

1979 May 11

[SAVVIDES, J.]

WORLD SHIPPING CORPORATION,

Plaintiffs,

v.

VASSILIKO CEMENT WORKS LIMITED,

*Defendants.**(Admiralty Action No. 64/75).*

Admiralty—Practice—Security for costs—Foreign plaintiff—Principles applicable—Amount of security—No dispute as to right to claim security but dispute as to amount—Answer to petition not filed—Court not in a position to know what are the issues before it, what evidence will be required to prove or contest such issues and whether defendants' witnesses will be required to attend Court to give evidence after plaintiffs' witnesses are heard—Amount offered by plaintiffs sufficient at this stage of proceedings—Right of defendants to apply for increase at later stage—Cyprus Admiralty Jurisdiction Order, 1893 rules 185, 203 and 237.

By means of this Admiralty Action the plaintiff company, which is resident abroad, claimed the equivalent in Cyprus Pounds of U.S. dollars 400,266.20 for freight, demurrage and/or damages for breach of contract. The plaintiffs filed their petition on July 17, 1976 and on September 29, 1976 the defendants filed an application for security for costs in the sum of C£ 2,000 without having in the meantime filed their answer which was to be filed in accordance with the directions of the Court two months after the filing of plaintiffs' petition. The plaintiffs did not dispute that the defendants were entitled to an order for security for costs and offered to give security in the sum of C£ 650.

Held, that the answer to the petition is not before the Court and at this stage, the Court is not in a position to know to what extent plaintiff's claim is admitted or denied, what are the issues before the Court and what evidence will be required for proving or contesting such issues; that furthermore, it is not evident, at

this stage, whether defendants' witnesses will be required to attend the Court to give evidence, after plaintiffs' witnesses are heard; that, therefore, the amount asked for by the applicants as security for costs, is excessive and unreasonable and the amount
 5 of C£ 650.— offered by the plaintiffs as security for costs, is quite sufficient at this stage of the proceedings; and that, accordingly, the plaintiffs should give security for costs in the sum of C£ 650.

Application partly granted.

Per curiam:

10 Defendants are not precluded, at any later stage, to apply for increase of such security, if the amount offered by the plaintiffs proves manifestly insufficient to cover defendants' costs in case they are successful.

Cases referred to:

15 *Senior Service Ltd. and Others v. Chrysanthi Shipping Co. Ltd., and Another* (1975) 1 C.L.R. 316.

Application.

Application by defendants for an order directing the plaintiffs to give security for costs in an admiralty action whereby plaintiffs
 20 claimed the equivalent in Cyprus Pounds of U.S. dollars 400, 266. 20 for freight, demurrage and/or damages for breach of contract.

T. Eliades, for applicants—defendants.

G. Michaelides, for respondents—plaintiffs.

25 SAVVIDES J. gave the following judgment. This is an application for security for costs in an admiralty action instituted by a plaintiff Company resident abroad, whereby plaintiffs claim the equivalent in Cyprus Pounds of U.S. dollars 400, 266. 20 for freight, demurrage and/or damages for breach of contract.

30 The action was filed on the 18th October, 1975. On the 13th November, 1975, directions were given that the plaintiffs should file and deliver their petition within two months and the defendants should file and deliver their answer within two months from the delivery to them of the petition. The plaintiffs filed their
 35 petition on the 17th July, 1976 and on the 29th September, 1976 the defendants filed the present application, asking for security for costs without having in the meantime, filed their answer

which was to be filed in accordance with the directions of the Court, two months after the filing of the petition by the plaintiffs.

The plaintiffs opposed the application only in respect of the amount claimed as security by the defendants without disputing that the defendants were entitled to an order for security for costs in the circumstances of the case. The plaintiffs offered to give security in the sum of C£ 650.-, whereas the applicants-defendants by a series of affidavits filed, ask for security in the sum of C£ 2,000.-. It is on this issue that this application proceeded for hearing.

The application is based on rules 185, 203 and 237 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction. Rule 185, reads as follows:

“ If any Plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision) or any Defendant making a counterclaim is not resident in Cyprus, the Court or Judge may, on the application of the adverse party, order him to give such security for the costs of such adverse party as to the Court or Judge shall seem fit; and may order that all proceedings in the action be stayed until such security be given”.

The provision for security for costs is a provision intended to safeguard a defendant in recovering any costs awarded in his favour in cases where the plaintiff is resident abroad and has no property in Cyprus on which execution may levy. It is a discretionary power which is given to the Court and the respective provision in the English Rules applicable to admiralty proceedings (vide Order 23, Supreme Court Practice, 1976, at p. 385) is that the Court may order security for costs “if, having regard to all the circumstances of the case, the Court thinks it just to do so”.

