cyprus construing our said rule 50; this may, indeed, be so, because it appears that it has always been taken for granted, and correctly so, that the power vested in the Court under this rule is a discretionary one. It is useful in this respect to point out that in *Staikouras v The ship "Charalambos"* (Admiralty action No. 16/69, unreported)* in which an order for the arrest of the defendant ship was applied for, such order was refused by Josephides, J. who stated, *inter alia*, that "the granting of a warrant of arrest of a ship is discretionary" and "on the facts of this case, as given in the plaintiff's affidavit, I would not be prepared to exercise my discretion in his favour".

In deciding on the merits of the application for the arrest of the defendant cargo I have to observe, first, that, in my opinion, it would be contrary to principle to grant the warrant sought by the plaintiffs; because it was decided in *The Beldis* [1936] P. 51 that Admiralty process in *rem* does not permit the arrest of a ship or other property of

* Delivered on the 8th September, 1969 (unreported).

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a defendant unconnected with the cause of action (of course, now, as regards ships, *The Beldis* has to be read subject to section 3 (4) (b) of the English Administration of Justice Act, 1956). So, in the present instance, once the claim for freight in respect of the defendant cargo was settled, I should not order the arrest of this cargo in respect of other claims unconnected with it, merely because of the contractual lien to be found in clause 11 of the charterparty, on the strength of which the plaintiff's ship loaded such cargo (see, also, Carver on Carriage by Sea, 11th ed.—by Colinvaux—vol. II, p. 1144, para. 1390).

Moreover, I would not be prepared to order such arrest on the basis of the particular facts of this case :

The other claims (especially the main ones such as claims (b), (c) and (d) in the writ of summons) appear, from the material before me, to relate not to the current trip but to previous trips of the ship on board which the defendant cargo is to be found.

All such claims were in existence when the defendant cargo was loaded on the ship at Alexandria for the purpose of it being carried to Lattakia, and not to Famagusta ; and the ship deviated from its agreed course, and sailed to Famagusta, in order to bring the defendant cargo within the jurisdiction of this Court, and seek its aid, due to the fact, which supervened after the ship had sailed from Alexandria, that the freight for the said cargo had not been paid, and not because of the existence of the said other claims.

It has been contended by the plaintiffs that as the freight for the defendant cargo was not paid it was quite proper to instruct the master of the ship to sail to Famagusta, which was the nearest port on the way to Lattakia, and that Cyprus was, in the circumstances, the forum of convenience, even though it is provided by clause 30 of the charterparty that " any dispute arising " in relation thereto is to " be settled in London " .

So, once the freight for such cargo has been paid, I am not prepared to come to the aid of the plaintiffs and to order its arrest in respect of their other claims, especially as, under clause 30 of the charterparty, they are matters to be settled in London.

Furthermore, as I have been informed by plaintiffs counsel today, the plaintiffs, on the 11th September, 1970' after this decision had been reserved on the 8th September'

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1970, proceeded, without prior consultation with their, counsel, to sell the defendant cargo locally, thus doing, in the purported exercise of their rights under the lien clause in the charterparty, and at their own risk in case such rights have been exceeded, what they had asked this Court to order as a corollary to the arrest of the cargo.

In the light of all the foregoing considerations and even assuming, without deciding so at this stage, that this Court has jurisdiction to determine the present case and such case is, on its facts, a proper one to be tried in Cyprus, I have decided to refuse the warrant for the arrest of the defendant cargo applied for by the plaintiffs, and their relevant application is, therefore, dismissed, without any order for costs.

There remains to decide on the application for leave to serve notice of the writ of summons on the foreign defendants, the two Syrian corporations. I am not in a position to decide on such application now, as I would like to hear further argument on the main issues relevant to it and, especially, regarding the question of jurisdiction and regarding the issue whether this action* is a proper one to be tried in Cyprus.

*Application for warrant of
arrest dismissed.*

* The action was discontinued on the 1st October, 1970.