

GRADE ONE SHIPPING LTD. OWNERS OF  
THE CYPRUS SHIP "CRIOS II" (NO. 1),

*Plaintiffs,*

v.

THE CARGO ON BOARD THE SHIP "CRIOS II"  
NOW LYING IN THE PORT OF LARNACA,

*Defendants.*

1976  
Oct. 14  
—  
GRADE ONE  
SHIPPING LTD.  
(NO. 1)  
v.  
CARGO ON  
BOARD  
THE SHIP  
"CRIOS II"

(Admiralty Action No. 83/76).

5 *Admiralty—Arrest of property—Security—Furnishing of security by applicants—Power of Court to make order as to security and to vary or rescind the terms thereof—Rules 205 and 211 of the Cyprus Admiralty Jurisdiction, Order, 1893 and sections 2 (definition of "Court" and "Civil Proceeding") and 32 of the Courts of Justice Law, 1960 (Law 14 of 1960)—Amount of security proved to be inadequate taking into account the damage that will result to the cargo owners as a result thereof—Increased.*

10 *Injunction—Interlocutory injunction—Terms and conditions on grant of—Principles applicable.*

*Jurisdiction—Civil jurisdiction of a Court under s. 32 of the Courts of Justice Law, 1960—It includes Admiralty proceedings—Definition of "Court", "Civil proceeding", in section 2 of the Law.*

15 *Security—Power of Court to order security when making order for arrest of property—And to vary or rescind terms of such security.*

20 In making an order for the arrest of the defendant cargo, on an *ex parte* application by the plaintiffs, the Court directed the plaintiffs to give security in the sum of £7,000. The applicants, cargo owners, in applying for the release of the cargo, raised the question of increase of the security.

25 Counsel for the plaintiffs objected to the increase and he contended that the Court in its admiralty jurisdiction not only has no power to increase the security ordered in an action in rem but has no power at all to order such security when making the order for arrest of property.

The value of the cargo was about three million U.S. dollars and the expenses for its discharge amounted to £36,850 and a more or less similar amount was required for its reloading. The weekly expenses, including storage and insurance, were about £2,000.

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*Held*, (1) the Court has power to order security and vary in a proper case such order (see rules 205 and 211 of the Cyprus Admiralty Jurisdiction Order, 1893 sections 2 (definition of "Court" and "Civil proceeding") and 32 of the Courts of Justice Law, 1960).

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(2) In cases of interlocutory orders it is a question of balance of hardship as regards the litigants (see *American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 All E.R. 504 at p. 509). The amount of £7,000 security ordered has been proved to be inadequate taking into account the damage that will result to the cargo owners as a result thereof, and it is hereby increased to £50,000 (see p. 327 of the judgment et seq.).

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*Order accordingly.*

Cases referred to:

*American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 All E.R. 504  
at p. 509.

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### **Application.**

Application by cargo-owners for the release of the defendant cargo, which had been arrested earlier on an *ex parte* application of the plaintiffs, and for the increase of the security which the plaintiffs had been directed to give when the order of arrest was made.

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*E. Psillaki (Mrs.)* with *J. Erotokritou*, for the applicants-cargo-owners.

*L. Papaphilippou*, for respondents-plaintiffs.

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The following ruling was delivered by:-

MALACHTOS, J.: One of the questions raised by the applicants cargo owners in this application for the release of their cargo which was arrested by Order of the Court on an *ex parte* application by the plaintiffs-respondents, was the increase of security of the amount of £7,000.- given by the plaintiffs on the 9th June, 1976, when the Order for arrest of the cargo was made, as well as the modification of the terms imposed on the plaintiffs for such security.

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Counsel for the respondents-plaintiffs objected to such increase of security. His main argument, which is in fact the only argument of substance, being that this Court in its admiralty jurisdiction not only has no power to increase the security ordered, in an action in rem like the present one, but has no power at all to order such security when making the order for arrest of property. There is nothing he alleged, in the Cyprus Admiralty Jurisdiction Order 1893 or the relevant legislation and the practice of the Admiralty Division of the High Court of Justice in England where it is provided for the furnishing of such security.

As it is stated in the application for the issue of the warrant of arrest of property the application was based on the Cyprus Admiralty Jurisdiction Order rules 50 to 60 and rules 203 to 212. Rule 205 is as follows:

“ 205. The Court or Judge may, on proof of urgency or other peculiar circumstances, make a temporary order, notwithstanding that no notice of the application has been given, on such terms, as to the furnishing of security or otherwise, as shall appear to be just.”

