

1975  
Dec. 30

[A. LOIZOU, J.]

CO-OPERATIVE ORGANIZATION OF GENERAL TRADE  
(S.O.G.E.K.) CYPRUS LTD.,

CO-OPERATIVE  
ORGANIZATION  
OF GENERAL  
TRADE  
(S.O.G.E.K.)  
CYPRUS LTD.

*Plaintiffs,*

*and*

THE SHIP "BLUE SEA" (OWNERS) NOW  
LYING AT FAMAGUSTA HARBOUR,

v.  
THE SHIP  
"BLUE SEA"  
AND OTHERS

*Defendants,*

*and*

1. BLUE SEA SHIPPING COMPANY LIMITED,
2. REEDEREI JONNY WESCH,

*Applicants.*

*(Admiralty Action No. 5/74).*

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*Admiralty—Practice—Parties—Joinder—Principles applicable—  
Discretion of the Court—Application to add two fur-  
ther defendants—Applicants not already parties—Action  
for breach of contract of afreightment—Determination  
of dispute between present parties will not directly affect 5  
proposed defendant 2 in his legal rights or in his pocket  
—Application to be added as defendant refused—Rules  
29, 30 and 32 of the Cyprus Admiralty Jurisdiction  
Order, 1893.*

*Cyprus Admiralty Jurisdiction Order, 1893—Rules 30— 10  
Construction—Intervener—Whether "a person interested  
in the action" within the meaning of the said rule.*

By an action in rem the plaintiffs claimed damages  
from the defendants for, *inter alia*, breach of contract  
of afreightment and/or for unlawful exercise of lien on 15  
the cargo of the plaintiff.

By an application under rules 29, 30 and 32 of the  
Cyprus Admiralty Jurisdiction Order, 1893 the appli-  
cants who were not parties to the action applied "for  
an order of the Court that they be joined as defendants 20  
in this action upon such terms as shall seem just".

Applicants No. 1 were the owners of the defendant vessel and the plaintiffs had no objection to their being joined as defendants, but they did object to the joining of applicants No. 2.

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5 Plaintiffs alleged that, the defendants, in contravention of the terms of the charterparty, which were incorporated in the Bill of Lading, arbitrarily and without the consent and agreement of the plaintiffs inserted in the bill of lading the following clause :

10 "Owners having a lien upon cargo covered by this Bill of Lading outstanding amount due under time charter contract with Messrs. Mortensen and Lange, dated 4th August, 1972 and addendum thereto"; and that the defendants, resting upon the above clause arbitrarily exercised a lien upon part of the cargo of the  
15 plaintiffs up to the value of £18,000. Such lien was exercised by unknown to plaintiffs alleged time charter owners. The said time charter owners were applicants No. 2.

20 Applicants contended that the reason why the defendant vessel did not deliver part of the cargo was the exercise of a lien by or on behalf of applicants or either of them, and that the action brought by plaintiffs against the defendant vessel relates solely to the non delivery  
25 of the said cargo, in view of the exercise of the above lien. And as the defence to the action would be the lawful exercise of the above lien, and that as there would be a counterclaim, for a declaration that such lien was lawfully exercised, the applicants were necessary parties which ought to be added as defendants in  
30 order to counterclaim for the above declaration.

35 Counsel for the applicants submitted that our Admiralty Rules do not provide anything about interveners, because rule 30 (quoted in full in the judgment *post*) is so widely framed as to include the cases normally covered by Order 9, rule 10 of the Civil Procedure Rules and the case of interveners, under Order 12, rule 24 of the old English Rules of the Supreme Court, with the difference that in Admiralty actions in Cyprus,  
40 such an intervener—a person "interested in the action"—is entitled to be made a full-fledged defendant and he can so be added.

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*Held*, (1) The only extension of the meaning of rule 30 made by our Admiralty Rules themselves, is to be found in rule 31, which clearly says that for the purposes of rule 30 an underwriter or insurer, shall be deemed to be a person interested in the action, which means, that a normal intervener is not to be deemed a person interested in the action. The instances where intervention was allowed are to be found in the British Shipping Laws, Admiralty Practice, (1964) p. 137, paragraph 312, which includes charterers. (See, also, *The Lord Strathcona* [1925] P. 143 and *The Byzantion* [1922] 16 Asp. 19). 5 10

