

1977
Jan. 29

[MALACHTOS, J.]

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CONSOLIDATED
GLASS WORKS
LTD.
v.
FRIENDLY
ALE SHIPPING
CO. LTD.
AND ANOTHER

CONSOLIDATED GLASS WORKS LTD.,
Plaintiffs,
v.
FRIENDLY PALE SHIPPING CO. LTD.,
AND ANOTHER,
Defendants.

(Admiralty Action No. 26/75).

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- Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45 of 1963)—Prohibition of dealing with a ship—Section 30 of the Law—Plaintiff a mere claimant of damages against the owners of the ship for breach of contract and/or for negligence—And has nothing to do with the ship herself—He is not a person interested within the meaning of the said section 30—Order prohibiting dealing with the ship made thereunder discharged—Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd., (1976) 1 C.L.R. 333, followed.* 5 10
- Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45 of 1963)—Order prohibiting dealing with ship under s.30 of the Law—Application to have it set aside—Could be made at any time after the issue of the order—Fact that defendants had stated previously that they do not object to the order does not estop them from applying to set it aside.* 15
- Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45 of 1963)—“Interested person” in s.30 of the Law—Admiralty action in rem—Though generally a plaintiff always has an interest in the property of the defendant that interest does not necessarily make him an “interested person” within the meaning of the said s.30.* 20
- Injunction—Interlocutory injunction—Section 32 of the Courts of Justice Law, 1960—Whether it can be made by this Court in the exercise of its admiralty jurisdiction.* 25
- Jurisdiction—Admiralty jurisdiction—Supreme Court in the exercise of this jurisdiction is a Civil Court—Section 32 of the Courts of Justice Law, 1960 (Law 14/60).*

1977
Jan. 29

—
CONSOLIDATED
GLASS WORKS
LTD.
v.
FRIENDLY
PALE SHIPPING
CO. LTD.
AND ANOTHER

5 Following the filing of an action on the 20th May, 1975, by means of which plaintiffs claimed an amount of C£18,000 for breach of contract and/or for negligence, on the 13th June, 1975 on an *ex parte* application based solely on section 30* of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63), they obtained an order prohibiting any dealing with the defendant No. 2 ship or any share therein.

10 On July 4, 1975 the defendants appeared in the action and stated that they did not object to the order made under section 30 above.

15 On November 13, 1976 an application was filed by defendant No. 1 company for an order setting aside the above order of the 13th June, 1975. This application was based on the Cyprus Admiralty Jurisdiction Order 1893, rules 203 to 212 and on section 30 of Law 45/63 (*supra*). Counsel for the applicant mainly contended that since it was clear from the facts of the case that the plaintiff was not an interested person within the meaning of section 30 of Law 45/63 the original order could not have been made by the Court.

20 On the other hand counsel for the respondent contended (a) that since applicants, when they appeared in the action on July 4, 1975, stated that they did not object to the order sought to be set aside, they were estopped from applying to set it aside at this stage; (b) that as soon as an action in rem in the admiralty jurisdiction is filed, the plaintiff becomes an interested person within the meaning of section 30 of Law 45/63; (c) that although the application for the issue of the order was based solely on section 30 of Law 45/63, yet the Court had power under section 32** of the Courts of Justice Law, 1960 (Law 14/60) to grant the order and it is immaterial whether the application was based on the one or the other section.

30 *Held*, granting the application, (1) that the fact that the applicants stated that they did not object to the order in question does not estop them from applying to set it aside in view of the clear wording of section 30 of Law 45/63 which provides, among other things, that the Court "may discharge the order

* Quoted at p. 48 *post*.

** Quoted in full at pp. 50-51 *post*.

1977
Jan. 29

—
CONSOLIDATED
GLASS WORKS
LTD.
v.
FRIENDLY
PALE SHIPPING
CO. LTD.
ND ANOTHER

when made, with or without costs and generally may act in the case as the justice of the case requires”.

(2) That though a plaintiff always has an interest in the property of a defendant that interest does not necessarily make him an interested person within the meaning of section 30 of Law 45/63 in admiralty actions. 5

(3) That though section 32 of the Courts of Justice Law, 1960 gives very wide powers to every court in the exercise of its civil jurisdiction, and this Court in its admiralty jurisdiction is a Civil Court, to grant an injunction in all cases in which it appears just or convenient so to do, the power of the court to grant an injunction under this section is not in issue in these proceedings and neither is in issue the question whether this Court on the facts of this particular case could make under this section the order prohibiting any dealing with the ship in question or any share therein. 10 15

Per curiam: (1) In any event, and irrespective of what may be argued as regards the application of section 32 of Law 14/60, in view of the provisions of section 4(1) of the Civil Procedure Law, Cap. 6, even if I were to decide on the making of an order under section 32 of Law 14/60 prohibiting any dealing with the ship in question, or any share therein, I would not have exercised my discretion in granting such an order. 20

