

TAFCO (FOREIGN TRADE ORGANIZATION FOR
CHEMICALS AND FOODSTUFFS) OF
SYRIA (NO. 1),

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TAFCO
(NO. 1)

v.

SHIP
"LAMBROS L"

Plaintiffs,

v.

THE SHIP "LAMBROS L" AND HER CARGO,

Defendant.

(Admiralty Action No. 23/77).

Injunction—Interlocutory injunction—Admiralty Action in rem by cargo-owners for breach of contract and for delivery of cargo —Application for interim order directing delivery of cargo to plaintiffs—Serious question to be tried at the hearing—Probability that plaintiff entitled to relief—Difficult or impossible to do justice at a later stage—Cargo of perishable nature and freight in respect thereof pre-paid—Any delay in discharge of cargo will cause irreparable damage to its owners and to the persons entitled thereto—Alleged lien of defendants on cargo will be equally served if a satisfactory guarantee is given in lieu of cargo—Application granted subject to the furnishing of security—Section 32 of the Courts of Justice Law, 1960 (Law 14 of 1960)—Michael v. Brevinos (1969) 1 C.L.R. 578 distinguishable on the facts.

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Admiralty—Claim for delivery of cargo—Interim order directing delivery of cargo to plaintiffs.

By means of this application the applicants-plaintiffs applied for:

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(a) An order of the Court ordering the defendant ship to deliver immediately to them the cargo of Soya Bean meal of 101.053 bags and weighing 5.062 tons and 730 kilos;

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(b) An order of the Court entitling and/or authorising the plaintiffs to receive and/or take delivery of the said cargo and/or remove the said cargo from the defendant ship.

The plaintiffs claimed to be the owners and persons entitled

to the said cargo whose value was U.S. dollars 1,505.000; and that they settled its value which included the prepaid freight which amounted to U.S. dollars 155.000. The port of discharge was the port of Latakia in Syria where the defendant ship arrived on November 12, 1976; but after staying there for 25 days she left the port without discharging the cargo; and came to Cyprus where she was arrested pursuant to an order of arrest in another action. When the plaintiffs discovered her presence in Cyprus they filed an action claiming U.S. dollars 1,800.000 as damages for breach of contract and they, also, applied and secured a warrant for her arrest.

In support of their above application the applicants-plaintiffs mainly argued that they were the owners of the said cargo—and this was not disputed by anybody; that the freight in respect thereof had been prepaid; and that the cargo was of perishable nature and has already been on board for a considerable time and if it continued to be on the ship till the determination of the action it would perish or become unmerchantable and the plaintiffs would suffer irreparable damage since the ship herself does not appear to have the value of the goods.

The main grounds of opposition were that the owners had no cause of action against the defendants, there were no serious questions to be tried, there was no probability that the plaintiffs were entitled to any relief against the defendants and that they had a lien on the cargo for the demurrage.

Held, (1) that any further delay in the discharge of the cargo will cause irreparable damage to its owners and the persons entitled thereto, a fact which is not disputed; that justice will be done if before the said cargo is delivered to the applicants a guarantee is given by them for any possible claim that the defendant ship may have in respect of demurrage or otherwise; that if a satisfactory guarantee is given to the defendants in lieu of the cargo, the ends of justice will be served equally well, if not better, as the destruction of this perishable cargo might eventually leave the defendant ship with a valueless subject of its alleged lien; that the discharge of the cargo will give to the defendant ship the opportunity to obtain more easily its release.

(2) That there is a serious question to be tried at the hearing and a probability that the plaintiff is entitled to relief and that unless the order applied for is granted it will be difficult

5 or impossible to do justice at a later stage; and that as section 32 of the Courts of Justice Law, 1960 (Law 14/60) can be successfully invoked an order as per the application is made which will take effect upon the plaintiffs furnishing a security in the sum of U.S. dollars 220,000 (*Michael v. Brevinos Ltd.*, (1969) 1 C.L.R. 578 distinguishable on the facts).

Application granted.

Cases referred to:

Michael v. Brevinos Ltd. (1969) 1 C.L.R. 578.