Since the application for the warrant of arrest was made *ex parte* on proof of extreme urgency, I am of the view that this Court had jurisdiction in granting the Order to order the plaintiffs to furnish security under the above order.

Furthermore, this Court has power in a proper case under rule 211 to vary or rescind any order previously made. This rule provides that the Court or Judge may, on due cause shown, vary or rescind any order previously made.

Even if we assume that in the relevant Rules or legislation both in Cyprus and in England, there is no express provision for furnishing security by the applicant in cases of arrest of property, then again I hold the view that this Court has power to order the person obtaining an Order for arrest of property to enter into a recognizance in an amount specified in the Order and impose such terms and conditions as it may think fit and in a proper case to increase or reduce such amount. This power is given to this Court by section 32(1)(2) of the Courts of Justice Law, 1960 (Law 14/60) where there is express provision to this effect. This section reads as follows:

“ 32 (1) Subject to any Rules of Court every Court, in

the exercise of its civil jurisdiction, may, by order, grant an injunction (interlocutory, perpetual or mandatory) or appoint a receiver in all cases in which it appears to the Court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith: 5

Provided that an interlocutory injunction shall not be granted unless the Court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage. 10

(2) Any interlocutory order made under subsection (1) may be made under such terms and conditions as the Court thinks just, and the Court may at any time, on reasonable cause shown, discharge or vary any such order." 15

It is clear that section 32 refers to the civil jurisdiction by a Court and "Court" in the interpretation section 2 of Law 14/60 means the High Court or any subordinate Court established by this or any other law having jurisdiction and includes any Judge thereof. "Civil Proceeding" or "Civil Jurisdiction" includes any proceeding other than criminal proceeding which in effect means that admiralty proceedings are included. 20

Having held that I have power to order security and vary in a proper case such order, I shall now proceed to consider the merits of the case as to the amount to be ordered and the terms to be imposed by the Court. This depends on the facts and circumstances of each particular case. 25

In the present case there is no dispute that the value of the cargo in question is about three million U.S. dollars, that the expenses for the discharge of the cargo are £36,850.- and a more or less similar amount will be required for its reloading, and that the weekly expenses, including storage and insurance, are about £2,000.- 30

The freight back to Jeddah is estimated to about £100,000.- Over and above the above sums there is possible damage for delays and breakages. It is also not in dispute that the plaintiff company on 28.6.76 transferred their ship "CRIOS II" to another Cyprus Company, namely, Thesavros Shipping Co. Ltd. Till the above date the said ship was free of mortgages but on 40

1.8.76 it was mortgaged in favour of a private individual, namely, Eve Pavlou of Pireus as a security for an amount of 250,000 U.S. dollars. The plaintiff company, therefore, has now no property in Cyprus whatsoever. The security bond for the sum of £7,000.— is signed by a certain Symos Leontiades a foreigner of Athens in his personal capacity, who has no property in Cyprus although a vague allegation was made by counsel for respondents that he is possessed of shares in companies that are owners of ships registered in Cyprus.

10 In cases of interlocutory orders like the one under consideration, it is a question of balance of hardship as regards the litigants. In the case of the *American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 All E.R. 504 at page 509, it is stated that: "The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The Court must weigh one need against another and determine where 'the balance of convenience' lies."

25 There is no doubt that the amount of £7,000.— ordered by this Court on the 9th June, 1976, when the order for arrest was made, has been proved to be inadequate taking into account the damage that will result to the cargo owners as a result thereof.

30 It is further doubtful whether the cargo owners, if the plaintiffs are unsuccessful in their claim, will be able to recover anything from the person who signed the said security bond or from the plaintiffs themselves.

35 On the other hand, I think that I should not increase the amount of security to such an extent to cover fully all the costs incurred as a result of the order of arrest, so as to make it less onerous for the cargo owners and to encourage them to sit at rest on their rights.

40 Therefore, the Order made on the 10th June, 1976, is varied as follows:

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The respondents—plaintiffs or anybody on their behalf shall enter into a recognizance in the sum of £50,000.— (Fifty thousand pounds). This amount to be secured either by a bank guarantee or by a deposit in Court. Taking into consideration the difficulties that the plaintiffs may encounter in securing the said amount under the above terms, they are given time till the 30th of this month to comply. Failure to do so then the Order of arrest will automatically lapse subject to the payment of all fees, dues and charges incurred in respect of the arrest and custody of the cargo.

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*Order accordingly.*