GEORGE D. COUNNAS & SONS LTD.,

Plaintiffs,

v.

UNION LEBANESE TRANSPORT AGENCIES OF BEIRUT THROUGH THEIR AGENT IN CYPRUS COSTAS STYLIANOU,

Defendants.

(*Admiralty Action No.* 209/76).

Practice—Writ of summons—Setting aside issue and service thereof—Action against foreign corporation through agent within the jurisdiction—Service on agent—Corporation not carrying on business within the jurisdiction through the said agent—Who only had authority to prepare report inwards or clearance outwards of ship belonging to the corporation—Sections 23 and 45 of the Customs and Excise Laws 1967 to 1973—Issue and service of writ on agent set aside.

Agency—Test of carrying foreign corporation's business by agent within the jurisdiction.

The plaintiffs in this action who had a claim for 562.70 U.S. dollars against the Union Lebanese Transport Agencies of Beirut, owners of the Ship "Diya", issued and served a writ of summons upon Costas Stylianou of Limassol as agent of the shipowners.

By means of the present application the said alleged agent applied to set aside the issue and service of the writ on the ground that the service was bad in Law. In an affidavit in support of the application he stated that he was running a customs clearance agency in Limassol and had no authority from the said Union Lebanese Transport Agencies to enter into any agreement on their behalf or to make any contracts whatever or to collect freights or issue and accept bills of lading for and on behalf of the said company or accept any payments and, generally, to represent them in any way in connection with their business; and he had no authority from the said company to deal with any claim against them by any person and no business was carried out in his office by the said company.

In answer to the above allegations the plaintiffs produced a letter from the Harbour Master of Limassol which stated that the agent of the said ship in December, 1975 was the applicant.

Held, (1) that the test in each case is whether the agent in carrying on the foreign corporation's business makes a contract for the foreign corporation or whether in carrying on his own business sells a contract with the foreign corporation; that in the former case the corporation is and in the latter case is not carrying on business at that place.

(2) That it is clear from the facts contained in the affidavit in support of the application, which are accepted as true and correct, that the applicant has never been the agent of the Union Lebanese Transport Agencies of Beirut, a foreign corporation; that there is nothing to show that the said corporation carries on business in Cyprus through the applicant; that the letter of the Harbour Master does not prove anything beyond the authority given to the applicant for the preparation of the report inwards or clearance outwards of a ship (see sections 23 and 45 of the Customs and Excise Laws 1967 to 1973 and the Importation and Exportation by Sea Regulations, 1968); and that, accordingly, the issue and service of the writ of summons is hereby set aside.

Application granted.

Cases referred to:

Okura & Co. Ltd. v. Forsbacka Jernverks Aktiebolag [1914] 1 K.B. 715;

The Lalandia [1933] P. 56;

Thames & Mersey Marine Insurance Co. v. Societa di Navigazione a Vapore del Lloyd Austriaco [1914] 12 Asp. M.L.C. 491;

The Holstein [1936] 2 All E.R. 1660;

Application.

Application by defendants for an order to set aside the issue and service of the writ of summons in an admiralty action whereby plaintiffs claimed 562.70 U.S. dollars for loss or damage caused to goods shipped on the ship "Diya".

M. Vassiliou, for applicant.

L. Papaphilippou, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

MALACHTOS, J.: The plaintiffs in this Admiralty Action having a claim for 562.70 U.S. dollars against the Union Lebanese Transport Agencies of Beirut, owners of the ship "DIYA" for loss or damage caused to 17 bundles of corrugated cartons shipped on the said ship against a Bill of Lading No. 1 dated 8th December, 1975, for carriage from Silaata to Limassol, issued and served a writ of summons upon Costas Stylianou of Limassol as agent of the shipowners.

At this stage of the proceedings we are concerned with an application to set aside the issue and service of the writ on the ground that the service is bad in law.

Both counsel in arguing this case relied on the affidavits in support of the application and opposition, respectively, and called no further evidence.

In the affidavit in support of the application it is stated by the applicant Costas Stylianou that he is running a customs clearance agency in Limassol and has no authority from the Union Lebanese Transport Agencies of Beirut to enter into any agreement on their behalf or to make any contract whatever or to collect freights or issue and accept bills of lading for and on behalf of the said company or accept any payments and, generally, to represent them in any way in connection with their business. He has no authority from the said company to deal with any claim against them by any persons and no business is carried out in his office by the said company.

In answer to the above allegations of the applicant in the affidavit in support of the opposition reference is made to a letter dated 4th March, 1977, addressed to the plaintiffs' advocate by the Harbour Master of Limassol, which letter reads as follows:

> "In reply to your letter reference No. BB695 dated 28th March, 1977, I wish to inform you that the agent of M/S 'DIYA' in December, 1975 was Mr. Costas Stylianou, Telephone No. 64041, Limassol".

Obviously the above information was obtained by the

Harbour Master from the form which the master of a ship on arriving at a Cyprus port usually is filling up in accordance with the Importation and Exportation by Sea Regulations, 1968 and appoints an agent to make a report inwards as required by section 23 of the Customs and Excise Laws 1967 to 1973 and under the directions given by the Director of the Department of Customs and Excise by virtue of section 45 of the said Law, the said agent is authorised by the master to act for him in all matters relating to the clearance outwards of the ship.

Subsections 1 and 2 are the relevant parts of section 23 of the law and read as follows:

"23.-(1) Report shall be made in such form and manner and containing such particulars as the Director may direct of every ship and aircraft to which this section applies -

(2) This section shall apply to every ship arriving at a port -

(a) from any place outside the Republic; or

(b) carrying any goods brought in that ship from some place outside the Republic and not yet cleared on importation".