(2) The Court has a discretion to add a party to an action at law if the determination of the dispute will directly affect him in his legal rights or in his pocket in that he will be bound to foot the bill. (See *Artemis Company Ltd. v. Ship "SONJA"* (1972) 1 C.L.R. 153 at p. 160). 15

(3) In the first place, the determination of the dispute between the present parties, does not directly affect applicant 2, in his legal rights or in his pocket, in that, he will be bound to foot the bill. If the proposed defendant 2 is not allowed to come in as defendant, what will happen? They still have their own remedies, as between themselves and the persons with whom they are in conflict, and they still have other procedural means open to them. (See *Gurtner v. Circuit* [1968] 1 All E.R. 328 at p. 332). 20 25

(4) The matter in issue between the parties being whether the said clause was properly inserted in the Bill of Lading and was binding on the plaintiffs or whether it was arbitrarily inserted and without their consent and agreement, the addition of applicants 2 as defendants will only complicate, delay and embarrass the proceedings. The application is dismissed as far as applicants 2 are concerned. 30 35

*Order accordingly.*

Cases referred to :

*Artemis Company Limited v. The Ship "SONJA"* (1972)  
1 C.L.R. 153 at p. 160;

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*General Insurance Co. Ltd. of Cyprus v. Maroulla  
Georghiou & Another* (1963) 2 C.L.R. 117;

*Amon v. Raphael Tuck & Sons Ltd.*, [1956] 1 All E.R.  
273 at p. 277;

5 *Gurtner v. Circuit* [1968] 1 All E.R. 328 at p. 331;

*The Lord Strathcona* [1925] P. 143;

*The Byzantion* [1922] 16 Asp. 19.

**Application.**

10 Application under Rules 29, 30 and 32 of the Cyprus  
Admiralty Jurisdiction Order, 1893, for an order that  
the Applicants be joined as defendants in an admiralty  
action whereby the plaintiffs claimed from defendants  
damages for breach of contract of afreightment.

*Chr. Demetriades*, for the applicants.

15 *Fr. Saveriades* with *S. Charalambous*. for the  
respondents.

The following ruling was delivered by :-

20 A. LOIZOU, J. : This is an application under Rules  
29, 30 and 32 of the Cyprus Admiralty Jurisdiction  
Order, 1893, whereby, "the applicants apply for an order  
of the Court that they be joined as defendants in this  
action upon such terms as shall seem just and that no  
petition or answer be filed in this action, until this appli-  
cation is heard".

25 By this action in rem, the plaintiff Co-Operative Orga-  
nization claims damages for breach of contract of afreight-  
ment and/or damages for failure to deliver the cargo  
of the plaintiffs as per the Bill of Lading and/or for  
wrongful detention and/or otherwise, and/or damages for  
30 unlawful and/or otherwise exercise of lien on the cargo  
of the plaintiffs carried by the defendants in breach of the  
conditions of the contract of afreightment and/or other-  
wise.

35 Applicants No. 1 are the owners of the defendant  
vessel, and the plaintiffs, respondents in this application,  
have no objection to their being joined as defendants but  
they do object to the joining of applicants No. 2, who,  
as it is stated in the affidavit filed in support of this

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application, they were at all material times the time charter owners of the said vessel and it is in respect of the joining of applicants No. 2 that these proceedings relate.

The plaintiffs-respondents, together with the filing of their action, applied and obtained a warrant for the arrest of the defendant ship. In the affidavit filed in support of that application, it was deposed —

“4. To my best knowledge and belief the plaintiff is a holder of a bill of lading dated 20.12.73 as per charter-party dated 26.11.73 incorporating all the terms conditions and exceptions of the charter-party.

5. The plaintiff has paid the freight and is the owner of goods consisting of iron steel bars and paid the sum of £113,500.000.

6. The bills of lading were issued by the Master and or owners of the said ship “Blue Sea” but in contravention of the terms of the charter-party dated 26.11.73 which were incorporated in the bill of lading inserted in it arbitrarily and without the consent and agreement of the plaintiff the following clauses.

‘Owners having a lien upon cargo covered by this B/L outstanding amount due under time charter contract with Messrs. Mortesen and Lange, dated 4th August, 1972 and addendum thereto’.

7. The defendant in breach of above agreement and resting upon the above clause which plaintiff did not accept or knew has arbitrarily exercised a lien upon part of the cargo of the plaintiff up to the value of £18,000.- not specifying the quantity of cargo of the said lien.

