

1982 June 12

[A. LOIZOU, J.]

SPYROS ANASTASSIOU,

Plaintiff,

v.

THE SHIP "MAHEE",

Defendant.

(Admiralty Action No. 108/82).

Admiralty—Arrest of ship—Principles applicable—Court has to be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that the plaintiff is entitled to relief.

5 *Admiralty—Arrest of ship—Caveat against issue of warrant of arrest—Rule 65 of the Cyprus Admiralty Jurisdiction Order, 1893—Arrest of ship without notice to the person by whom the caveat has been entered—Rule 70 of the above Order—Claim against ship for damages for breach of contract of carriage of cargo*
10 *—Existence of immediate possibility of ship sailing away—Amounts to "special circumstances" within meaning of above rule 70 justifying arrest of ship without notice to person by whom caveat has been entered.*

15 *Admiralty—Practice—Arrest of ship—Mode of execution of warrant of arrest—Rules 16, 55, 58 and 59 of the Cyprus Admiralty Jurisdiction Order, 1893.*

Admiralty—Practice—Arrest of ship—Security by plaintiff—Form of security bond.

20 Along with the filing by the plaintiff of an action in rem against the defendant ship for damages for loss suffered by him by reason of the "defendants' breach of an agreement for the carriage of a cargo of about 220 tons of citrus from Limassol to Hodeidah dated 29th April 1982", an application for a warrant of
25 arrest of the defendant ship was, also, made. One of the terms of the agreement, which was concluded by exchange of telexes,

was that the defendant vessel would load the cargo in question not later than the 8th May, 1982. The defendant ship, however, did not arrive at Limassol to collect the cargo on the 8th May, 1982, or at any time thereafter in total breach of the agreement; and on the contrary she sought and obtained clearance from Larnaca port, where she was lying at Roads, thereby denoting her intention to sail from there to a port outside Cyprus. The application for the warrant of arrest was filed on 12.5.1982 but prior to this application there had been filed a caveat* against the issue of any warrant of arrest of the defendant ship. 5 10

Counsel for the plaintiff, after bringing the caveat to the knowledge of the Court, applied under rule 70** of the Rules for the issue of the warrant of arrest applied for without notice to the person by whom the caveat had been entered as the very fact that the vessel had already obtained clearance meant that she could sail at any time without any further formalities with the authorities and that there existed the special circumstances which rendered it desirable or necessary for the Court to make the order applied for without notice to the person by whom the caveat has been entered. 15 20

On May 12, 1982, the Court exercising its powers under the above rule 70 issued an order*** for the arrest of the defendant ship which was made returnable on the 15th May, 1982, and by means of which the plaintiffs were, inter alia, directed to "file a security bond in the sum of C£3,000 to be answerable in damages in the defendant ship and her owners against whom the present order is made". 25

* The caveat was entered under the provisions of rule 65 of the Cyprus Admiralty Jurisdiction Order, 1893 which reads as follows: "65. Any person desiring to prevent the arrest of any property may cause a caveat against the issue of any warrant of arrest to be entered by the Registrar in a book to be kept by him for that purpose and hereinafter called the Caveat Book".

** Rule 70 provides as follows:

"70. No order of the Court or Judge affecting the property or moneys referred to or specified in any caveat, duly entered in accordance with these Rules, shall ordinarily be made on the application of any party or person, except notice of such application shall have been given to the party or person at whose instance the caveat has been entered, but the Court or Judge may, upon proof of any special circumstances, which render it desirable or necessary, and upon such terms as may seem fit, make any such order without notice to the person by whom the caveat has been entered".

*** The order is quoted at pp. 349-50 *post*.

Upon an application on behalf of the defendant ship for the discharge of the warrant of arrest it was contended:

- 5 (a) That there has been no contract between the plaintiff and the defendant as there was given no authority to a Cyprus agent or indeed any other agent to conclude any agreement with the plaintiff.
- 10 (b) That as no notice was served on the caveators so that the owners should be given an opportunity to be heard there was no compliance with rule 70 of the Cyprus Admiralty Jurisdiction Order, 1893, because there had been no proof of any special circumstances.
- (c) That the warrant of arrest was not lawfully executed because no proper service* was effected on the defendant ship.
- 15 (d) That the form of the security bond** given in pursuance to the condition in paragraph 3(c) of the order making the warrant of arrest was not valid in that there were omitted therefrom the words "to be answerable in damages to the defendant ship or her owner".

