

1985 January 30

[A. LOIZOU, J.]

MARIO BOTTEGHI S.P.A.,

Plaintiffs,

v.

1. BOLT HEAD NAVIGATION COMPANY LTD.

2. M/V MARANAR,

Defendants.

(Admiralty Action No. 27/85).

Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/1963)—Ship not within the jurisdiction but flying the Cyprus flag and owned by a company registered within the jurisdiction—Claim for goods and materials supplied to ship—Ship escaped from lawful arrest effected by a warrant issued by a foreign Court—Plaintiff considered as having an interest in the ship in the sense of section 30 of the above Law—Order prohibiting any dealing with the ship made under the said section 30 of the Law upon an ex parte application, the Court keeping an open mind for re-consideration of the position if called upon by the defendant—Duration of the order. 5 10

Injunction—Mareva injunction—Section 32 of the Courts of Justice Law, 1960 (Law 14/60)—Principles applicable—Whether a Mareva injunction can be granted in relation to registration and ownership of a ship. 15

Upon filing an action against the defendants for the sum of Italian lire 175,564.500 for goods and/or materials and/or spare parts supplied to the defendant 2 ship the plaintiffs, also, filed an ex parte application praying for: 20

“(a) An order of the Honourable Court restraining and/or prohibiting defendants 1 their servants or agents from selling, transferring, mortgaging, alienating or

charging in any way the defendant ship MARANAR, or deleting same from the Registry of Cyprus ships pending the hearing and final determination of this action and/or until further order of this Court.

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(b) An order of the Honourable Court restraining and/or prohibiting the defendants 1, their servants or agents from dealing with the defendant ship MARANAR or any share thereof in any way whatsoever, pending the hearing and final determination of this action and/or until further order of this Court."

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This application was based on section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law No. 45 of 1963) and section 32 of the Courts of Justice Law, 1960, (Law 14 of 1960).

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In support of the application the plaintiff mainly contended that defendants 1, who were the owners of defendant 2 ship, flying the Cyprus flag, had no other assets within the jurisdiction; that the claim was agreed and accepted by the defendants; that due to the default of the defendants to pay the amount claimed or part thereof, the plaintiffs commenced proceedings against the defendant 2 ship in the Court of Livorno Italy and on the 23rd November, 1984 MARANAR was put under arrest; that the defendant did nothing to bail out the said ship and whilst under arrest between 18th and 19th December 1984 she escaped from Livorno port thus avoiding the arrest and the plaintiffs claim that the defendants have applied to delete the said ship from Cyprus Registry and alienate same; and that if such an event occurs the claim of the plaintiffs cannot in any way be remedied as the nature thereof does not in law create a maritime lien that may follow the vessel and therefore the plaintiffs would suffer irreparable harm.

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Held, that on the particular facts of this case it is in the interests of justice to grant an order under section 30 of Law 45/63 as applied for and having an open mind for re-consideration of the position if called upon by the defendants after hearing what has to be said by them; that the narrow ground upon which this order is granted

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stems from the fact that the defendant ship had escaped from lawful arrest effected on the strength of a warrant issued by a Court, apparently having jurisdiction in the matter and in the circumstances the applicants can be considered as having an interest in the ship in the sense of section 30 of the Law; that giving effect to the words “make an order prohibiting for a time specified any dealing with a ship or any share therein” and in particular the term “for a time specified” in section 30 of Law 45/63 the order under section 30 prayed for will be made until further order, but the specified time during which it will be in force will be determined at the hearing of the application which may take place if the respondents call upon this Court to discharge such order.

Held, further, after dealing with the principles governing the making of a Mareva injunction under section 32 of the Courts of Justice Law, 1960 (Law 14/60), that by their very nature ships sailing from port to port naturally incur liabilities that may render them the subject of arrest, appraisalment and sale and other encumbrances in other jurisdictions; that in such circumstances an injunction may not be of any effect vis a vis such claimants with different priorities; that bearing in mind that the jurisdiction of a Court in granting remedies such as mareva injunction should not be exercised in vain, this Court has come to the conclusion that even if the registration and ownership of a ship could be the subject of an injunction under section 32 of Law 14/60 it would not be prepared to exercise its discretion if it had one, in granting same; and that, therefore, the application to the extent that it is based on section 32 of Law 14/60 must be dismissed.

Application granted.

