

1984 November 19

[TRIANTAFYLIDES, P.; A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, JJ.]

ALKOSTAR SHIPPING CO. LTD.,

Appellants-Defendants.

v.

LA SOCIETE MAURITANIENNE D' ASSURANCES ET
DE REASSURANCES,

Respondents-Plaintiffs.

(Civil Appeal No. 6628).

Arbitration—Arbitration clause—Stay of proceedings—Section 8 of the Arbitration Law, Cap. 4—Discretion of the Court—Principles applicable—Refusal to stay proceedings on the ground that the time for the commencement of arbitration proceedings had lapsed whereas it had not—Set aside as it has not been based on the actually existing at the material time situation—Stay of proceedings ordered by Court of Appeal.

This was an appeal against the dismissal of an application for an order under section 8* of the Arbitration Law, Cap. 4, staying the proceedings in an admiralty action. The refusal to make an order under section 8, above, appeared to have been based, mainly, on the view that the time for the commencement of the arbitration proceedings had lapsed and that the commencement of such proceedings was not possible without an extension of time being agreed to by the appellants against whom the respondents had the claim which gave rise to the filing of the action. The trial Judge, also, found that there was discouragement of the respondents by the appellants to proceed to arbitration due to refusal of the appellants to agree to an extension of time for this purpose. Actually, however, at the time when the admiralty action concerned was filed the time for the commencement of arbitration proceedings had not yet lapsed and

* Section 8 is quoted in full at p. 851 post.

no extension of time was, therefore, necessary in order to enable the respondents to take steps for the setting in motion of the arbitration process

Held, (1) that if it was not convenient for the respondents to take steps for the setting in motion of the arbitration process within the time available before the lapse of the relevant period that is a situation which was entirely different from the basis on which the trial Judge reached his decision which is challenged by this appeal, and that, therefore, the refusal of the trial Judge to stay the proceedings must be set aside since it has not been based on the actually existing at the material time situation

(2) That bearing in mind all the relevant principles, as regards the exercise of the discretionary powers in relation to granting a stay of proceedings in an action in order to enable a party to refer the dispute to arbitration, this is a proper case in which to make, and it is hereby made, an order for the stay of the proceedings in the admiralty action in question, under section 8 of Cap 4

Appeal allowed

Cases referred to 20

Skahotou v Pelckanos (1976) 1 C L R 251,

Heyman v Darwins Ltd [1942], 1 All E R 337

Appeal.

Appeal by defendant against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) dated the 25th October, 1983 (Admiralty Action No 404/78) whereby his application for an order under section 8 of the Arbitration Law, Cap. 4, staying the proceedings in the above Admiralty Action was dismissed

L. Papaphilippou, for the appellants. 30

C. HadjiIoannou, for the respondents.

TRIANAFYLIDIS P gave the following judgment of the Court This is an appeal from the judgment of a Judge of this Court by means of which there was dismissed an application for an order under section 8 of the Arbitration Law, Cap. 4, staying the proceedings in admiralty action No 404/78. 35

The said section 8 reads as follows:

5 “8. If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the arbitration agreement or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that Court
10 to stay the proceedings, and that Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to
15 do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings”.

20 The refusal of the trial Judge to make an order under section 8, above, appears to have been based, mainly, on the view that the time for the commencement of the arbitration proceedings had lapsed and that the commencement of such proceedings was not possible without an extension of time being agreed to by the appellants against whom the respondents had the claim which gave rise to the filing of the aforesaid action.

25 The learned trial Judge, after having expounded at length and correctly, indeed, the relevant legal principles, proceeded, on the basis of his aforementioned view, to find that there was discouragement of the respondents by the appellants to proceed to arbitration due to refusal of the appellants to agree to an extension of time for this purpose.

30 Actually, however, at the time when the admiralty action concerned was filed the time for the commencement of arbitration proceedings had not yet lapsed and no extension of time was, therefore, necessary in order to enable the respondents to take steps for the setting in motion of the arbitration process.

35 If it was not convenient for the respondents to do so within the time available before the lapse of the relevant period that is a situation which was entirely different from the basis, as aforesaid, on which the trial Judge reached his decision which is challenged by this appeal.

We have, therefore, to set aside the refusal of the trial Judge to stay the proceedings in the admiralty action since it has not been based on the actually existing at the material time situation.

The next thing which we had to consider was whether we should order that the application for stay of proceedings should be heard again by another Judge of this Court or whether we should exercise ourselves the discretionary powers which the trial Judge could have exercised on the basis of the correct situation; and we have decided to adopt the latter course.

We do not agree with counsel for the respondents that there exists no real dispute between the parties; on the contrary, on the face of the record, there exists, in our opinion, a dispute which could be referred to arbitration.

Bearing in mind all the relevant principles as regards the exercise of the discretionary powers in relation to granting a stay of proceedings in an action in order to enable a party to refer the dispute to arbitration (see, inter alia, *Skaliotou v. Pelekanos*, (1976) 1 C.L.R. 251, and *Heyman v. Darwins Ltd.*, [1942] 1 All E.R. 337), we hold that this is a proper case in which to make, and we do make, an order for the stay of the proceedings in the admiralty action in question, under section 8 of Cap. 4.

As regards costs we have decided that the respondents have to pay to the appellants both the costs before the trial Judge and in this appeal.

Appeal allowed.