20 *Held*, (1) at this stage the plaintiff had to make out a case satisfying the Court that there was a serious question to be tried at the hearing and that on the facts before it there was a probability that the plaintiff was entitled to relief; that on the totality of the circumstances and contentions placed before
25 this court for the issue of the warrant of arrest this Court feels justified in being satisfied that a case was made out with triable issues to be determined at the trial, also, as regards the existence of the disputed relationship of agency; accordingly contention (a) should fail.

30 (2) That the existence of an immediate possibility of the ship

* Under rules 16 and 55 of the Cyprus Admiralty Jurisdiction Order, 1893 a warrant of arrest is served by attaching an office copy of the writ to a mast or to some other conspicuous part of the ship; and under rule 58 the Marshal shall immediately after service of the warrant has been effected, forward to the Registrar of the Court a certificate of service. The certificate of the Marshal in this respect is quoted at p. 352 *post* and was to the effect that the warrant of arrest was served by the Deputy Marshal and the Bailiff of the Supreme Court by fixing the warrant on the bridge door and Master's cabin door of the ship on the 12th May, 1982.

** The security bond is quoted at p. 353 *post*.

sailing and the plaintiff suffering injustice therefrom in recovering his claim might by itself in a proper case amount to the special circumstances required by rule 70; accordingly contention (b) should fail.

(3) That in view of the Marshal's certificate, which was issued under rules 58 and 59 of the Cyprus Admiralty Jurisdiction Order, 1893, no valid complaint can be made against the mode of service of the warrant of arrest in question; accordingly contention (c) should fail. 5

(4) That the omission of a reference to the words "to be answerable in damages to the defendant ship or her owner" in the security bond* does not vitiate the warrant of arrest as it goes without saying that in such a security bond the relevant terms of the warrant for the arrest in respect of which it was given should be considered as incorporated therein by the inclusion of the term "for the issue" of such order, and that a person who has given same is answerable in damages to the defendant ship and her owners against whom such order was made, otherwise it would be meaningless as the Registrar has no claim as such against a person on whose behalf the security bond is filed; accordingly contention (d) should, also, fail. 10
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Application dismissed.

Observations with regard to the need for a revision of our Rules of Court both with regard to civil matters and to the Admiralty Jurisdiction of this Court. 25

Cases referred to:

Rolinmpex Centrala Handlu Zagranicznego, Willy Bruns and Kamstra (Hull) Ltd., v. Prirs Bernhard (owners), [1964] P. 117.

Application. 30

Application by the defendants for the discharge of a warrant of arrest issued against the defendant ship, on the application of the plaintiffs, in an action for damages for loss suffered by

* With the agreement of the parties the security was increased from £3,000 to £8,000 and a new clearer form of security bond was adopted which may be followed in the future.

reason of defendants' breach of an agreement for the carriage of cargo.

M. Montanios, for the applicants-defendants.

E. Psyllaki (Mrs.), for the respondent-plaintiff.

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Cur. adv. vult.

A. LOIZOU J. read the following judgment. Together with the filing by the plaintiff of this admiralty action in rem against the defendant ship for damages "for loss suffered by him by reason of the defendants' breach of an agreement for the carriage
10 of a cargo of about 220 tons of citrus from Limassol to Hodeidah _____dated the 29th April 1982", an application for leave to issue a warrant of arrest for the arrest of the defendant ship, was made.

The facts relied upon were set out in the accompanying affidavit supplemented by a number of telexes exchanged between the parties.
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As it appears therefrom the said agreement was concluded by exchange of telexes. It was one of its terms that the defendant vessel would load the cargo in question not later than the
20 8th May 1982 but she did not arrive at Limassol to collect the plaintiff's cargo on the 8th May 1982, or at any time thereafter in total breach of the agreement. On the contrary the defendant ship sought and obtained clearance from Larnaca port where she was lying at Roads, thereby denoting her intention to
25 sail from there to a port outside Cyprus. The plaintiff sent telexes to the owners, care of her master, but no reply was given to any of them, except as alleged in the said affidavit for an oral reply of the vessel's agents that the defendant ship would not load the plaintiff's cargo as the owners did not expect to make
30 a profit from the voyage to Hodeidah.