Observations: It would be most desirable if the appropriate Authorities in Cyprus considered the need for a revision of our section 32 of the Courts of Justice Law, 1960 along the lines the corresponding provision of the English Supreme Court of Judicature (Consolidation) Act, 1925 was revised by

means of s. 37(3) of the Supreme Court Act, 1981.

Cases referred to:

- 5 *Tokio Marine v. Fame Shipping Co. Ltd.* (1976) 1
 C.L.R. 333;
- Eastern Mediterranean Maritime Ltd. v. Nava Dock and
 Shipping Co. Ltd.* (1975) 5 J.S.C. 666;
- Verolme Dock and Ship Building Co. v. Lamant
 Shipping Co. Ltd.* (1975) 11 J.S.C. 1618;
- 10 *Girling Konzern Allgemeine Versicherungs A.G. (No. 1)
 v. The Ship Dimitrakis* (1976) 1 C.L.R. 385;
- London Overseas (Sugar) Co. and Another v. Tempest Bay
 Shipping Co. Ltd. and Others* (1978) 1 C.L.R. 367;
- 15 *Algemeen Vrachtkantoor B.V. and Others v. Sea Spirit
 Navigation Co. Ltd.* (1976) 1 C.L.R. 368;
- Ship "Georghios C" and Another v. Mitsui Sugar Co. and
 Another* (1976) 1 C.L.R. 105;
- Reederei Schulte and Bruns Baltic v. Ismini Shipping Co.
 Ltd.* (1975) 1 C.L.R. 433; (1976) 1 C.L.R. 132;
- 20 *Nemitsas Industries Ltd., v. S.S. Maritime Ltd. and Others*
 (1979) 1 C.L.R. 302;
- Grade One Shipping Co. Ltd. (No. 1) v. The Cargo on
 Board the Ship "Crios II"* (1976) 1 C.L.R. 323;
- 25 *Consolidated Glass Works Ltd. v. Friendly Pale Shipping
 Co. Ltd. and Another* (1977) 1 C.L.R. 44;
- Cyprian Seaways Agencies Ltd. v. Chaldeos Shipping Co.
 Ltd. and Another* (1977) 1 C.L.R. 165;
- Constantinides v. Makriyiorghou and Another* (1978) 1
 C.L.R. 585;
- 30 *Essex Overseas Trade Services Ltd. v. The Legent Shipping
 Co. Ltd. and Another* (1981) 1 C.L.R. 263;
- Rena "K"* [1971] 1 All E.R. 397 at p. 417;

Allen v. Jambo Holdings Ltd. [1980] 1 W.L.R. 1252;

Clipper Maritime Company of Monrovia v. Mineralimport-export (The Marie Leonhardt) [1981] 2 Lloyd's L.R. 458;

La Brance and Argentino [1908] 77 L.J. (P.) 91. 5

Application.

Application by plaintiffs for an order restraining and/or prohibiting defendants No. 1 their servants or agents from selling, transferring, mortgaging, alienating or charging in any way the defendant ship Maranar or deleting same from the Registry of Cyprus Ships pending the hearing and final determination of this action. 10

C. Erotokritou with K. Soulioti (Miss),
for the applicants.

Cur. adv. vult. 15

A. LOIZOU J. read the following judgment. The plaintiffs /applicants, an Italian firm have filed this action against defendants 1, a limited company registered in Cyprus, and defendant 2, M/V MARANAR, whose whereabouts at present are unknown and their claim is:- 20

(a) The sum of Italian Lire 175,564.500 or its equivalent in Cyprus pounds for goods and/or materials and/or spare parts supplied to the defendant ship MARANAR and for repairs carried out and services rendered to her at the ports of Marina Di Carrara and Livorno between the 4th October and 30th November, 1984, at the request of the defendants 1 their servants or agents. 25

(b) Legal interest and

(c) Costs. 30

Upon the filing of the said action they also filed the present ex parte application by which they pray for:-

“(a) An order of the Honourable Court restraining and/or prohibiting defendants 1 their servants or agents from selling, transferring, mortgaging, alienating or charging in any way the defendant ship MARANAR, 35

or deleting same from the Registry of Cyprus Ships pending the hearing and final determination of this action and/or until further order of this Court.

- 5 (b) An order of the Honourable Court restraining and/or prohibiting the defendants 1 their servants or agents from dealing with the defendant ship MARANAR of any share thereof in any way whatsoever, pending the hearing and final determination of this action and/or until further order
10 of this Court.
- (c) Any other relief as the Court may deem fit.
- (d) Costs”.

