

1985 November 14

[A. LOIZOU, DEMETRIADES, STYLIANIDES, JJ.]

STAVROS MAKRIS LTD.,

Applicant,

v.

THE CYPRUS PORTS AUTHORITY,

Respondent.

(Application in Civil Appeal No. 7048).

5 *Appeal—Ex parte application for interim order prohibiting the respondent from expelling the appellants from the space they occupy until conclusion of the appeal against a decision whereby the trial Judge dismissed a similar application for an interim order—The question of the jurisdiction of the Court to grant the order applied for left open—As in any event in the circumstances the Court was not prepared to grant the interim order applied for.*

10 The appellants on the 14.8.85 filed an action in the D. C. of Nicosia claiming inter alia a declaration that they are contractual or statutory tenants of a space in the new port of Limassol. On the 14.9.85 they filed an application for interim order restraining the respondent Authority from leasing or in any other way changing the status quo of the relationship between them as regards the said space
15 in the new port of Limassol.

20 The respondent Authority opposed the application. The trial Judge dismissed the application on the ground that he had no territorial jurisdiction as the order applied for related to a duty free shop situate in the district of Limassol.

25 The appellants filed an appeal against the said decision and with it the present ex parte application for an interim order restraining the respondent Authority, its servants or agents from expelling the appellants from the

said space in the new port of Limassol until the conclusion of the Appeal or until further order.

Held, dismissing the application for interim order (1) Once on the merits of the case the Court is not in any event prepared to grant the injunction sought, there is no need to pronounce on the subject of the jurisdiction of the Court in this field. The matter of jurisdiction is left entirely open. 5

(2) In the circumstances there is no urgency in the matter as the judgment of this Court on appeal will not in any way become nugatory if the interim order prayed for is not granted. 10

Application dismissed.

Cases referred to:

Pickwick International Inc. (G.B.) Ltd. v. Multiple Sound Distributors Ltd. (Practice Note) [1972] 1 W.L.R. 1213; [1972] 3 All E.R. 384; 15

Djeredjian Ltd. v. The Chartered Bank (1965) 1 C.L.R. 130;

Grade One Shipping Ltd. v. The Cargo on Board the Ship "Crios II" (1976) 1 C.L.R. 363; 20

Grade One Shipping Company Owners of the Ship "Crios II" (No. 4) v. The Cargo on Board the Ship "Crios II" (1976) 1 C.L.R. 378;

Erinford Properties Ltd. and Another v. Cheshire County Council [1974] 2 All E.R. 448. 25

Application.

Application by appellants for an interim order prohibiting the respondent from expelling the appellants from the space they occupy in the new port of Limassol until the conclusion of their appeal or until further order. 30

L. Papaphilippou, for the appellants-applicants.

Cur. adv. vult.

5 A LOIZOU J. read the following judgment of the Court. This is an ex parte application by the appellants for an interim order prohibiting the respondent Authority, its servants or agents from expelling the appellants from the space they occupy in the new port of Limassol until the conclusion of their appeal or until further order.

10 The application is based on the Civil Procedure Rules, 0.48 r. 1 (ee), 11 and 12, 0.35 rs. 18 and 19, on the Courts of Justice Law 1960, (Law No. 14 of 1960), section 32, the Civil Procedure Law, Cap. 6, sections 4 and 9 and the case of *Erinford Properties Ltd., v. Cheshire County Council* [1974] 2 All E.R. 448; [1974] 2 W.L.R. p. 749.

15 The facts relied upon are set out in the accompanying affidavit and the documents attached thereto.

20 The sequence of events and the relevant facts are these. The appellants filed on the 14th August, 1985, in the District Court of Nicosia, action no. 7493/85, claiming a declaration that they are contractual or statutory tenants, of a space in the port of Limassol and that the proposed termination of the agreement between them and the respondent Authority dated the 12th July 1984, is unlawful and contrary to the terms of the agreements. They further
25 claimed for a declaration prohibiting the respondent Authority from taking any steps for their eviction from the above space. On the 14th September, 1985 they filed an interlocutory application for an interim order against the respondent Authority preventing them from leasing or in any
30 other way changing the status quo of the relationship between them as regards the space in the Port of Limassol. Upon direction by the Court same was served on the respondent Authority which appeared and contested the proceedings.