The relevant parts of section 45 of the Law are also subsections 1 and 2 which read:

"45.-(1) Save as permitted by the Director, no ship or aircraft shall depart from any port or customs airport from which it commences, or at which it touches during, a voyage or flight outside the Republic until clearance of the ship or aircraft for that departure has been obtained from the proper officer at that port or airport.

(2) The Director may give directions -

(a) as to the procedure for obtaining clearance under this section;

(b) as to the documents to be produced and the information to be furnished by any person applying for such clearance".

It is clear from the above that the authority of such

agent is related to the preparation of the report inwards or clearance outwards of a ship and has nothing to do with any other business of the ship or her owning company.

In the case of *Okura and Co. Ltd. v. Forsbacka Jernverks Aktiebolag* [1914] 1 K.B. 715, a Court of appeal case, "the defendants were a foreign corporation carrying on business in Sweden as manufacturers. They employed as their sole agents in the United Kingdom a firm in London who also acted as agents for other firms and carried on business as merchants on their own account. The agents had no general authority to enter into contracts on behalf of the defendants, but they obtained orders and submitted them to the defendants for their approval. On being notified by the defendants that they accepted the orders the agents signed contracts with the purchasers as agents for the defendants. The goods were shipped direct from the defendants in Sweden to the purchasers. The agents in some cases received payment in London from the purchasers and remitted the amount to the defendants less their agreed commission:-

Held, that the defendants were not carrying on their business at the agents' office in London so as to be resident at a place within the jurisdiction, and that service of a writ on the agents at their office was, therefore, not a good service on the defendants".

At page 718 of this Report Buckley L.J. had this to say:

> "The question in this case is whether the defendants, who are a foreign corporation, can be served with a writ in this country. The answer to that question depends on whether the defendants can be found 'here' for the purpose of being served. In one sense, of course, the corporation cannot be 'here'. The question really is whether this corporation can be said to be 'here' by a person who represents it in a sense relevant to the question which we have to decide. The point to be considered is, do the facts shew that this corporation is carrying on its business in this country? In determining that question, three matters have to be considered. First, the acts relied on as shewing

that the corporation is carrying on business in this country must have continued for a sufficiently substantial period of time. That is the case here. Next, it is essential that these acts should have been done at some fixed place of business. If the acts relied on in this case amount to a carrying on of a business, there is no doubt that those acts were done at a fixed place of business. The third essential, and one which it is always more difficult to satisfy, is that the corporation must be 'here' by a person who carries on business for the corporation in this country. It is not enough to shew that the corporation has an agent here; he must be an agent who does the corporation's business for the corporation in this country".

This case was followed in the *Lalandia* case [1933] P. 56. In this case the plaintiffs, the owners of a vessel damaged in collision with a vessel owned by the defendants, a foreign corporation, served a writ upon a member of an English firm, E.M. & Co., who acted as the defendants' agents. The writ was served at E.M. & Co.'s London offices. The defendants moved to set aside the writ and service on the ground that they were not resident within the jurisdiction.

It appeared that E.M. & Co. were one of the defendants' agents in this country for the booking of freight, issue of passenger tickets, and the ordinary purposes for which ship's brokers are employed. The only remuneration received by them was the customary agents' commission, and they had no concern with the management of the defendant corporation. The only name appearing on the door of E.M. & Co's offices was their own name, but upon the window of the ground floor their name was exhibited as agents for the defendant corporation together with the names of other foreign shipping companies for whom E.M. & Co. acted:-

Held, applying the tests stated by Buckley L.J. in *Thames and Mersey Marine Insurance Co. v. Societa di Navigazione a Vapore del Lloyd Austriaco* [1914] 12 Asp.M.L.C. 491 and *Okura & Co. v. Forsbacka Jernverks* A/B [1914] 1 K.B. 715, that E.M. & Co. were a firm who "sold" and did not "make" contracts on behalf of the defendants, and that the defendants did their business in this

country "through" E.M. & Co. and not "by" them; that the defendants, accordingly, were not resident within the jurisdiction and that the writ and service must be set aside.

The *Okura* case was also followed in the case of The *"Holstein"* [1936] 2 All E.R. 1660.

> "In a collision case where the procedure in rem was not available it was sought in an action brought in personam against a foreign shipping company to effect service of the writ through London agents. The agents were general agents for shipping companies and the foreign company in question had no financial interest in the firm nor was any of their staff assigned exclusively to the business of the foreign company. The remuneration was wholly by commission:-
>
> *HELD:* Service on such general agents was bad".

It is clear from the above authorities that the test in each case is whether the agent in carrying on the foreign corporation's business makes a contract for the foreign corporation or whether in carrying on his own business sells a contract with the foreign corporation? In the former case the corporation is and in the latter case is not carrying on business at that place.

In the case in hand, it is clear from the facts contained in the affidavit in support of the application which facts I accept as true and correct, that the applicant has never been the agent of the Union Lebanese Transport Agencies of Beirut, a foreign corporation. There is nothing to show that the said corporation carries on business in Cyprus through the applicant. The letter of the Harbour Master to the plaintiffs' advocate, as I have already said, does not prove anything beyond the authority given to the applicant for the preparation of the ship's report by the master of the ship owned by the said corporation.

For the foregoing reasons the issue and service of the writ of summons should be set aside and an order is made accordingly.

The plaintiffs are adjudged to pay to the applicant the costs of this application to be assessed by the Registrar.

Order accordingly.