The damage claimed for the alleged breach of this agreement was estimated in the region of U.S. \$92,000.—and the aid and process of the Court was required to enforce payment of any amount lost and or to be lost by the plaintiff as above by
35 the arrest of the defendant ship.

When counsel arrived at Nicosia to file the present proceedings she discovered that a caveat had been entered against the issue

of any warrant of arrest under rule 65 of the Cyprus Admiralty Jurisdiction 1893 along the lines set out in paragraph (F) of Schedule I of the said order and which reads as follows:

"In the Supreme Court of Cyprus, Admiralty Jurisdiction.
(Title of action (if any).) 5

I, A.B., of hereby apply that a caveat may be entered against the issue of a warrant for the arrest of (state the nature of the property against the arrest of which the caveat is to be entered) without notice to me".

It may be mentioned here, as pointed out in British Shipping Laws, Admiralty Practice 1964 paragraph 239 "..... no caveat against arrest is entered in an action. Such a caveat may be entered at any time. It may be a shield against the consequence of future collisions, salvage or other occurrences, before they happen, or it may be entered after it is known that a writ is about to be or has been issued. It is because a caveat is not related to any particular action that the heading of the praecipe for caveat against arrest in Form No. 5 in Appendix Q differs from the heading in most other forms". Hence in the caveat in question there is no reference to the title of an action as none had until then been filed. 10 15 20

Counsel for the applicant brought this caveat to my knowledge and applied under rule 70 of the Cyprus Admiralty Jurisdiction Order for the issue of the warrant of arrest applied for without notice to the person by whom the caveat had been entered as the very fact that the vessel had clearance since the previous Monday, meant that she could sail at any time without any further formalities with the authorities and that there existed the special circumstances which rendered it desirable or necessary for me to make such order without notice to the person by whom the caveat had been entered. She offered to verify her statements to the extent that they were not contained in the affidavit already filed by a new affidavit to be filed the soonest possible as there was no time in delaying any longer. She further informed the Court that she had met Mr. M. Montanios, of the firm of Montanios and Montanios, who had entered the said caveat and informed him of her application for the issue of the warrant of arrest. In all fairness to Mr. Montanios she mentioned that he told her that he did not consider oral notice as a proper notice I may mention here that this information given by 25 30 35 40

counsel to Mr. M. Montanios at an accidental encounter in the Court's corridors did not weigh with me as an appropriate notice which should be given to cases where such caveats are entered and as I stated in the brief reasons I gave in issuing
5 the warrant of arrest I relied on the provisions of rule 70 which dispenses with a notice upon proof of special circumstances which render it desirable or necessary to make such order.

Rule 70 reads as follows:

10 "70. No order of the Court or Judge affecting the property or moneys referred to or specified in any caveat, duly entered in accordance with these Rules, shall ordinarily be made on the application of any party or person, except notice of such application shall have been given to the party or person at whose instance the caveat has been entered, but
15 the Court or Judge may, upon proof of any special circumstances, which render it desirable or necessary, and upon such terms as may seem fit, make any such order without notice to the person by whom the caveat has been entered".

My order of the 12th May 1982 reads as follows:

20 "*Court*: In view of the circumstances of this case and its urgency and in particular of the fact that the interests of the plaintiff are likely to be defeated if this ship is not forthwith arrested, I have decided to exercise my powers under rule 70 of the Cyprus Admiralty Jurisdiction Order
25 1893, and grant the application. Furthermore the applicants are at liberty to file an additional affidavit at the soonest possible opportunity and verify on oath the statement made by counsel hereinabove, on the following terms:—

1. Notice of such arrest shall be served on the said ship.
- 30 2. The Marshal shall release the ship upon directions of the Registrar of this Court on the filing of a security bond by or on behalf of the ship in the sum of C£41,000.— (forty-one thousand Cyprus pounds) for the satisfaction of any order or judgment for the payment of money made
35 against the ship or her owners in this action.
3. The applicants—plaintiffs shall comply with the following requirements.

(a) Lodge in Court the sum of C£200.—deposit for any

expenses which may be incurred by the Marshal in connection with the custody of the ship while under arrest, subject to this sum being increased later on.