(2) What was decided in the case of *Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd. and others*, (1976) 1 C.L.R. 302, following *Nippon Yusen Kaisha v. Karageorgis and Another* [1975] 3 All E.R. 282 and *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.* [1975] 2 Lloyd's Rep. 509, should be considered as so decided in the particular circumstances of that case and should not be readily extended so that to cover assets other than cash money and, especially, any dealing with a ship or any share therein. 25 30

(4) That the plaintiff company is a mere claimant of damages against the owner company of the ship in question for breach of contract and/or for negligence and has nothing to do with the ship herself; and that, accordingly, the plaintiff is not an interested person within the meaning of section 30 of Law 45/63 and the order made on the 13th June, 1975 will 35

be discharged (see *Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.* (1976) 1 C.L.R. 333).

1977
Jan. 29

Application granted.

CONSOLIDATED
GLASS WORKS
LTD.
v.
FRIENDLY
PALE SHIPPING
CO. LTD.
AND ANOTHER

Cases referred to:

- 5 "Monica S" [1967] 2 Lloyd's Rep. 113;
Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd. (1976) 1 C.L.R. 333;
Eastern Mediterranean Maritime Ltd. v. Nava Shipping Co. Ltd. (1975) 5 J.S.C. 666;
- 10 *Verolme Dock and Ship Building Company Ltd. v. Lamant Shipping Co. Ltd.*, (1975) 11 J.S.C. 1618;
Nemitsas Industries Ltd. v. S. & S. Maritime Ltd. and Others (1976) 1 C.L.R. 302;
- 15 *Nippon Yussen Kaisha v. Karageorgis and Another* [1975] 3 All E.R. 282;
Mareva Compania Naviera S.A. v. International Bulkcarriers S.A. [1975] 2 Lloyd's Rep. 509.

Application.

20 Application by defendant No. 1 for an order setting aside and/or cancelling an order of the Court under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law No. 45/63) prohibiting any dealing with the defendant No. 2 ship or any share therein.

25 *L. Papaphilippou*, for the applicants.

X. Syllouris with *J. Erotokritou*, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

30 MALACHTOS, J.: On the 26th May, 1975, the plaintiff company issued a writ of summons against the defendants, claiming as stated therein:

35 A. A sum of over C£18,000 (eighteen thousand Cyprus pounds) or an amount of over 50,000 U.S. dollars (fifty thousand) damages for breach of agreement and/or duty and/or for negligence

1977
Jan. 29

—
CONSOLIDATED
GLASS WORKS
LTD.
v.
FRIENDLY
PALE SHIPPING
CO. LTD.
AND ANOTHER

during the loading, handling, stowing, care, carriage and discharge of a cargo of soda ash light loaded at Constanza for Lourenco Marques on board defendant No. 2 ship "Captain Pavlou" property of defendant No. 1 company on or about the months of March, April, May and June 1974, as well as compensation with regard to any contribution for salvage and general average as a result of the said carriage which the plaintiff company may be bound to pay. 5
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B. Interest and costs.

On the 13th June, 1975, the plaintiffs on an *ex parte* application based solely on section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, Law 45/63, obtained an order of this court prohibiting any dealing with the defendant No. 2 ship or any share therein. This section 30 is as follows: 15

"30. The High Court may, if the Court thinks fit (without prejudice to the exercise of any other power of the Court), on the application of any interested person make an order prohibiting for a time specified any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions the Court may think just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires; and the Registrar, without being made a party to the proceedings, shall on being served with an official copy thereof obey the same". 20
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On the 4th July, 1975, when the above order was made returnable, a conditional appearance was entered by counsel on behalf of both defendants and time was given till the 17th September, 1975, to apply to set aside the issue and service of the writ and in case they failed to do so, then the conditional appearance entered should be considered as unconditional. 35

Counsel for the defendants stated on the above date that he did not object for the order to remain in force subject to the result of the application which would be filed 40

for setting aside the issue and service of the writ. In view of the fact that no step was taken by the defendants to the above direction up to the 17th September, 1975, the conditional appearance entered on 4.7.75, was considered as unconditional. An application, however, for leave to join an additional defendant in the action or in the alternative to issue a third party notice, was filed on behalf of the defendants on the 9th July, 1975. This application was opposed by the plaintiff. We are not concerned with this application at this stage. What we are concerned with is an application which was filed on the 13th November, 1976, on behalf of defendant No. 1 company, based on the Cyprus Admiralty Jurisdiction Order 1893, rules 203 to 212, and on section 30 of Law 45/63, claiming an order setting aside and/or cancelling the order of the 13th June, 1975 prohibiting any dealing with the defendant 2 ship or any share therein.

The main argument of counsel for the applicant company is that since it is clear from the facts of the case, as they appear in the file, that the plaintiff is not an interested person, within the meaning of section 30 of Law 45/63, the original order, could not have been made by the court.