15 This application is based on section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law No. 45 of 1963), section 32 of Law No. 14 of 1960), the Cyprus Admiralty Jurisdiction Order, 1893, rules 203 and 237, the general practice of the Admiralty Division of the High Court of Justice in England and the
20 practice and inherent powers of the Supreme Court of Cyprus in its Admiralty Jurisdiction.

The relevant facts relied upon appear in the affidavit filed on behalf of the plaintiffs/applicants and the documents attached thereto. It is defined as follows:-

- 25 “3. The defendants 1 are the owners of the defendant 2 ship flying the Cyprus flag and to the best of my knowledge and belief the defendants 1 have no other assets within the jurisdiction.
- 30 4. The claim of the plaintiffs against the defendants is for Italian Lire 175,564.500 or its equivalent in Cyprus pounds for goods and/or for repairs carried out and services rendered to her at the ports of Marina Di Carrara and Livorno between the 4th October and 30th November, 1984 at the request of the
35 defendants their servants or agents, as it appears in the writ of summons repeated and adopted herein.
5. The plaintiffs claim was agreed and accepted by the

defendants and the relevant invoices were signed and stamped by the master of the defendant 2 ship. It is now shown to me invoices Nos. 727/84 and 728/84 both dated 16.11.84 and invoice No. 743/84 dated 28.11.84, in Italian language translated into English attached hereto and marked 'NK1', 'NK2' and 'NK3' respectively. The total sum of the said invoices is Italian Lire 175,564.500, as aforesaid.

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6. Due to the default of the defendants to pay the said amount or part thereof, the plaintiffs commenced proceedings against the defendant 2 ship in the Court of Livorno, Italy and on the 23rd November, 1984 MARANAR was put under arrest.

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7. The defendants did nothing to bail out the said ship and whilst under arrest between 18th and 19th December, 1984 she escaped from Livorno port thus avoiding the arrest and the plaintiffs claim. It is now shown to me in originals and/or copies and/or photostat copies the following documents attached hereto and marked:-

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(a) Order of the Court of Livorno dated 23rd November, 1984 in Italian language with its English translation 'NK4'.

(b) Cable from the Harbour Master of Livorno to the Registrar of Cyprus Ships in Italian language with its English translation 'NK5'.

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(c) Affidavit of Mrs Agni Morosan of Limassol, translator, dated 25th January, 1985, 'NK6'.

(d) Bundle of cable and telexes exchanged between the plaintiffs and the Registrar of Cyprus 'NK7'.

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To the contents of said documents the plaintiffs will refer at the hearing of their full meaning and effect.

8. According to my information from the Registrar of Cyprus Ships the defendants have applied to delete the said ship from the Cyprus Registry and alienate same. If such an event occurs I verily believe that the claim of the plaintiffs cannot in any way be remedied

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as the nature thereof does not in law create a maritime lien that may follow the vessel and therefore the plaintiffs will suffer irreparable damages”.

5 It may be added that after the escape of the defendant ship from arrest as mentioned earlier in this judgment, the sole director and the secretary of defendants 1, resigned on the 11th January 1985 and they were replaced by Evangelina Kamano and Sergio Monti respectively. both of 11 Zimianzo, La Corona, Spain.

10 It is the case for the plaintiffs/applicants that an order under section 30 of Law 45 of 1963, could be granted as they are interested persons in the sense of the said section, having by the institution of the proceedings in Italy and the arrest of the ship by virtue of a Court order
15 issued there, a statutory lien on the said ship.

Section 30 reads as follows:-

“30. The High Court may, if the Court thinks fit (without prejudice to the exercise of any other power of the Court), on the application of any interested
20 person make an order prohibiting for a time specified any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions the Court may think just, or may refuse to make the order, or may discharge the order when
25 made, with or without costs, and generally may act in the case as the justice of the case requires and the Registrar, without being made a party to the proceedings, shall on being served with an official copy thereof obey the same”.