- (b) To lodge in Court any further amount that the Registrar of this Court will ask the plaintiffs to do with regard to the expenses of the arrest and failing to comply within three days from such demand, the order of arrest to be discharged. 5
- (c) File a security bond in the sum of C£3,000.—to be answerable in damages in the defendant ship and her owners against whom the present order is made. Failing to do so, this warrant of arrest will be automatically discharged. 10

This order is returnable on the 15th May 1982, at 9:30 a.m. and copy of the order should be served on the caveator's address for service. I have fixed this warrant of arrest at such a short period so that this will amount to a notice to the caveators and for any person interested to appear and move the Court that this Order should be discharged and also for the purpose of the caveators putting up bail in furtherance of their caveat". 15 20

The first ground on which the applicants rely for the discharge of this warrant of arrest is that there has been no contract between the plaintiff and the defendant as there was given no authority to a Cyprus agent or indeed any other agent to conclude any agreement with the plaintiff. This, it was urged is stated in the affidavit of Mr. Abdel Hadi, filed on behalf of the applicants defendants and there does not appear to exist a relationship of agency between the defendants and Moustakas Shipping Agency Limited from the telexes attached to the affidavit filed on behalf of the plaintiff in support of the issue of the said agreement. 25 30

It is clearly alleged in the said affidavit that Moustakas Shipping Agency Limited, are the agents of the defendant vessel and or her owners. 35

No doubt at this stage, the plaintiff had to make out a case satisfying me that there was a serious question to be tried at the hearing and that on the facts before me there was a probabi-

lity that the plaintiff was entitled to relief on the totality of circumstances and contentions placed before me for the issue of the warrant of arrest I feel justified in being satisfied that a case was made out with triable issues to be determined at the trial, also as regards the existence of the disputed relationship of agency.

The second point raised on behalf of the applicants-defendants is related to the existence of the caveat against arrest. It was argued that a notice had to be served on the caveators so that the owners should be given an opportunity to be heard. It was urged that there was no compliance with rule 70 dispensing with the giving of a notice as there had been no proof of any special circumstances. I do not subscribe to this contention. The existence of a clearance obtained two days earlier and the fact that she was lying at Roads meant that the defendant ship was free to sail at any moment without any further formalities and the amounts involved were too big to be expected to be satisfied otherwise than through her arrest. It is true that our Rules in general, including the provisions regarding the issue of caveats are out of date with regard to present day realities and even not the same as those prevailing in England under the old English Rules, Order 29 rules 11 and 12 (See also the praecipe for caveat, warrant in Appendix A, Part II No. 18). Whereby there must be given in the notice, an undertaking to enter an appearance in any action that may be commenced against the said property and to give bail in such action in a sum not exceeding an amount to be stated in the notice or pay such sum into the registry. Such provision does not appear in our Rules and the notice required to be given for the entering of a caveat against the issue of a warrant for the arrest. Therefore rule 70, hereinabove set out should be interpreted, as far as the "special circumstances" required to be proved for the issue of a warrant of arrest without notice to a caveator, in the light of this omission, so that if there is an immediate possibility of the ship sailing and the plaintiff suffering injustice therefrom in recovering his claim, that by itself might in a proper case amount to the special circumstances required by this rule. As already seen in this case there existed this immediate possibility of the ship sailing.

Needless to say that the old Rules in England regarding caveats

against arrest have now been replaced by Order 75 rules 6 & 7 of the new Rules whereby (rule 6) is provided that the fact that there is a caveat against arrest in force should not prevent the issue of a warrant to arrest the property to which the caveat relates and under rule 7 thereof provisions are made for the discharge of a warrant of arrest unless the Court is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, and upon such discharge being ordered the person arresting may be ordered to pay to the applicant damages in respect of the loss suffered by the applicant as a result of such arrest (rule 7). 5 10

I cannot but only stress once more the need for a revision of our Rules of Court both with regard to civil matters and to the admiralty jurisdiction of this Court.