8. This lien was exercised by unknown to plaintiff alleged time-charter owners REEDEREI JONNY WELCH K.S. of HAMBURG, through their lawyer Mr. Chrysis Demetriades of Limassol.

9. The plaintiff has through their advocate protested to the lien imposed by a letter dated 26.1.74 which was handed to master and or owners of the ship but was refused and by a telegram dated 28.

1.74 and protesting for the lien imposed and calling defendant to waive the said lien holding them responsible for damages.

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10. Defendant failed to waive the said lien.”

5 The applicants though disputing many allegations of this affidavit, by their affidavit confirm that the reason why defendant vessel did not deliver part of the cargo was the exercise of a lien by or on behalf of applicants or either of them, as admitted by the said affidavit and  
10 that the action brought by plaintiffs against defendant vessel relates solely to the non-delivery of the said cargo, in view of the exercise of the above lien. By paragraph 6 of the said affidavit it is deposed as follows :

15 “6. I am informed by Mr. Chrysses Demetriades, Advocate handling the case for Applicants and for Defendant vessel, and I verily believe that the Defence to this action would be the lawful exercise of the above lien and that, furthermore, there should be a counterclaim for a declaration that such lien  
20 was lawfully exercised and that Applicants are necessary parties which ought to be added as Defendants, in order to counterclaim for the above declaration.”

The three relevant Rules relied upon by the applicants in support of their application, read as follows :-

25 “29. Any number of persons having interests of the nature arising out of the same matter may be joined in the same action whether as Plaintiffs or as Defendants.

30 30. The Court or Judge may at any stage of the proceedings and either with or without an application for that purpose being made by any party or person and upon such terms as shall seem just, order that the name or names of any party or parties be struck out or that the names of any person or persons who are interested in the action or who ought  
35 to have been joined either as Plaintiffs or Defendants or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved  
40 in the action be added.

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32. The Court or Judge may order upon what terms any person shall be joined as a party, and what notices and documents, if any, shall be given to and served upon him, and may give such further directions in the matter as shall seem fit.”

5

In the case of *Artemis Company Limited v. The Ship “SONJA”* (1972) 1 C.L.R. 153, I had the occasion of reviewing the authorities regarding the principles governing the addition of a defendant either on the application of the defendant or of a person not already a party and I referred to our case of *General Insurance Co. Ltd. of Cyprus v. Maroulla Georghiou & Another* (1963) 2 C.L.R. p. 117, and to a number of English authorities, including *Amon v. Raphael Tuck & Sons Ltd.*, [1956] 1 All E.R. p. 273 at p. 277, as well as the case of *Gurtner v. Circuit* [1968] 1 All E.R. 328 at p. 331 quoting the passage from the judgment of Lord Denning, M.R., and at pp. 160-161, I said :

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“The principle therefore was extended considerably with Salmon L.J. concurring to the effect that the Court has a discretion to add a party to an action at law if the determination of that dispute will directly affect him in his legal rights or his pocket in that he will be bound to foot the bill. Furthermore Diplock L.J. with Salmon, L.J. concurring concluded that a matter was not ‘effectively adjudicated upon’ within this order unless all those who would be liable to satisfy the judgment were heard; thus not applying the dictum of Devlin, J. in *Amon’s* case (*supra*) found at p. 287 where he said :

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‘The only reason which makes it necessary to make a person a party to an action is so that he may be bound by the result of an action and the question to be settled therefore must be a question in the action which cannot be effectively and completely settled unless he is a party’.

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Lord Denning M.R. preferred the wider interpretation given to the rule by Lord Esher M.R. in *Byrne v. Brown* [1889] 22 Q.B.D. 657 where he said at p. 666 :

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‘One of the chief objects of the Judicature Acts

5 was to secure that, wherever a Court can see in the  
transaction brought before it that the rights of one  
of the parties will or may be so affected that under  
the forms of law other actions may be brought in  
10 respect of that transaction, the Court shall have  
power to bring all the parties before it, and deter-  
mine the rights of all in one proceeding. It is not  
necessary that the evidence in the issues raised by  
the new parties being brought in should be exactly  
15 the same; it is sufficient if the main evidence, and  
the main inquiry, will be the same, and the Court  
then has power to bring in the new parties, and to  
adjudicate in one proceeding upon the rights of all  
the parties before it. Another great object was to  
20 diminish the cost of litigation. That being so, the  
Court ought to give the largest construction to those  
Acts in order to carry out as far as possible the two  
objects I have mentioned'."

