

1980 December 22

[TRIANTAFYLIDIS, P., DEMETRIADES AND SAVVIDES, JJ.]

MADINA MARITIME S.A.,

Appellants-Applicants,

v.

S. CH. JEROPOULOS & CO. LIMITED.

Respondents.

(Civil Appeal No. 5902).

Civil Procedure—Appeal—Cross-appeal—Leave to file after commencement of hearing of appeal—Discretion of Court of Appeal—Order 35 rules 8 and 10 of the Civil Procedure Rules.

5 After the appellant had concluded his address in support
of his grounds of appeal counsel for the respondents, applied,
halfway in the course of his address, for an adjournment to
file an application for leave to adduce further evidence. On
the day of hearing of such application counsel for the respondents
10 filed, also, an application for leave to file a notice of cross-appeal
and for extension of time for filing same.

15 *Held, on the application for leave to file a cross-appeal:* That
the appellants will not be prejudiced in any way other than
costs if the application is granted; that the appellants will have
ample opportunity, in addressing the Court in reply to the
address of counsel for the respondents, to deal with the grounds
which will appear on the notice of cross-appeal to be filed
by the respondents; and that, therefore, this Court in the exercise
of its relevant discretion will grant the application and allow
20 the respondents to file a notice of cross-appeal within ten days
from to-day.

Application granted.

Cases referred to:

25 *Ex-parte Bishop, In re Fox Walker & Co.*, [1880] 15 Ch. D. 400;
*Christodoulou and Another v. The Attorney-General of the
Republic* (1972) 1 C.L.R. 205.

Application.

Application for leave to file a cross-appeal and for extension of time for filing same.

Fr. Saveriades, for the applicants.

L. Papaphilippou, for the respondents.

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Cur. adv. vult.

TRIANTAFYLIDIS P.: The decision of the Court will be given by Mr. Justice Savvides.

SAVVIDES J.: At this stage, in the course of the hearing of this appeal, we have to deal with an application on the part of the respondents, for leave to file a notice of cross-appeal and for extension of time for filing same. The application has been opposed by the appellants on the facts of the case, as appearing on the application, and on the ground that such application has no merit.

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The present appeal is an appeal against the judgment of the District Court of Limassol dismissing an application for an order setting aside the registration of a judgment of the High Court of Justice in England, obtained in respect of an arbitration award. When the appeal came up for hearing before this Court and after counsel for the appellants, respondents in the Court below had concluded his address in support of his grounds of appeal, counsel for the respondents, applied, halfway in the course of his address, for an adjournment to file an application for leave to adduce further evidence. The hearing was adjourned and an application in that respect was made by counsel for respondents to adduce further evidence which was opposed by the other side. On the day fixed for hearing of such application, counsel for respondents filed the present application, which has also been opposed. In view of this application, it was found expedient by the Court to deal with it first before proceeding with the hearing of the first application for adducing further evidence.

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The application is based on Order 35, rule 10, and Order 57, rule 2, of the Civil Procedure Rules which corresponded, respectively, to Order 58, rules 6 and 7 and Order 64, rule 7, of the Rules of the Supreme Court in England as in force upto 1962.

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The above provisions in the Civil Procedure Rules are in fact similar to the provisions of the English Rules.

The following provision appears in Order 35, rule 10, of the Civil Procedure Rules:

5 “The omission to give such notice shall not diminish the powers conferred by rule 8 of this Order upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.”

10 The powers referred to in Order 35, rule 8 which, are preserved by Order 35, rule 10, may be found summarized in the first part of Order 35, rule 8, and are to the effect that the Court of Appeal shall have all powers and duties as to amendment and otherwise of the trial Court together with full discretionary
15 power to receive further evidence upon questions of fact.

 In *Ex-parte Bishop, in Re Fox Walker & Co.*, [1880] 15 Ch. D. 400 in which notice of cross-appeal was given after the hearing of the appeal and was opposed on the ground that it was given too late, the Court held that a notice given by the
20 respondent to an appeal under rule 6 of Order LVIII of the Rules of Court 1875, need not be given within the time limited by rule 15. James, L.J. at page 410 had this to say:

 “Under the old practice a cross-appeal was allowed to be presented after the expiration of the time allowed for presenting an original appeal and now we have power
25 to extend the time for appealing, if necessary”.

 The question of filing a notice of cross-appeal out of time, has been dealt with by this Court in the case of *Alisavou Christodoulou and another v. The Attorney-General of the Republic*
30 (1972) 1 C.L.R. p. 205. In that case, the Court had to deal with a notice of cross-appeal filed after the appellant had concluded his address and counsel for respondents had begun his address, and the hearing had to be adjourned for lack of time. The Court in the exercise of their discretion, granted
35 leave to file a notice of cross-appeal even at that late stage. Triantafyllides P. had this to say at pages 206 and 207:

 “It is clear that under rule 10 we have a discretion to allow, even at this stage, counsel for respondents Nos. 2 and 3

to file a cross-appeal; and so that we may be in a position to exercise fully our powers in dealing with the present appeal under rule 8 of Order 35 of the Civil Procedure Rules, we are prepared to grant leave for the filing of the cross-appeal; however, the notice of cross-appeal, as filed, does not conform with the requirement in rule 10 that it should set forth fully the grounds to be relied upon in support of the cross-appeal and the reasons therefor. Non-compliance with this requirement cannot be treated as being an immaterial defect; it is a matter of substance; counsel for the appellants is entitled to know, and this Court should also know, what exactly are the said grounds and reasons. So counsel for respondents Nos. 2 and 3 should duly comply with the said requirement.”

We find that the facts of the above case are in line with those of the present case.

We have carefully taken into consideration the arguments by counsel for the appellants concerning any prejudicial effect in case the application is granted, but we find ourselves unable to agree with him that, if the application is granted the appellants will be prejudiced in any way other than costs. The appellants will have ample opportunity in addressing the Court in reply to the address of counsel for the respondents to deal with the grounds which will appear on the notice of cross-appeal to be filed by the respondents. Therefore, exercising our relevant discretion we grant the application and allow the respondents to file a notice of cross-appeal. Such notice to be filed within ten days from today and to comply with the requirements of Order 35, rule 10.

The costs of this application should be borne by the respondents and we make an order accordingly in favour of the appellants.

Application granted. Order for costs as above.