10 **Application.**

15 Application by plaintiffs for an interim order ordering the defendant ship to deliver immediately to the plaintiffs the cargo of Soya bean meal, in an admiralty action whereby the plaintiffs claimed the sum of 1,800.000 U.S. dollars or its equivalent in Cyprus pounds.

X. Syllouris, for the plaintiffs.

E. Montanios, for the defendant.

Cur. adv. vult.

The following ruling was delivered by:-

20 A. LOIZOU, J.: The plaintiffs-applicants claim to be the owners and persons entitled to the cargo on board the defendant ship "Lambros L" now in Limassol Port, of 101.053 bags weighing 5,062 tons and 730 kilos of Soya bean meal of a value of U.S. dollars 1.505.000 by virtue
25 of the indorsement of the bills of lading Nos. 1 and 2 which were issued in respect of the said cargo on 15.9.1976. The plaintiffs-applicants settled its value which included the prepaid freight which amounted to U.S. dollars 155.000.

30 According to the said bills of lading, the port of discharge was Latakia in Syria where the defendant ship arrived on 12.11.1976. A notice of readiness (exh. 2) was then given by the master on the 15th November, 1976 to and accepted by the plaintiffs on the same day. After the
35 defendant ship remained there for about 25 days, she left the port of Latakia on or about the 10th December, 1976. without discharging the plaintiffs' cargo and came to Limassol where she was arrested pursuant to an order of

arrest issued against her in Action No. 245/76 of the Supreme Court of Cyprus in its admiralty jurisdiction, on the application of a Cypriot firm, the plaintiffs in the said action, and the said order of arrest is still in force.

The plaintiffs having discovered her presence in Cyprus filed the present action in rem, on the 25th January, 1977 claiming the amount of U.S. dollars 1,800,000 or its equivalent in Cyprus Pounds, as damages for breach of contract and/or bills of lading, etc., and further and in the alternative, the delivery of the aforesaid cargo to them, with damages, etc. On the same day they applied and secured a warrant for the arrest of the defendant ship and the cargo on board. When the case was fixed so that cause might be shown against the continuance in force of the order of arrest made *ex parte*, counsel for the respondent-defendant ship appeared and asked for a month's time so that they would prepare all necessary documents and affidavits which might also involve the obtaining of expert advice and opinions from overseas, and the hearing was fixed on the 18th February, 1977. On the 15th, however, of February, the plaintiffs-applicants filed the present application applying for interim and/or temporary order and/or directions as follows:

"A. An order of the Court ordering the defendant ship "LAMBROS L" and/or her master and/or her owners and/or all persons concerned to deliver immediately to the plaintiffs the cargo of Soya bean meal 101.053 bags and weighing 5.062 tons and 730 kilos.

B. An order of the Court entitling and/or authorising the plaintiffs to receive and/or take delivery of the said cargo and/or remove the said cargo from the said ship "LAMBROS L" and/or otherwise.

C. Further or alternatively any other or further order or directions or remedy as may be just.

D. Costs of this application".

The application is based on the Cyprus Admiralty Jurisdiction Order 1893, rule 205, section 32 of the Courts of Justice Law, 1960, Law 14/60 and the Inherent Power of the Court and the General Law and Practice.

5 The main ground upon which the plaintiffs-applicants
base their said application is the fact that they are the own-
ers of the said cargo—that is not disputed by anybody—
the freight in respect thereof was pre-paid and the said
cargo is of perishable nature, and has already been on
board for a considerable time and if it continues to be on
the ship till the determination of the action it will perish or
become unmerchantable and the plaintiffs will suffer irre-
parable damage since the ship herself does not appear to
10 have the value of the goods.

They further state in para. 7 of their affidavit that:

15 "Although there can be no justification or reason for
the refusal or failure of the defendant to deliver the
said cargo to the plaintiffs the plaintiffs are prepared
to give any guarantee or security that the Honourable
Court might consider reasonable for securing the im-
mediate delivery of the said cargo to the plaintiffs".