30 This section came under judicial interpretation in a number of cases. In the case of *Tokio Marine v. Fame Shipping Company Ltd.*, (1976) 1 C.L.R. 333, Malachos J., reviewed a number of authorities which are very few
indeed in respect of this provision being a very old one
35 and discharged the order made earlier under section 30 on the ground that the said section does not apply to mere creditors or claimants of damages against the owner of the ship and that “interested person” in this section means a person who is interested in the ship herself. He

may be a legatee or heir or creditor. He went on further to say that whether a claimant is an "interested person" within the meaning of the said section is a question depending on the facts of the particular case. He referred to the cases, *Eastern Mediterranean Maritime Ltd., v. Nava Shipping Company Ltd.*, (1975) 5 J.S.C., 666 and *Verolme Dock and Ship Building Company Ltd., v. Lamant Shipping Company Limited* (1975) 11 J.S.C. 1618 in which he reconsidered as regards the approach taken by him therein regarding the application of section 30. The *Tokio Marine* case was followed in the case of *Gerling Konzern Allgemeine Versicherungs A. G. (No. 1) v. The Ship Dimitrakis* (1976) 1 C.L.R. p. 385. The same approach is to be found in the case of *London Overseas (Sugar) Co., and another v. Tempest Bay Shipping Company Ltd., and others* (1978) 1 C.L.R. p. 367.

I subscribe fully to the interpretation given to section 30 in the above cases and without in any way attempting to depart from the principles laid down therein I have come to the conclusion that on the particular facts of the present case it is in the interests of justice to grant an order under section 30 as applied for, on this ex parte application and having an open mind for re-consideration of the position, if called upon by the defendants, after hearing what has to be said by them.

In fact I dealt with section 30 in the case of *Algemeen Vrachtkantoor B. V. and others v. Sea Spirit Navigation Company Limited* (1976) 1 C.L.R. 368 and referred in that respect inter alia to the cases of *The Ship "Georghios C", and Another v. Mitsui Sugar Ltd., and Another* (1976) 1 C.L.R. 105; *Reederei Schulte and Bruns Baltic, v. Ismini Shipping Company Limited*, (1975) 1 C.L.R. 433.

The narrow ground upon which I grant this order stems from the fact that the defendant ship had escaped from lawful arrest effected on the strength of a warrant issued by a Court, apparently having jurisdiction in the matter and in the circumstances the applicants can be considered as having an interest in the ship in the sense of section 30 of the Law.

As regards section 32 of the Courts of Justice Law 1960

(Law No. 14 of 1960) also invoked by the applicants, I had the occasion to deal with it in the case of *Nemitsas Industries Ltd., v. S. S. Maritime Limited and Others* (1979) 1 C.L.R. 302 which referred to assets, namely
5 money within the jurisdiction in respect of which there was reasonable apprehension that they might be transmitted or removed out of the jurisdiction.

This section was applied in the same way as section 45 of the Supreme Court of Judicature (Consolidation) Act
10 1925 on the basis of which *Mareva Injunctions* were extensively granted in England in recent years. In fact in order to remove any doubts as to whether the power to prevent the removal of assets out of the jurisdiction by means of a *Mareva* injunction extended to cases where
15 the defendant was a domiciled, resident or present within the jurisdiction, a statutory amendment was effected to it by section 37, subsection (3) of the Supreme Court Act 1981 (see Halsbury's Statutes of England, third edition volume 51, Continuation volume 1981 p. 633).

20 It would be most desirable if the appropriate Authorities in Cyprus considered the need for a revision of our corresponding statutory provision along the same lines.

Our section 32 came under judicial interpretation in a number of cases since the *Nemitsas* case (supra). Reference
25 may be made in particular to the cases of *Grade One Shipping Co., Ltd., (No. 1) v. The Cargo on Board the Ship "Crios II"* (1976) 1 C.L.R. 323; *Consolidated Glass Works Ltd., v. Friendly Pale Shipping Co., Ltd., and Another* (1977) 1 C.L.R. p. 44; *Cyprian Seaways Agencies Ltd., v. Chaldeos Shipping Co., Ltd., and Another* (1977)
30 1 C.L.R. 165; *London and Overseas (Sugar) Co. and Another v. Tempest Bay Shipping Co. Ltd., and Others* (1978) 1 C.L.R. 367, where Malachtos J., following the *Consolidated Glass Works Ltd.*, (supra) held that "The
35 application of s. 32 should not be readily extended so that to cover assets other than cash money and especially any dealing with a ship or any share therein". *Loizos Constantinides v. Gregorios Makryiorghou and Another* (1978) 1 C.L.R. 585, where an appellate bench of this
40 Court reviewed the authority on the subject but not in

relation to ships. Reference may also be made to the cases of *Essex Overseas Trade Services Ltd., v. The Legent Shipping Co., Ltd., and another* (1981) 1 C.L.R. 263, in which case a Mareva Injunction was refused.

