

1976  
April 13

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU,  
A. LOIZOU, MALACHTOS, JJ.]

REEDEREI  
SCHULTE AND  
BRUNS BALTIC  
SCHIFFAHRTS  
K. G.  
OF BREMEN  
v.  
ISMINI  
SHIPPING  
Co. LTD.

REEDEREI SCHULTE AND BRUNS BALTIC  
SCHIFFAHRTS K.G. OF BREMEN,

*Appellants—Plaintiffs,*

v.

ISMINI SHIPPING CO. LTD.,

*Respondents—Defendants.*

(Civil Appeal No. 5535).

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*Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45 of 1963)—Order prohibiting dealing with ship under section 30 of the Law—Made subsequent to the giving of security by the same ship to secure her release after her arrest by order of a Court in another Country, and in respect of the same cause of action—Making of the order under s. 30 placed appellant in an over-advantageous position—Rightly discharged.* 5

*Admiralty—Arrest of property—Giving bail to secure release—Effect in law of giving bail.*

The plaintiffs, having applied ex-parte, obtained an order under section 30\* of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45 of 1963) prohibiting any dealing with the Ship "Ismini" belonging to the defendants. On the same day they filed an action claiming, *inter alia*, damages for the sinking of their Ship "Annemarie Schulte" after a collision, with the said Ship "Ismini". 15

The defendants applied for the discharge of the aforesaid order and they contended that after the said collision the plaintiffs instituted proceedings in Bremen, in the Federal Republic of Germany, and had applied for the arrest of the "Ismini" whilst it was in Germany; eventually, an agreement was reached in Germany by means of which it was arranged that the defendants, as owners of the "Ismini", would furnish security for the sum of D.M.600,000; this amount was, according to the defendants, equal to the market value of the "Ismini"; 25

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\* Quoted at p. 135 *post*.

and on such security having been furnished, the "Ismini" was released.

The trial Judge reached the conclusion that the granting of the order under s. 30 had placed the appellants in an over-advantageous position and in the exercise of his discretion discharged the said order.

*Held, (after dealing with the effect of giving bail—p. 136 post).*

(1) The object of the appellants (plaintiffs) in seeking to prevent any dealing with the ship by means of an order under s. 30 was the same as the one for which they had accepted the security in Germany in lieu of the arrest of such Ship, namely to be in a position to levy execution against her in case they obtained judgment in Cyprus against the respondents (defendants) in respect of the same cause of action for which they had instituted the proceedings in Germany and in relation to which the security was furnished.

(2) Plaintiffs had thus sought to be placed in an over-advantageous position by obtaining in Cyprus an order under section 30 of Law 45/63. The said order was properly discharged by the trial Judge.

*Appeal dismissed with costs.*

Cases referred to:

*Beneficial Finance Corporation, Ltd. v. Price* [1965] 1 Lloyd's Rep. 556;

*HadjiAthanasios v. Parperides and Others* (1975) 1 C.L.R. 401;

*Karydas Taxi Company Ltd. v. Komodikis* (1975) 1 C.L.R. 321;

*In Re F. (a minor)* [1976] 1 All E.R. 417;

*The Christiansborg* [1885] 10 P.D. 141 at pp. 155–156.

### Appeal.

Appeal by plaintiffs against the judgment of a Judge of the Supreme Court (Hadjianastassiou, J.) dated the 22nd December, 1975), (Admiralty Action No. 21/75) whereby an order under s. 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63), prohibiting any dealing with the Ship "Ismini", made on the 6th May, 1975 was discharged.

*M. Vassiliou*, for the appellant.

*E. Psyllaki (Mrs.)*, for the respondents.

*Cur. adv. vult.*

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The judgment of the Court was delivered by:—

TRIAN TAFYLLIDES, P.: This is an appeal against the discharge\*, on December 22, 1975, by a Judge of this Court, of an order made by him *ex parte*, on May 6, 1975, under section 30 of the Merchant Shipping (Registration of Ships, Sale and Mortgages) Law, 1963 (Law 45/63). 5

On the same day when the order was made there was filed an admiralty action, No. 21/75, in which the appellants were claiming, *inter alia*, damages for the sinking of their ship “Anne-marie Schulte” after a collision with the ship “Ismini” which belonged to the respondents. 10

In the affidavit in support of the *ex parte* application for an order under section 30 it was stated that the “Ismini” was the only property owned by the respondents and that if they were to be left free to dispose of it the appellants would not be able to recover any damages awarded to them in respect of the sinking of their ship. 15

It is clear, therefore, that the object for which the order under section 30 was sought was to ensure that, in case of a successful outcome of the said admiralty action, execution could be levied against the “Ismini”, as property of the respondents. 20

On August 28, 1975, an application was filed, by the respondents, for the discharge of the order made as aforesaid under section 30; in support of such application there was filed an affidavit stating, *inter alia*, that after the aforementioned collision the appellants had instituted proceedings in Bremen, in the Federal Republic of Germany, and had applied for the arrest of the “Ismini” whilst it was in Germany; eventually, an agreement was reached in Germany, on December 23, 1974, by means of which it was arranged that the respondents, as owners of the “Ismini”, would furnish security for the sum of D.M. 600,000; this amount was, according to the respondents, equal to the market value of the “Ismini” at the material time; so, on such security for D.M. 600,000 having been furnished, the “Ismini” was released; and it is to be noted, too, that in return for the said security it was agreed that execution would not be levied, at any time, against the “Ismini”. 25  
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In an affidavit which was filed by the appellants, in opposing

\* Reported in (1975) 1 C.L.R. 433.

the application for the discharge of the order under section 30, it was denied that the value of the "Ismini" was only D.M. 600,000; but, it was added that the affiant was not in a position to state the exact value of the ship.