The third point is that this warrant of arrest was not lawfully executed inasmuch as no proper service was effected on the defendant ship. Under rule 55 of the Cyprus Admiralty Jurisdiction Order 1893 a warrant has to be served by the Marshal or his officers in the same manner as that prescribed by the Rules for the service of a writ of summons in an action in rem and thereupon the property to be arrested. Under rule 16 a writ of summons in an action in rem is served upon a ship by attaching an office copy of the writ to a mast or to some other conspicuous part of the ship, and under rule 58 the Marshal shall immediately after service of the warrant has been effected, forward to the Registrar of the Court, a certificate of service. Such certificate must state by whom the warrant of arrest had been served and the date and mode of service and shall be signed by the Marshal. 15 20 25

There exists in the file such a certificate signed by the Marshal stating that "The warrant of this Court to arrest the ship MAHEE dated 12th May 1982 was served by the Deputy Marshal Economides Nicos and the Bailiff of the Supreme Court by fixing the warrant on the bridge door and Master's cabin door on the above ship on the 12th May 1982". 30 35

There is also a further affidavit of service made under Order 5 rule 2, of the Civil Procedure Rules, made by the process-server of this Court and which in so far as relevant reads:

"I, G. Papamichael, a process-server, make oath and say

that I served an office copy of the writ of summons and order in Action No. 108/82 of the Supreme Court Registry, at (a) Larnaca on the 12th day of May, 1982, by leaving the same in the presence of Mr. Nicos Economides, Deputy Marshal of the Admiralty Court of Cyprus, the ship 'MAHEE', by affixing the writ of summons and order on the bridge of the ship by leaving a copy of the order with the engineer of the ship as the Master was not on board the above ship which was lying at Larnaca port".

10 In my view no valid complaint can be made against the mode of service of the warrant of arrest in question. The Marshal's certificate issued under rules 58 and 59 constitute a complete answer to this ground of Law. I need not therefore deal with the legal position on which argument was advanced by learned
15 counsel for the applicants by reference to the case of *Rolimpey Centrala Handlu Zagranicznego, Willy Bruns and Kamstra (Hull) Ltd., v. Prins Bernhard (owners)*, [1964] P. p. 117 regarding the consequences of a plaintiff's failure to follow the prescribed method of serving a writ against a ship which is by nailing or
20 affixing it to the mast or some other conspicuous place.

The last point relates to the security bond given in pursuance to the condition contained in paragraph 3(c) of the order herein-above set out. This security was in the following form:

25 "To:-The Registrar of the Supreme Court of Cyprus. WHEREAS by an Order of the Court made in the above action on 12th May 1982, it was ordered that a warrant for the arrest of the Ship "MAHEE" be issued.

NOW We, Chrysses Demetriades & Co., of Limassol, hereby give security in the sum of C£3,000.—for which
30 we are to be answerable to the Registrar of the Supreme Court for the issue of the said Order.

Dated this 12th day of May, 1982.

(Signed) CHRYSSES DEMETRIADES & CO.

Witnesses:-"

35 This is the kind of form of a security bond which has been used under the Civil Procedure Rules and the Admiralty Rules for the issue of interim orders when direction for the filing

of a security bond is given as a prerequisite to the issue of such an order. The omission of a reference to the words "to be answerable in damages to the defendant ship or her owner" does not vitiate the warrant as it goes without saying that in such a security bond the relevant terms of the warrant for the arrest in respect of which it was given should be considered as incorporated therein by the inclusion of the term "for the issue" of such order, and that a person who has given same is answerable in damages to the defendant ship and her owners against whom such order was made, otherwise it would be meaningless as the Registrar has no claim as such against a person on whose behalf the security bond is filed. This ground therefore should also fail. 5 10

I need not deal, however, with the question of the increase of the amount of £3,000.—issued as security as being inadequate as the parties have agreed to increase same to £8,000.—in respect of which a new security bond has been given on the following terms which clarifies the position and whose terms are as follows: 15

"WHEREAS by an Order of the Court made in the above action on the 4th day of June, 1982, it was ordered that the above named Plaintiff give additional security in a total amount of £8,000.—, for maintaining the order of arrest of the Defendant Ship made in the above action on the 12th May, 1982. 20

Now We, Chrysses Demetriades & Co., Law Office, of Limassol hereby give security in the total sum of £8,000.— (Eight thousand Pounds) up to which amount we undertake to be answerable in damages to the Defendant Ship and her owners for the issue of the said Order of arrest. 25
Dated this 5th June, 1982. 30

(Signed) CHRYSSES DEMETRIADES AND CO

Witnesses:—"

I need only say that this clearer form may be followed in the future in order to avoid any unnecessary discussions.

For all the above reasons the motion to discharge this warrant of arrest is dismissed and same remains in force as ordered. Costs in cause. 35

Application dismissed. Costs in cause.