The existence of a power to grant a Mareva Injunction under section 45 of the Supreme Court of Judicature (Consolidation) Act 1925, has been established by a series of decisions of the Court of Appeal as pointed out by Brandon J., in the *Rena "K"* [1971] 1 All E.R. 397 at p. 417 in which he said that a Mareva Injunction is granted in a case where a plaintiff brings an action in U.K. against a foreign defendant and the latter has money or chattels within the jurisdiction which, if he were not prevented from doing so he would be free to remove out of the jurisdiction before the plaintiff could bring an action to trial and if successful obtain and enforce a judgment against him.

Mareva Injunctions were granted as regards goods as well as money within the jurisdiction, and the jurisdiction was also applied to assets such as an aircraft as in the case of *Allen v. Jambo Holdings Ltd.*, [1980] 1 Weekly Law Reports, 1252 and also where the defendants assets included a ship within the jurisdiction as in the case of *Clipper Maritime Company of Monrovia v. Mineralimport-export (The "Marie Leonhardt")* [1981] 2 Lloyds Law Reports p. 458.

I have not, however, been able to trace any authority to the effect that a ship not within the jurisdiction but registered and owned by a company registered within the jurisdiction can be the subject of a Mareva Injunction, under a provision corresponding to section 32 of our Courts of Justice Law 1960. By their very nature ships sailing from port to port naturally incur liabilities that may render them the subject of arrest, appraisalment and sale and other encumbrances in other jurisdiction. In such circumstances an injunction may not be of any effect vis a vis such claimants with different priorities. Bearing in mind that the jurisdiction of a Court in granting such remedies should not be exercised in vain, I have come to the conclusion that even if the registration and ownership of a ship could be the subject of an injunction under

section 32 of the Law. I would not be prepared to exercise my discretion if I had one, in granting same. I would therefore refuse the present application to the extent that is based on the said section.

5 Before concluding I would like, as regards section 30
of the Merchant Shipping (Registration of Ships, Sales
and Mortgages) Law, 1963, to refer to the case of *The*
Ship "Georghios C" and Another v. Mitsui Sugar and
10 *Another* (1976) 1 C.L.R. 105. The Full Bench of this
Court explained in this case that though there appeared
from the case of *La Brance and Argentino* [1908] 77 L.J.
(P.) 91, that an order under section 30 of the Merchant
Shipping Act 1894, in England was made until further
15 order, same was done as shown by the report of that
case at only an early ex parte stage of the proceedings,
it held the view that in the light of the clear wording of
section 30 and in the light of all relevant considerations
in that case it should vary the order which was finally
made by the trial Judge, so as to limit its application until
20 the expiration of forty days from the delivery of the
judgment. It further pointed out that in the meantime
respondents in whose favour the order had been made,
could take all other necessary steps for the protection of
their interest, including expediting the trial of the action.

25 In the light of the above and giving effect to the words
"make an order prohibiting for a time specified any deal-
ing with a ship or any share therein" and in particular
the term "for a time specified" I shall make the order
under section 30 prayed for, until further order, but I
30 shall determine the specified time during which it will be
in force at the hearing of the application which may
take place if the respondents call upon this Court to
discharge such order.

35 Finally, I would like to quote from the case of *Reederei*
Schulte and Bruns Baltic Schiffahrts K.G. of Bremen v.
Ismini Shipping Co. Ltd. (1976) 1 C.L.R. 132, where
the Full Bench of this Court at p. 135 said the following:-

40 "Our own case-law has not yet fully defined the
situation in which an order under section 30 may
be made in the exercise of the relevant discretionary

powers; but from what is stated in the volume on the English Merchant Shipping Acts in the British Shipping Laws series (vol 11, para. 57, pp. 23-24) it appears that an order under the corresponding section of the English legislation is made quite rarely and only in rather special circumstances".

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In the result there will be an order as follows:

(a) An order restraining and/or prohibiting defendants 1 their servants or agents from selling, transferring, mortgaging, alienating or charging in any way the defendant ship "MARANAR" or deleting same from the Registry of Cyprus Ships pending the hearing and final determination of this action and/or until further order of this Court.

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(b) The said order to take effect upon the applicants giving C£ 10,000.—(Cyprus Pounds ten-thousands) security, to be answerable to the defendants for damages that they may suffer as a result of this order being found to have been wrongly in Law made.

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(c) The order is made returnable on Saturday the 2nd of February, 1985, at 9.30 a.m. for the defendants to appear and if they so decide to move the Court against the continuance in force of the order made to-day ex parte.

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Costs in cause.

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Order accordingly.