

1978 June 3

[MALACHTOS, J.]

LONDON AND OVERSEAS (SUGAR) CO. AND ANOTHER,  
*Plaintiffs,*

v.

1. TEMPEST BAY SHIPPING CO. LTD.,
2. TRANSWAY NAVIGATION CO. LTD.,
3. THE SHIP "CYPRUS SKY", NOW RENAMED  
"EASTERN SKY",

*Defendants.*

(Admiralty Action No. 183/78).

5 *Injunction—Interlocutory injunction or interim order—Action against ship owners and ship for damages arising out of breach of contract for carriage of goods by sea—Order prohibiting dealing with ship and order restraining, inter alia, its transfer pending determination of the Action—Could not be made under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, section 32 of the Courts of Justice Law, 1960 and section 4 (1) of the Civil Procedure Law, Cap. 6.*

10 *Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963—Construction of section 30 of the Law—It does not apply to creditors or claimants of damages against the owners of the ship—"Interested person" in this section means a person who is interested in the ship herself.*

15 *Civil Procedure Law Cap. 6—Interim order—Section 4(1) of the Law—In order to obtain an order thereunder the order should concern the subject matter of the action.*

20 *Courts of Justice Law, 1960—Injunction—Interlocutory injunction—Section 32 of the Law—Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd. and Others (1976) 10 J.S.C. 1542 distinguished.*

*Civil Procedure—Appeal—Staying of execution pending appeal—Discretion of Court—Principles governing exercise of.*

On May 26, 1978, the plaintiffs filed an action against the defendants claiming damages for breach of contract of carriage of goods by sea. On the same day they filed an *ex parte* application for “an order of the Court restraining or prohibiting defendants from transferring, mortgaging, alienating or charging the ship (defendant 3) and for “an Order of the Court restraining and/or prohibiting defendants 2 from dealing with the ship” (defendant 3) “or any shares therein”. This application was based on section 30\* of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, on section 32\*\* of the Courts of Justice Law, 1960 and on section 4 (1)\*\*\* of the Civil Procedure Law, Cap. 6. The application was granted and when it was made returnable, for the respondents to show cause why it should not remain in force, respondents filed an opposition contending that the Court could not make the order as applied for.

At the conclusion of his address counsel for applicants applied, in case this application is decided against him, not to cancel the Order made on May 26, 1978, pending an appeal which he would be filing in such a case.

*Held, (1) on the opposition:*

(1) That section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, does not apply to creditors or claimants of damages against the owners of the ship and that “interested person” in this section means a person who is interested in the ship herself; that it is obvious that the plaintiffs are claimants of damages and that, accordingly, they are not covered by this section (See *Tokyo Marine v. Fame Shipping Co. Ltd.* (1976) 10 J.S.C. 1499).

(2) That in order to obtain an order under section 4 (1) of the Civil Procedure Law, Cap. 6 the order should concern the subject matter of the action and this is not the case either in the present proceedings.

(3) That taking into consideration the particular case in hand this Court will confine itself to repeat what it has already

\* Quoted at p. 371 *post*.

\*\* Quoted at p. 371 *post*.

\*\*\* Quoted at p. 372 *post*.

said in the case of the *Consolidated Glass Works Ltd. v. Friendly Pale Shipping Co. Ltd.* (1977) 1 J.S.C. 45 at p. 52: "What was decided in the case of *Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd. and others* (1976) 10 J.S.C. 1542, following *Nippon Yussen Kaisha v. Karageorghis and Another* [1975] 3 All E.R. 282 and *Mareva Compania Naviera S.A. v. International Bulk-carriers 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"; and that, accordingly, the order made on the *ex parte* application of the plaintiffs, on May 26, 1976, is hereby cancelled.

*Held (II) on applicants' application for stay pending an appeal:*

That the Court has power to grant or refuse a stay which is purely a matter of discretion depending on the particular circumstances of each case; that the Court does not make a practice of depriving a successful litigant of the fruits of his litigation pending an appeal; that when a party is appealing, exercising his undoubted right of appeal, the Court ought to see that the appeal, if successful, is not nugatory; and that applying the above principles to the facts and circumstances of the case in hand this is not a proper case to exercise the Court's discretion in favour of the applicant.

*Order accordingly.*

Cases referred to:

*Tokyo Marine v. Fame Shipping Co. Ltd.* (1976) 10 J.S.C. 1499 (to be reported in (1976) 1 C.L.R.);

*Consolidated Glass Works Ltd., v. Friendly Pale Shipping Co. Ltd.* (1977) 1 J.S.C. 45 p. 52 (to be reported in (1977) 1 C.L.R.);

*Becker v. Earl's Court Ltd.* [1911] 56 S.J. 206;

*The Ratata* [1897] P. 118 at p. 132;

*The Annot Lyle* [1886] 11 P.D. 114 at p. 116.

### 35 Application.

Application for an order restraining or prohibiting defendants 2 from transferring, mortgaging, alienating or charging the ship defendant 3 and for an order restraining or prohibiting defendants 2 from dealing with the said ship or any share therein,

made in an action whereby plaintiffs claimed damages for breach of contract of carriage of goods by sea.