Counsel for the respondent, on the other hand, who opposed the application, submitted that since the defendants on the 4th July, 1975, appeared in the action and a statement was made on their behalf that they did not object to the order made by the court on 13.6.75, under section 30 of Law 45/63, they were estopped from applying to set it aside at this stage. Furthermore, no good cause is shown in the affidavit in support of the application to enable the Court to set aside the said order.

He also submitted that as soon as an action in rem in the admiralty jurisdiction is filed, the plaintiff becomes an interested person within the meaning of section 30 of Law 45/63. Since the present action is a mixed action the plaintiff company should be considered as an interested person within the meaning of this section. He referred in this respect to the case of "*Monica S*" reported in [1967] 2 Lloyd's Rep. 113.

I must say from now that having gone carefully through this rather long report I found nothing that supports the

1977

Jan. 29

CONSOLIDATED
GLASS WORKS
LTD.

v.

FRIENDLY
PALE SHIPPING
CO. LTD.
AND ANOTHER

above proposition of counsel. It is true that generally speaking a plaintiff always has an interest in the property of a defendant but that interest does not necessarily make him an interested person within the meaning of section 30 of Law 45/63 in admiralty actions.

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As it appears from the writ of summons the plaintiff company is a mere claimant of damages against the owner company of the ship in question for breach of contract and/or for negligence and has nothing to do with the ship herself. So, the plaintiff is not an interested person within the meaning of section 30 of Law 45/63 (see in this respect the case of the *Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.* (1976) 1 C.L.R. 333 where the *Eastern Mediterranean Maritime Ltd. v. Nava Shipping Co. Ltd.* (1975) 5 J.S.C. 666 and *Verolme Dock and Ship Building Company Ltd. v. Lamant Shipping Co. Ltd.* (1975) 11 J.S.C. 1618, were reconsidered).

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As regards the submission of counsel for the respondent company that the applicants are estopped from applying to set aside the order as they did not show cause why it should not remain in force when it was returnable on 4.7.75, I think it cannot stand in view of the clear wording of section 30 of the law which provides, among other things, that the court "may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires".

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In the circumstances of the present case the application to set aside the order could be made at any time after the issue thereof.

Counsel for the respondent finally submitted that although the application for the issue of the order was based, as stated therein, solely on section 30 of Law 45/63, yet the court had power under section 32 of the Courts of Justice Law 1960, Law 14/60, to grant the order and it is immaterial, as he put it, whether the application was based on the one or the other section. Section 32 of Law 14/60 reads as follows:

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"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 man-

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datory) 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
10 it shall be difficult or impossible to do complete justice at a later stage.

15 (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.

20 (3) If it appears to the court that any interlocutory order made under subsection (1) was applied for on insufficient grounds, or if the plaintiff's action fails, or judgment is given against him by default or otherwise, and it appears to the court that there was no probable ground for his bringing the action, the court may, if it thinks fit, on the application of the defendant, order the plaintiff to pay to the defendant such
25 amount as appears to the court to be a reasonable compensation to the defendant for the expense and injury occasioned to him by the execution of the order.

30 Payment of compensation under this subsection shall be a bar to any action for damages in respect of anything done in pursuance of the order; and any such action, if begun, shall be stayed by the court in such manner and on such terms as the court thinks just".

35 No doubt this section gives very wide powers to every court in the exercise of its civil jurisdiction, and this court in its admiralty jurisdiction is a civil court, to grant an injunction in all cases in which it appears just or convenient so to do.

40 However, the power of the court to grant an injunction

1977

Jan. 29

—
CONSOLIDATED
GLASS WORKS
LTD.

v.

FRIENDLY
PALE SHIPPING
CO. LTD.
AND ANOTHER

under this section is not in issue in these proceedings. Neither is in issue the question whether this court on the facts of this particular case could make under this section the order prohibiting any dealing with the ship in question or any share therein.

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In any event, and irrespective of what may be argued as regards the application of section 32 of Law 14/60, in view of the provisions of section 4(1) of the Civil Procedure Law, Cap. 6, even if I were to decide on the making of an Order under section 32 of Law 14/60 prohibiting any dealing with the ship in question, or any share therein, I would not have exercised my discretion in granting such an Order.

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What was decided in the case of *Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd. and others*, (1976) 1 C.L.R. 302, following *Nippon Yusen Kaisha v. Karageorgis and Another* [1975] 3 All E.R. 282 and *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.* [1975] 2 Lloyd's Rep. 509, should be considered as so decided in the particular circumstances of that case and should not be readily extended so that to cover assets other than cash money and, especially, any dealing with a ship or any share therein.

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What is in issue in these proceedings is whether this Court could make the Order under section 30 of Law 45/63 on the facts of the present case. As I have already said the respondent company is not a person interested within the meaning of this section and, consequently, the Order made on 13.6.75, has to be and is hereby discharged.

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The applicants are entitled to their costs to be assessed at the end of the proceedings.

Order accordingly.