

1983 June 21

[SAVVIDES, J.]

ANDREAS SYLVESTROS LTD..

Plaintiffs

v.

ADRIATICA DE NAVIGATIONE SP.A DIC/TR AS.
(THROUGH THEIR AGENTS IN CYPRUS A.L.
MANTOVANI SONS LTD. OF LIMASSOL) AS
OWNERS AND/OR CHARTERERS OF THE SHIP
"SERENISSIMA EXPRESS".

Defendants

(Admiralty Action No. 154/82)

Carriage of goods by sea—Claim for goods short-landed—No bill of lading produced—Liability of ship owners to be considered under their common law duty as carriers of goods—Loss occurring while the goods were on board the ship and in the control and possession of the ship-owners who are liable for such loss

5 The plaintiffs were a trading company in Cyprus and the defendants were the owners of the ship "SERENISSIMA EXPRESS". The plaintiffs loaded on the said ship at Livorno two containers containing 1,338 cartons of electric fans which the defendants undertook to carry and deliver to plaintiffs at 10 Limassol. The containers were properly sealed before loading. The ship arrived in Limassol and discharged the containers on 17.8.1981. Upon discharge it was found by the Customs Authorities that the seals of one of the two containers were 15 missing. After the containers were transmitted to a bonded warehouse, the contents of the two containers were destuffed under proper customs supervision and it was found that goods to the value of £421.975 mils were missing: and hence this 20 action for £421.975 mils as damages for short-landed goods. No bill of lading has been produced.

Held, that since no bill of lading has been produced the responsibility of the defendants has to be considered under

their common law duty as carriers of goods; that on the evidence the loss occurred while the goods were on board the ship and in the possession and control of the defendants, who are liable for such loss and that the amount claimed by the defendants as damages is duly warranted by the evidence; 5
therefore judgment will be given for plaintiffs against the defendants for £421.975 mils with legal interest and costs.

Judgment for plaintiffs as above.

Cases referred to:

Yiannakouri and Another (No.3) v. Cyprus Sea Cruises (Limassol) Ltd. (1965) 1 C.L.R. 397; 10

Baxter's Leather Company v. Royal Mail Steam Packet Company [1908] 2 K.B. 626 C.A. at p. 630;

Paterson Steamship v. Canadian Wheat [1934] A.C. 538;

Beaumont-Thomas v. Blue Star Line [1939] 3 All E.R. 127; 15

Domestica Ltd. v. Adriatica and Another (1981) 1 C.L.R. 85.

Admiralty action.

Admiralty action for the sum of £421.975 mils as damages for short-landed goods from the ship "Serenissima Express".

N. Michaelides for P. Angelides, for plaintiffs. 20

No appearance for defendants.

Cur. adv. vult.

SAVIDES J. read the following judgment. Plaintiffs by this action claim against the defendants the sum of £421.975 mils, as damages for short-landed goods from the ship "SERENISSIMA EXPRESS". The defendants entered an appearance in this action and on the 14th October, 1982, directions were made for pleadings to be exchanged between the parties. Plaintiffs filed their petition but counsel for the defendants failed to file his answer within the prescribed period. When the case came up before the Court for further directions, counsel for plaintiffs applied orally, under the Cyprus Admiralty Rules, for judgment by default of answer. Such application was fixed for hearing on the 10th January, 1982, when counsel for the defendants appeared and applied for an adjournment asking at the same 30
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time for extension of time to file his answer. Counsel for

plaintiffs did not object and an order was made extending the time for filing the answer, with directions that if the defendants fail to file their answer within the extended period, the application for judgment by default was to proceed against them and
5 the action was adjourned to the 1st February, 1983. The defendants failed to file any answer and failed to appear on the date the action was fixed for proof and counsel for applicants proceeded to prove his case against the defendants.

The facts of the case are briefly as follows:

10 The plaintiffs are a trading company in Cyprus and the defendants are the owners of the ship "SERENISSIMA EXPRESS". The plaintiffs loaded on the said ship at Livorno, two containers containing 1,338 cartons of electric fans which the defendants undertook to carry and deliver to plaintiffs at
15 Limassol. The containers were properly sealed before loading. The ship arrived in Limassol and discharged the containers on 17.8.1981. Upon discharge, it was found by the Customs Authorities that the seals of one of the two containers were missing. After the containers were transmitted to a bonded
20 warehouse, the contents of the two containers were destuffed under proper customs supervision and it was found that the following goods were missing: 15 cartons x 2 pieces of Article No. TS - 1617. The Customs issued a certificate in that respect which was produced as exhibit 2. A survey was carried out on
25 the 21st August, 1981 by an authorised surveyor and his report was produced as exhibit 1. According to such report, such goods were missing and the nature and the cause of loss is described as "pilferage". The value of the goods is given as equivalent to Cyprus Pounds £421.975 mils. No bill of lading
30 has been produced in this case. Therefore, the responsibility of the defendants has to be considered under their Common Law duty as carriers of goods.

In *Yiannakouri and Another (No. 3) v. Cyprus Sea Cruises (Limassol) Ltd.* (1965) 1 C.L.R. 397, Josephides, J. after referring
35 to the cases of *Baxter's Leather Company v. Royal Mail Steam Packet Company* [1908] 2 K.B. 626, C.A. at p. 630, *Paterson Steamship v. Canadian Wheat* [1934] A.C. 538, *Beaumont-Thomas v. Blue Star Line* [1939] 3 All E.R. 127 and to Carver on Carriage of Goods by Sea, 10th Edition, concluded
40 as follows at page 413:

"In short, shipowners are not strictly speaking common carriers, but they are under the same kind of liability as common carriers unless that liability is cut down by a special contract. In this case I hold that the defendants were under the same kind of liability as common carriers". 5

The exposition of the law as laid down in the above case, was followed in the *Domestica Ltd, v. Adriatica and Another* (1981) 1 C.L.R. 85, in which A. Loizou, J. found that the damage complained of was clearly caused whilst the goods were on board the ship and in the possession and control of the defendants who were found liable for breach of their common law duty as carriers. Reference is made in that case to Carver Carriage of Goods by Sea, 12th Edition, vol. 1 page 19, where the following is stated at p. 97: 10

"Where, then, a shipowner receives goods to be carried for reward, whether in a general ship with goods of other shippers, or in a chartered ship whose services are entirely at the disposal of the one freighter, it is implied in common law, in the absence of express contract - 15

That he is to carry and deliver the goods in safety, answering for all loss or damage which may happen to them while they are in his hands as carrier: 20

Unless that has been caused by some act of God, or of the King's enemies; or by some defect or infirmity of the goods themselves, or their packages; or through a voluntary sacrifice for the general safety; 25

And, that those exceptions are not to excuse him if he had not been reasonably careful to avoid or guard against the cause of loss, or damage; or has met with it after a departure from the proper course of the voyage; or, if the loss or damage has been due to some unfitness of the ship to receive the cargo, or to unseaworthiness which existed when she commenced her voyage." 30

On the evidence before me I am satisfied that the loss occurred while the goods were on board the ship and in the possession and control of the defendants who are liable for such loss and 35

that the amount claimed by the defendants as damages is duly warranted by the evidence before me.

In the result, I give judgment for plaintiffs against the defendants for £421.975 mils with legal interest from today and
5 costs.

*Judgment for plaintiffs for £421.975 mils
with costs.*