C. *Erotokritou*, for applicants-plaintiffs.

A. *Triantafyllides*, for respondents-defendants.

MALACHTOS J. gave the following judgment. In view of the urgency of these proceedings I shall proceed straight away to pronounce judgment. 5

On the 26th May, 1978 the plaintiffs filed this action claiming, as stated in the writ of summons, against the defendants damages for breach of contract and/or breach of duty and/or negligence of the defendants, their servants and agents for failure to deliver and/or carry the plaintiffs' goods on board the defendant 3 ship "CYPRUS SKY" now renamed "EASTERN SKY", owned by defendants 1 and/or 2, under a bill of lading for carriage from Dunkirk to Lagos. At the same time, upon an *ex parte* application accompanied by affidavit, the plaintiffs obtained an Order for a warrant of arrest of the defendant 3 ship anchored at the time in the port of Limassol. The said warrant could not be executed as the ship had already sailed during the night between the 25th and 26th May. On the same day, *i.e.* 26/5/78, the plaintiffs filed another *ex parte* application accompanied by affidavit claiming: 10 15 20

- (a) an Order of the Court restraining or prohibiting defendants 2 from transferring, mortgaging, alienating or charging the ship "CYPRUS SKY" now renamed "EASTERN SKY"; 25
- (b) an Order of the Court restraining and/or prohibiting defendants 2 from dealing with the ship or any shares therein.

This application was based on section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, on section 32 of the Courts of Justice Law (14/60) and on section 4 (1) of the Civil Procedure Law, Cap. 6. 30

This last application, with which we are today dealing, was granted and was made returnable on the 2nd June, 1978, for the respondents to show cause why the Order should not remain in force. The respondents 1 and 2 filed an opposition and so the application proceeded on for hearing. 53

What we are concerned today, as counsel for the respondents submitted, is the application of the sections on which this application was based and alleged that the court could not make the Order as applied for.

5 These sections read as follows:

10 "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 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 mandatory) 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:

25 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 it shall be difficult or impossible to do complete justice at a later stage.

30 (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.

35 (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 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. 5

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. 10

4(1) The Court may at any time during the pendency of any action therein make in the action an order for the sequestration, preservation, custody, sale, detention, or inspection of any property, being the subject of the action, or an order for preventing any loss, damage, or prejudice which but for the making of the order might be occasioned to any person or property, pending a final judgment on some question affecting such person or property or pending the execution of the judgment." 15 20

Now, as regards section 30 of Law 45/63, it has been decided by this Court in the *Tokyo Marine v. Fame Shipping Co. Ltd.* (1976) 10 J.S.C. at page 1499, that section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, does not apply to creditors or claimants of damages against the owners of the ship and that "interested person" in this section means a person who is interested in the ship herself. 25

It is obvious that in the present proceedings the plaintiffs are claimants of damages and so they are not covered by this section.

Coming now to section 4(1) of Cap. 6, it is clear from the wording of that section that in order to obtain an order under this section the order should concern the subject matter of the action and this is not the case either in the present proceedings. 30

As regards the application of section 32 of Law 14/60, which is a provision that gives general power to the Court to make an Order granting an injunction, interlocutory, perpetual or mandatory in all cases in which it appears to the Court just and convenient so to do, I shall confine myself, taking into 35

consideration the particular case in hand to repeat what I have already said in the case of the *Consolidated Glass Works Ltd. v. Friendly Pale Shipping Co. Ltd.* (1977) 1 J.S.C. 45 at page 52:

5 "What was decided in the case of *Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd. and others* (1976) 10 J.S.C. 1542, following *Nippon Yusen Kaisha v. Karageorghis and Another* [1975] 3 All E.R. 282 and *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.* [1975] 2 Lloyd's  
10 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."

15 Therefore, the Order made on the *ex parte* application of the plaintiffs on 26th May, 1978, restraining or prohibiting defendants 2 from transferring, mortgaging, alienating, charging or dealing with the defendant 3 ship or any shares therein, is hereby cancelled.

20 As regards costs, the respondents are entitled to their costs and an Order is made accordingly.

At the conclusion of his address to the Court, counsel for applicants applied, in case that this application will be decided against him, not to cancel the Order made on 26th May, 1978,  
25 pending an appeal which he would file in such a case.

It is a well established principle that the Court has power to grant or refuse a stay which is purely a matter of discretion depending on the particular circumstances of each case (see *Becker v. Earl's Court Ltd.* [1911] 56 S.J. 206: the *Ratata* [1897]  
30 P. 118 at page 132). However, the Court does not make a practice of depriving a successful litigant of the fruits of his litigation pending an appeal (see the *Annot Lyle* [1886] 11 P.D. 114 at page 116). It has also been said that when a party is appealing, exercising his undoubted right of appeal, the Court  
35 ought to see that the appeal, if successful, is not nugatory. Needless to say that the above rules apply equally to admiralty cases.

Applying the above principles to the facts and circumstances of the case in hand it seems to me that this is not a proper case to exercise my discretion in favour of the applicant.

*Order accordingly.*