20 It has been argued by counsel for the applicants that  
our Admiralty Rules, do not provide anything about  
interveners, because Rule 30, is so widely framed, as to  
include the cases normally covered by Order 9, rule 10  
of the Civil Procedure Rules and the case of interveners,  
25 under Order 12. rule 24 of the old English Rules of the  
Supreme Court, with the difference that in admiralty  
actions in Cyprus, such an intervener—a person, "inte-  
rested in the action". is entitled to be made a full-fledged  
defendant and he can so be added.

30 In interpreting a particular statutory enactment, one  
has to look to the meaning of the enactment itself and  
not to the absence of any provisions. In any event, under  
Rule 237 of the Cyprus Admiralty Jurisdiction Order,  
"In all cases not provided by these Rules, the practice  
35 of the Admiralty Division of the High Court of Justice  
in England so far as the same shall appear to be appli-  
cable, shall be followed", and the wording of this Rule  
appears to be wide enough to include the practice  
relating to interveners. Furthermore, Rule 30 corresponds  
40 to the old English Order 16, rule 11, now re-numbered  
as Order 15, rule 6, in the Revised English Rules of  
the Supreme Court. (See *Artemis Co. Ltd. v. The Ship*  
*"SONJA"* (*supra*), p. 156). If it will help things more,  
it may be mentioned that in the Revised English Rules,



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the provision regarding interveners in admiralty actions, is still preserved and the old Order 12, rule 24, is reproduced, with amendments, in Order 75, rule 17. The object of this rule, as given in a note to it, in the Supreme Court Practice, 1973, is, "to enable a person 5 who has a substantial interest in the res to intervene, if this interest may be injuriously affected by the action against the res, and to protect his interests. The rights of an intervener are limited to the protection of his interest in the res, and he has no locus standi to raise 10 issues which are not material to this purpose". The authorities given in support of the aforesaid proposition, are, the case of *The Lord Strathcona*, [1925] P. 143 and *The Byzantion* (1922) 16 Asp. 19, and it goes on to say that, charterers are an example of interveners. (See 15 British Shipping Laws, Vol. 1, (1964), para. 310 et seq., and Suppt. (1970)).

Looking at the wording of the Rule, as such, I cannot give to it any other interpretation than the one which has been given to Order 16, rule 11, in the cases here- 20 inabove set out, from which, principles, I see no reason to depart. The only extention of the meaning of Rule 30 made by the Cyprus Admiralty Jurisdiction Order itself, is to be found in Rule 31, which, clearly says, that for the purposes of the last-preceding Rule an under- 25 writer or insurer, shall be deemed to be a person interested in the action, which means, that a normal intervener is not to be deemed a person interested in the action. The instances where intervention was allowed, which I need not repeat, are to be found in the British Shipping 30 Laws, Admiralty Practice, (1964) p. 137, para. 312, which includes charterers. In the circumstances, I have not been persuaded that this application should be granted.

In the first place, the determination of the dispute 35 between the present parties, does not directly affect the proposed defendant 2, in his legal rights or in his pocket, in that, he will be bound to foot the bill. "If the proposed defendant 2 is not allowed to come in as defendant, what will happen?" to repeat the question posed by Lord 40 Denning, in the *Gurtner* case (*supra*) at p. 332. They still have their own remedies, as between themselves and

the persons with whom they are in conflict, and they still have other procedural means open to them.

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5 The matter in issue between the present parties to the case, is, whether the clause, "Owners having a lien upon cargo covered by this Bill of Lading outstanding amount due under time charter contract with Messrs. Mortensen and Lange, dated 4th August, 1972 and addendum thereto", was properly inserted and was binding on the plaintiffs, or it was arbitrarily inserted, and 10 without their consent and agreement, as claimed by the plaintiffs, and, therefore, not binding on them. The addition of applicants 2 will only complicate, delay and embarrass the proceedings.

15 Considering all the circumstances of the present case and that in any event this is a matter in the Court's discretion, I do not propose to grant the order applied for. The application, however, is granted, as far as applicants 1, the owners of the defendant vessel are concerned, for which there has been no objection on behalf of the 20 plaintiffs-respondents, and an order is made accordingly, to the effect that the said applicants, be joined as defendants in the aforesaid action. The application is dismissed as far as applicants 2 are concerned, with costs against them.

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*Order accordingly.*