As to the principles which will guide the Court in the exercise of its discretion, we read in the Notes of the Supreme Court Practice, 1976 at page 385, the following:

“ In exercising its discretion under rule 1(1), *supra*, the Court will have regard to all the circumstances of the case. Security cannot now be ordered as of course from a foreign

plaintiff, but only if the Court thinks it just to order such security in the circumstances of the case. For the circumstances which the Court might take into account whether to order security for costs, see per Lord Denning M.R. in *Sir Lindsay Parkinson & Co. Ltd., v. Triplan Ltd.* [1973] Q.B. 609; [1973] 2 W.L.R. 632, 646-647; [1973] 2 All E.R. 273, 285-286. A major matter for consideration is the likelihood of the plaintiff succeeding. If there is a strong prima facie presumption that the defendant will fail in his defence to the action, the Court may refuse him any security for costs (see per Collins J., in *Crozat v. Brogden*, [1894] 2 Q.B. 30 at former 0. 65, r. 6a, made in 1920, which in substance is repeated in rule 1(1), *supra*). It may be a denial of justice to order a plaintiff to give security for the costs of a defendant who has no defence to the claim. Again, if a defendant admits so much of the claim as would be equal to the amount for which security would have been ordered, the Court may refuse him security, for he can secure himself by paying the admitted amount into Court (*Hogan v. Hogan (No. 2)*, [1924] 2 Ir. R. 14). Further, where defendant admits his liability plaintiff will not be ordered to give security (*De St. Martin v. Davis & Co.* [1894] W.N. 86) even where he counterclaims (*Winterfield v. Bradnum* [1878] 3 Q.B.D. 324)."

25 And, also, under the heading, "Plaintiff Resident Abroad", at the same page:

30 "There is no longer any inflexible rule or practice that a plaintiff resident abroad will be ordered to give security for costs; the power to make such order is entirely discretionary under rule 1(1), *supra* (see *Aeronave S.P.A. v. Westland Charters Ltd.* [1971] 1 W.L.R. 1445; [1971] 3 All E.R. 531, C.A. and reversing *Crozat v. Brogden* [1894] 2 Q.B. 30); *Re Pretoria Pietersburg Ry.* (No. 2) [1904] 2 Ch. 359). On the other hand, as a matter of discretion, it is the usual ordinary or general rule of practice of the Court to require the foreign plaintiff to give security for costs, because it is ordinarily just to do, and this is so, even though by the contract between the parties the foreign plaintiff is required to bring the action in England (*Aeronave S.P.A. v. Westland Charters Ltd.*, (*supra*)). There is, moreover, no rule or practice that a plaintiff resident abroad suing on a

dishonoured bill of exchange should not be ordered to give security (*Banque du Rhone S.A. v. Fuerst Day Lawson Ltd.* [1968] 2 Lloyd's Rep. 153, C.A.)."

I do not find it necessary to go into detail into the powers of the Court to make an order for security for costs, as the only issue left before the Court for determination, is as to the amount to be given as security.

The applicants-defendants have alleged that the costs will be around £2,000.-, taking into consideration the probability that the case will last for, at least, seven days. They will have to call a witness from Nigeria and, also, they may have to call another witness, a solicitor from the United Kingdom, whose expenses they estimate at £600.-.

Counsel for applicants, very rightly, conceded in answering a question put to him by the Court, that a defendant is entitled at any later stage of the proceedings, to apply for the amount of security to be increased, if the proceedings are protracted.

The answer to the petition is not before the Court and at this stage, the Court is not in a position to know to what extent plaintiffs' claim is admitted or denied, what are the issues before the Court and what evidence will be required for proving or contesting such issues. Furthermore, it is not evident, at this stage, whether defendants' witnesses will be required to attend the Court to give evidence, after plaintiffs' witnesses are heard. I, therefore, find that the amount asked for by the applicants as security for costs, is excessive and unreasonable and that the amount of £650.- offered by the plaintiffs as security for costs, is quite sufficient at this stage of the proceedings. This, of course, does not preclude defendants, at any later stage, to apply for increase of such security, if the amount offered by the plaintiffs proves manifestly insufficient to cover defendants' costs in case they are successful.

On the question of the amount which the Court may order for security for costs in admiralty proceedings, vide, also, *Senior Service Ltd. and others v. Chrysanthi Shipping Co. Ltd., and another* (1975) 1 C.L.R. p. 316.

In the result, I hereby make an order that the plaintiffs-respondents do give security for costs in the sum of £650.- by either

cash deposit with this Court or by bank guarantee, to the satisfaction of the Registrar of this Court. Such security to be given within 20 days from today. In the meantime, all proceedings in this action should be stayed until such security is given.

Coming now to the question of costs of this application, I find that any costs incurred after the 5th February, 1979 when the plaintiffs-respondents made a statement in Court offering to deposit the sum of C£650.-, should be costs in favour of the plaintiffs against the defendants. All other costs of this application upto and including the 5th February, 1979, should be costs in cause.

Application granted. Order for costs as above.