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5 The learned trial Judge, after hearing the parties and having reviewed fully in his judgment both the law and the facts, reached the conclusion that the granting of the order under section 30 had placed the appellants in an over-advantageous position and decided, therefore, in exercising his discretion, to discharge  
10 such order.

The said section 30 reads as follows:—

15 “The Supreme Court may, if the Court thinks fit (without prejudice to the exercise of any other power of the Court), on the application of any interested person make an order prohibiting for a time specified, any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions the Court may think just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally  
20 may act in the case as the justice of the case requires; and the Registrar, without being made a party to the proceedings, shall on being served with an official copy thereof obey the same.”

25 Our own case-law has not yet fully defined the situations in which an order under section 30 may be made in the exercise of the relevant discretionary powers; but, from what is stated in the volume on the English Merchant Shipping Acts in the British Shipping Laws series (vol. 11, para. 57, pp. 23–24) it appears that an order under the corresponding section of the  
30 English legislation is made quite rarely and only in rather special circumstances.

It is useful to refer, in this respect, to *Beneficial Finance Corporation, Ltd. v. Price*, [1965] 1 Lloyd's Rep. 556, where  
35 Moffitt, J. said (at pp. 561–562) in connection with a provision similar to our own section 30:—

40 “The procedure under Sect. 30 *prima facie* is intended to be summary, the order being temporary in nature, no doubt taking into account the probable rights of the parties to adjust their permanent rights by other procedures. The foundation of the order is to protect dealings for a specific

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time but leaving the Court to impose conditions which *prima facie* protect the person whose dealings are prohibited and confine the effect of the order so it will not put the applicant in an over-advantageous position.”

It is with the foregoing in mind that we have to carry out 5  
out task of reviewing on appeal the exercise in this case of the  
judicial discretion of the trial Judge; and regarding our powers,  
in this respect, we might usefully refer to two recent decisions  
of this Court, namely *Hadji Athanassiou v. Parperides and others*, 10  
(1975) 1 C.L.R. 401, and *Karydas Taxi Company Ltd. v. Komod-  
dikis*, (1975) 1 C.L.R. 321, as well as to *In Re F. (a minor)*,  
[1976] 1 All E.R. 417.

We are of the opinion that the trial Judge has quite rightly 15  
based his decision on the fact that the making of an order under  
section 30 had placed the appellants in an over-advantageous  
position.

We would like to stress, in this respect, that the result of the 20  
furnishing of security for D.M.600,000, as agreed between the  
parties in Germany, was that the appellants did accept such  
security instead of ensuring, through the arrest of the “Ismini”,  
that they would be in a position to execute against her any  
judgment that they might obtain against the respondents in  
relation to the sinking of their ship “Annemarie Schulte” in a  
collision with the “Ismini”.

Regarding the effect in law of the above arrangement it is 25  
useful to refer to *The Christiansborg*, [1885] 10 P.D. 141, where  
Fry, L. J. said (at pp. 155–156):—

“What is the effect of giving bail? It seems to me that bail 30  
is the equivalent of the res ..... The result of the giving  
of bail is the release of the ship. Now, what is the meaning  
of releasing a ship under the circumstances? It appears to  
me that the meaning of it is, that she is released from all  
rights and claims against her in respect of the collision,  
which is the cause for which her owners have been com-  
pelled to give the bail.” 35

In the same case it was stressed by both Fry L.J. and Baggallay  
L.J. in their judgments that there was no difference between  
bail being given by order of a Court or by agreement between  
the parties.

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5 Counsel for the appellants has argued that the *Christiansborg* case is distinguishable from the present one; we do agree that it is distinguishable as regards the factual context in which it was decided; but, the above quoted extract from the judgment of Fry L.J. expounds a legal proposition which is, in our opinion, quite relevant to the principal issue under consideration in the present case.

10 The object of the appellants in seeking to prevent any dealings with the "Ismini", by means of an order under section 30, was the same as the one for which they had accepted the security of D.M. 600,000 in Germany in lieu of the arrest of such ship, namely to be in a position to levy execution against her in case they obtained judgment in Cyprus against the respondents, in admiralty action No. 21/75, in respect of the same cause of  
15 action for which they had instituted the proceedings in Germany and in relation to which the said security was furnished; thus, they, indeed, had sought to be placed in an over-advantageous position by obtaining in Cyprus an order under section 30 of Law 45/63.

20 Consequently, we are of the view that the order under section 30 was properly discharged by the trial Judge and, therefore, this appeal fails and has to be accordingly dismissed, with costs.

*Appeal dismissed with costs.*