

DISTOS COMPANIA NAVIERA S.A. (NO. 4),
Plaintiffs,

v.

THE CARGO ON BOARD THE SHIP "SISKINA",
Defendant.

DISTOS
COMPANIA
NAVIERA S.A.
(NO. 4)
v.
CARGO
ON BOARD
THE SHIP
"SISKINA"

(Admiralty Action No. 43/76).

Admiralty—Arrest of property (cargo)—Security—Increase of—
Appeal—Application for an order enlarging the time within which
to furnish such security until determination of the appeal or for
stay of execution—Approach to the matter—Discretion of the
5 Court—Not only there do not exist such circumstances justifying
acceding to the application but, on the contrary, the particular
circumstances of the instant case militate against such a course—
Application refused.

10 Civil Procedure—Appeal—Execution—Stay of execution pending
appeal—Is granted if the special circumstances of the case so
require—Same approach adopted in applications for an order
enlarging the time within which to comply with the order appealed
from.

15 This was an application for enlargement of the time for com-
pliance with an order of this Court, by means of which the
plaintiffs were ordered to furnish increased security in respect
of the arrest of the defendant cargo, pending the determination
of an appeal against the order for increased security or, in the
20 alternative, for stay of execution of such order pending the
determination of the appeal.

Held, (after reviewing the facts—pp. 406–407 post).

25 (1) A stay of execution pending appeal is granted if the
special circumstances of the case so require; and the same
approach should be adopted in dealing with the alternative
part of the application for an order enlarging the time within
which to comply with the order appealed from; such enlarge-
ment being, in effect, another way of securing a stay of execution
pending the determination of the appeal (p. 407 post).

(2) Having in mind all the relevant considerations I have

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decided, in the exercise of my discretion, to refuse in toto the application of plaintiffs; in my view not only there do not exist such circumstances as to justify acceding to the application, but on the contrary, the particular circumstances of the instant case militate against such a cause.

Application refused.

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Application.

Application for (a) an order enlarging the time within which to comply with an order for increased security, made in relation to the arrest of the defendant cargo, pending the determination of an appeal against such order and (b) in the alternative, for an order staying the execution of the order for increased security pending the determination of the said appeal.

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L. *Papaphilippou*, for the appellants in C.A. 5618—applicants (plaintiffs in this action).

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J. *Erotokritou* with *Fr. Nicolaidis*, for the respondents (defendants owners of cargo under arrest in this action).

The following decision was delivered by:—

TRIANAFYLLIDES, P.: In dealing with an application by the plaintiffs in this action, made on October 9, 1976, for enlargement of the time for compliance with an order* of this Court made on September 14, 1976, until the determination of an appeal, C.A. 5618, made by them against such order (by means of which they were ordered to furnish increased security in respect of the arrest of the defendant cargo), or, in the alternative, for stay of execution of the order of September 14, 1976, pending the determination of the said appeal, I have directed on November 15, 1976**, that certain further information be placed before me by means of affidavits; as a result an affidavit was filed on behalf of the defendants on November 18, 1976, and another on behalf of the plaintiffs on November 20, 1976.

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I have considered the contents of these two affidavits, together with all other material before me, and the position appears, at present, to be as follows:

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Even though since September 14, 1976, a large part of the cargo under arrest in Limassol has been released, there still remains under arrest a considerable part of it, in respect of

* Vide p. 289 in this Part *ante*.

** Vide p. 381 in this Part *ante*.

which counsel for the defendants have already appeared in these proceedings, or have been recently instructed to do so on behalf of persons who have an interest in the cargo.

As regards the action in England (to which reference was made in my Decision of September 14, 1976*, and my Ruling of November 15, 1976**) it appears that those who are represented in the present proceedings in Cyprus, as persons beneficially interested in relation to the cargo still under arrest in Cyprus, are not, also, all of them, parties to the said action in England.

10 A stay of execution pending appeal is granted if the special circumstances of the case so require (see, *inter alia*, in England, The Supreme Court Practice, 1976, vol. 1, p. 880 and Admiralty Practice by McGuffie, Fugeman and Gray, vol. 1 in the British Shipping Laws series, pp. 596, 597, para. 1356); and, in my
15 view, the same approach should be adopted in dealing with that part of the plaintiffs' application by means of which there is sought, as an alternative to a stay of execution, an order enlarging, up to the determination of the appeal, the time within which to comply with the order appealed from, namely
20 that of September 14, 1976; such enlargement being, in effect, another way of securing a stay of execution pending the determination of the appeal.

Having in mind all relevant considerations I have decided, in the exercise of my discretion, to refuse in toto the present
25 application of the plaintiffs; in my view not only there do not exist such circumstances as to justify acceding to the application, but, on the contrary, the particular circumstances of the instant case militate against such a course.

In dismissing, however, the plaintiffs' application I have
30 decided to allow them a further period of ten days' grace within which to make arrangements in order to comply with my appealled from order of September 14, 1976.

The question of costs of this application is reserved, to be decided at the end of the proceedings in the present action.

35 *Order accordingly.*

* Vide p. 289 in this Part *ante*.

** Vide p. 381 in this Part *ante*.

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