20 The main ground of opposition is that the owners have
no cause of action against the defendants, there are no
serious questions to be tried at the hearing of the action
and there is no probability that plaintiffs are entitled to
any relief against the defendants and that they have a lien
on the cargo for the demurrage which under clause 5 of
25 the charterparty dated 27.8.1976 between the charterers
and the owners, the demurrage payable is at the rate of
U.S. dollars 2,800 per day which was payable under clause
32 thereof, every five days. The total amount claimed for
demurrage including another ten days from to-day which
30 might take for the discharge of the cargo in case the pre-
sent application is granted, is in the region of U.S. dollars
272,000, whereas the plaintiffs-applicants have offered to
give a security of U.S. dollars 200,000 because, as they
say, under clause A of the Additional Clauses of the bill
of lading, no demurrage was agreed to be paid, the rate
35 of demurrage being left blank, and in any event it is stated
in the said clause that "the demurrage in respect of each
parcel shall not exceed its freight" which is stated to be in
the region of U.S. dollars 150,000.

40 Having heard argument on both sides and having con-
sidered what, in my opinion, is just and equitable in the
circumstances, I have come to the conclusion that the ap-

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plication should be granted as per paras. (a) and (b) here-
of, as any further delay in the discharge of the said cargo
will cause irreparable damage to its owners and the per-
sons entitled thereto, a fact which is not disputed and jus-
tice will be done if before the said cargo is delivered to 5
the plaintiffs-applicants, a guarantee is given by them for
any possible claim that the defendant ship may have in
respect of demurrage or otherwise.

I have followed this course, because, this is not a case
where I should, instead, order the appraisal and sale of the 10
said cargo *pendente lite*, a course which, inevitably, will
increase expenses and has inherently the risk of being sold
at a price detrimental to all concerned. Furthermore, I
have considered whether I am entitled, in the light of what
was stated in the case of *Frixos Michael v. Brevinos Ltd.* 15
(1969) 1 C.L.R. p. 578, to order the delivery of the cargo
in question to one of the parties, namely the plaintiffs.

My answer is in the affirmative as *Brevinos* case is dis-
tinguishable on the facts. There, by the granting of the 20
order enabling one of the parties (the plaintiffs) to take
possession of the machinery the subject matter of the pro-
ceedings, the trial Judge in effect disposed in the interlo-
cutory proceedings of one of the main issues of the action,
namely the possession of the machinery in question. Here, 25
there is no such issue, except that the possession of the
cargo in question is claimed merely because of an alleged
lien thereon and by way of a security of their claims for
demurrage and otherwise.

If, therefore, a satisfactory guarantee is given to the
defendants in lieu of the cargo, the ends of justice will be 30
served equally well, if not better, as the destruction of this
perishable cargo might eventually leave the defendant ship
with a valueless subject of its alleged lien. Furthermore,
the discharge of the said cargo will give to the defendant
ship the opportunity to obtain more easily its release, 35
because if the cargo is delivered to its owners, the amount of
£ 600,000.- fixed by this Court in its order for the arrest
as the amount for which if a security is given on her be-
half the Marshal will release the ship, will have to be re-
duced considerably as from that amount, the value of the 40
goods, as at the time of delivery, will have to be deducted,
but this, will have to be decided at the proper time and

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when the Court is moved for that purpose. Being further
satisfied that there is a serious question to be tried at the
hearing, a probability that the plaintiff is entitled to relief,
and that unless this order is granted it will be difficult or
5 impossible to do justice at a later stage and as section 32
of the Courts of Justice Law, 1960 can successfully be in-
voked, I hereby make an order as per paras. A and B of
the application against the defendant ship, her master, her
owners and all persons concerned. This order to take, how-
10 ever, effect upon the plaintiffs furnishing a security in the
sum of U.S. dollars 220,000 or the equivalent in Cyprus
Pounds, to the satisfaction of the Registrar of this Court
and valid until the final determination of this action for
the satisfaction of any judgment to be given in favour of
15 the defendant ship or its owners against the plaintiffs.

Costs of this application against the defendant ship.

Application granted with costs.