35 The learned Acting President who dealt with the matter expeditiously, dismissed the application with costs by his judgment, delivered on the 22nd October 1985, on the ground that he had no territorial jurisdiction on the matter as the interim order applied for related to the duty free

shop in question situate in the district of Limassol. He, however, considered the other question raised, namely whether the relationship created between the parties under the aforementioned agreement is that of a tenancy or licence. As against that decision the appellants filed an appeal and with it the present application which we considered it appropriate in the circumstances to be taken by the Court rather than by one of its members. 5

With the seven grounds of Law relied upon in the appeal every issue raised with the application is contested. That alone has made us cautious as regards the extent of what to say by way of reasoning of our present judgment inasmuch as having heard it *ex parte*, we did not have the advantage of an argument from the other side. We might, however, had we thought it necessary, hear even in the absence of counsel for the applicants, counsel for the respondent authority, so that the appellants' application could become what in *Pickwick International Inc. (G.B.) Ltd. v. Multiple Sound Distributors Ltd. (Practice Note)* [1972] 1 W.L.R. 1213, 1214; [1972] 3 All E.R. 384, was described as an opposed *ex parte* motion. We feel, however, that we should review the Case Law of this Court as regards the position regarding the jurisdiction of the Court to issue interim orders for the preservation of the status quo pending appeals. 10 15 20 25

In Djeredjian Ltd., v. The Chartered Bank (1965) 1 C.L.R. 130, this Court, though dismissing the appeal, directed that the interim order, which had been the subject thereof, continued until such time as the trial Court would go into the merits of it and give its final decision on it. 30

In Grade One Shipping Ltd., v. The Cargo on Board the Ship "Crios II" (1976) 1 C.L.R. 363 the question whether an interim order may and to what extent be granted urgently by a Judge of this Court who is going to sit as a member of the Full Bench in order to hear an appeal, and who is, also going, as a member of such Bench, to deal prior to the appeal with an interlocutory application by summons by means of which it is sought to preserve the status quo pending the determination of the appeal, was 35

left open by Triantafyllides, P., because, as he said he had decided that in any event, even if he had competence to do so, he would not be prepared to grant the order applied for. He further stressed that he was not deciding that that course was definitely excluded in Law—(as this might have to be dealt with when the interlocutory application by summons was to be heard)—and that he was not satisfied that that was a clear cut instance whether he would be justified to intervene by way of an interim measure.

10 In *Grade One Shipping Company Owners of the Ship "Crios II" (No. 4) v. The Cargo on Board the Ship "Crios II"* (1976) 1 C.L.R. 378, the matter was left open by the Full Bench of this Court.

In the case of *Erinford Properties Ltd., and Another v. Cheshire County Council* [1974] 2 All E.R. 448 relied upon by the applicant Company, Meggery, J., reviewed the situation as regards the jurisdiction of a trial Judge to grant an injunction after the dismissal of an action. It was held that where a Judge dismisses an interlocutory motion for an injunction, he has jurisdiction to grant the unsuccessful applicant an injunction pending an appeal against the dismissal and that it is not necessary for the applicant to apply to the Court of Appeal. It was from this last part of the statement of the Law and the dicta to be found in the case that this case was relied upon by counsel as an authority for the proposition that this Court has jurisdiction to grant an interim injunction for the purpose of preventing the Court of Appeal's decision from being rendered nugatory should that Court reverse the Judge's decision.

30 We need not, however, be concerned with the details of the judgment in the *Erinford case* as following the course taken by the Full Bench in the *Grade One (No. 4) case* (supra) once on the merits of the case we are not prepared to grant in any event the injunction sought, we see no necessity as at present advised, to pronounce on the subject of our jurisdiction in this field and we leave it entirely open.

On the totality of the circumstances before us we find that there is no urgency in the matter as the judgment of

this Court could in no way become nugatory if no interim order, as prayed for is granted. We have decided on the assumption that we have jurisdiction, to refuse the exercise of our discretion in the circumstances. We have followed this course of brevity as had we dealt with the numerous legal points raised in these proceedings we would have been deciding on an ex parte application on the issues relevant both to the appeal and to the action proper without the advantage of full argument. 5

We therefore dismiss the application with no order as to costs. 10

*Application dismissed
with no order as to costs.*