

1976
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[MALACHTOS, J.]

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CHRISTOS
KALIAKATSOS
AND OTHERS
v.
VASCO
SHIPPING
CO. LTD.
AND ANOTHER

CHRISTOS KALIAKATSOS AND OTHERS,

Applicants,

v.

VASCO SHIPPING CO. LTD. AND ANOTHER,

Respondents.

(Civil Application No. 3/76).

*Jurisdiction—Claim for breach of contract entered into abroad—
Parties thereto non residents—Order prohibiting dealing with
ship against resident company the owners of the ship—Section 30
of the Merchant Shipping (Registration of Ships, Sales and
Mortgages) Law, 1963—Company having nothing to do with
dealings of parties to the contract—Order discharged for lack of
jurisdiction.*

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*Merchant Shipping (Registration of Ships, Sales and Mortgages) Law,
1963—Order prohibiting dealing with ship under section 30 of
the Law—Discharged for lack of jurisdiction.*

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By an *ex parte* application filed on the 7th February, 1976 the applicants obtained an order under s. 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 prohibiting any dealing with the ship "MISTRAL", belonging to respondent No. 1, the Vasco Shipping Company, which is a company formed and incorporated in Cyprus.

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The dispute between the parties arose out of a breach of an agreement between the applicants and respondent 2 for the purchase by applicants of a number of shares of the said Vasco Shipping Company.

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On the date when the order was made returnable counsel for the respondents contended that this was a case of breach of contract between respondent 2 in his personal capacity and the applicants, and since, admittedly, respondent 2 and applicants are non residents of Cyprus and the agreement was made in Greece, the Cyprus Courts have no jurisdiction to try their differences; and, consequently, this Court had no jurisdiction to issue the order under s. 30.

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--- --Held: (1) after careful consideration of the material before me, I have not been convinced that respondent 1 has anything to do with the dealings of respondent 2 and the applicants and, consequently, their differences cannot be solved in a Court in Cyprus. So this Court had no jurisdiction to issue the order of the 7th February, 1976 which is hereby discharged.

Order accordingly.

Application.

Application under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63) for an order prohibiting any dealing with the ship "Mistral".

A. Skordis, for the applicants.

L. Papaphilippou, for the respondents.

The following judgment was delivered by:-

MALACHTOS, J.: By an *ex parte* application filed on the 7th February, 1976, accompanied by affidavit, the applicants obtained an Order under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, prohibiting any dealing with the ship "MISTRAL" which flies the Cyprus flag. This ship belongs to respondent No. 1, the Vasco Shipping Co. which is a company formed and incorporated in Cyprus. The said Order of the Court was made returnable for the 28th February, 1976, for the respondents to show cause why the said order should not remain in force, and the applicants were ordered to enter into a recognizance in the sum of £3,000.- to the satisfaction of the Registrar, to be answerable in damages to the respondents. It was further ordered that if no legal proceedings on the part of the applicants were instituted on or before the 28th February, 1976, against the respondents, then this Order to be no longer in force.

On the 9th February, 1976, an *ex parte* application accompanied by affidavit was filed on behalf of the respondents for an Order that the hearing of the Order of this Court dated 7th February, 1976, which was made returnable on the 28th February, 1976, be given an earlier date due to the urgency of the case. This application of the respondents was granted and it was fixed for today for them to show cause why the Order made on the 7th February, 1976, should not remain in force. In the meantime, the respondents were ordered and filed their opposition on the same day and a copy thereof, with its accompanying

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affidavit, was delivered to the address for service of the applicants.

In short, the facts that gave rise to the present dispute are as follows:

The applicants are the shareholders on 100 shares of Kanthos Shipping Co. Ltd. of Nicosia owners of the vessel "Maranthi". Respondent No. 2 is the major shareholder holding 850 shares out of 1,000 and is the sole Director of respondent No. 1 Company owner of the vessel "Mistral".

It is the allegation of the applicants that on or about the 20.11.75 they agreed with respondent No. 2, personally, and as Director and/or as authorised representative of respondent No.1 to buy 260 shares of Vasco Shipping Co. Ltd. each valued at 390 dollars as the vessel "Mistral" was mutually agreed as valued at 390,000 U.S. dollars and that the shares were to be transferred to applicant No. 1, 100, to applicant No. 2, 100, and to applicant No. 3, 60. It was further agreed that applicants would sell and transfer to respondent 2, 4 shares each from their shares in Kanthos Shipping Co. Ltd. each share valued at U.S. dollars 2,000 as the vessel "Maranthi" was mutually agreed as valued at 200,000 dollars. The above sums would be a part of a set off. In furtherance and in execution of the above agreement the applicants advanced and/or paid to respondent 2 in all 12,460 U.S. dollars.

It is further the allegation of the applicants that the balance for the value of the shares was agreed to be paid by assignment of the profits in the running of the company.

On the other hand, in the affidavit filed in support of the opposition, the respondents deny that respondent No. 1 had anything to do with all these dealings or that the terms of the agreement were those alleged by the applicants. They alleged that the agreement was made by defendant No. 2 in his personal capacity and a basic term thereof was that the applicants were to make a down payment of 50% of the value of the shares on the date of the signing of the contract and as this they failed to do, the dispute arose.

One of the arguments of counsel for the respondents in support of their case is, as it has been stated above, that this is a case of breach of contract between respondent No. 2 in his personal capacity and the applicants, and since, admittedly, respondent

No. 2 and applicants are non residents of Cyprus and the agreement was made in Greece, the Cyprus Courts have no jurisdiction to try their difference; and, consequently, this Court had no jurisdiction to issue the Order under section 30.

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5 To this proposition counsel for the applicants agreed that if respondent No. 1 cannot be held liable then certainly this Court had no jurisdiction to issue the Order.

10 After careful consideration of the contents of the affidavits in support of both the application and the opposition, as well as the oral evidence given today before me and the arguments of counsel, I have not been convinced that respondent No. 1 has anything to do with the dealings of respondent No. 2 and the applicants and, consequently, their differences cannot be solved in a Court in Cyprus. So this Court had no jurisdiction to
15 issue the Order of the 7th February, 1976.

For the reasons stated above the Order of the 7th February, 1976, can no longer remain in force and is hereby discharged.

The applicants to pay the costs of the respondents.

Order accordingly.