

1985 November 21

[A. LOIZOU, J.]

VENIERA NAVIGATION CO. LTD.,

Plaintiffs,

v.

SERTINA SHIPPING CO. LTD.,

*Defendants.**(Admiralty Action No. 337/84).*

Admiralty—Contract Law—Damages—S. 73(1) of the Contract Law, Cap. 149—Loss of profits—When recoverable as damages—Time charter—Breach of the contract by failing to deliver the ship—During the negotiations the defendants were informed that the plaintiffs needed the ship to carry cement in continuous trips and that they had reached agreement to that effect with various cement owners—In these circumstances plaintiffs are entitled to damages in the sense of loss of profits. 5

On or about the 21.1.1984 the plaintiffs agreed with the defendants and chartered the defendants' vessel "Evangelistria 1" for a period of one year. The plaintiffs during the negotiations disclosed to the defendants that they would use the ship to carry cement in continuous trips from Cyprus to South Lebanon and that they had reached relevant agreements with various cement owners. The defendants failed to deliver the ship and eventually as a result of such failure the present action was filed. The defendants failed to enter an appearance. By the present actions the plaintiffs claim 34,950 U.S. Dollars damages in the sense of losses of profits which, but for the defendants' breach of the time charter, they would have made. 10 15 20

The plaintiffs maintained that loss of profit is recoverable on the true construction of section 73(1) of our Contract Law, Cap. 149. 25

Held, that the issue of the recoverability of loss of profit was dealt by the Court in *Philippou Ltd. v. Josephy Hoyle and Son Ltd.* (1982) 1 C.L.R. 625 at 634 where it was held that loss of profit is not recoverable save in exceptional circumstances where the seller is held liable for loss of profits or expenses under a sub-sale, when his liability is based on the contemplation of the parties of the consequences of a breach of contract which depends on the knowledge actual or imputed of the seller at the time of the contract. The prerequisites for awarding such damages in this case exist.

*Judgment for 34,950 U.S. Dollars.
Costs against defendants.*

Cases referred to:

- 15 *E. Philippou Ltd. v. Josephy Hoyle & Son Ltd.* (1982)
1 C.L.R. 625.

Admiralty Action.

20 Admiralty action for damages and/or compensation for losses and/or losses of profits sustained due to the breach of a time charter party for the charter of the ship "Evangelistria 1" for a period of one year.

A. Theofilou, for the plaintiffs.

Cur. adv. vult.

25 A. IOIZOU J. read the following judgment. The plaintiffs claim against the defendant Company is for:

- 30 A. Damages and/or compensation for losses and/or losses of profits sustained due to the breach of a time charter party dated 21.1.84 for the charter of the Ship "Evangelistria 1", for a period of one year, which ship was never delivered despite the repeated demands and requests of the plaintiffs.
- B. 15,000.- U.S.A. Dollars paid as advance on signing the above charter party.

C. Interest.

D. Costs.

The defendant Company though duly served failed to enter an appearance and defend the proceedings hence this judgment in default thereof.

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On or about the 21st January 1984, the plaintiffs agreed with the defendants and chartered their vessel "Evangelistria 1", of which the defendants allegedly were the managers and/or charterers and/or persons in possession and/or control, for a period of one year and the said agreement was incorporated in a uniform time charter of that date, exhibit 1. It is the allegation of the plaintiffs that during the negotiations before reaching the said agreement the plaintiffs disclosed to the defendants that they would use the ship to carry cement in continuous trips from Cyprus to South Lebanon and they had reached the relevant agreements with various cement owners to start such trips on or about the 10th February 1984, carrying 800 tons of cement per trip at the freight of 13 U.S.A. Dollars per ton. The defendants failed to deliver the ship in spite of the repeated demands and requests of the plaintiffs and who in consequence thereof terminated the above charter-party on the 20th February 1984, with full reservation of their rights.

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On or about the 20th October, the defendants refunded to the plaintiffs the deposit paid to them by the plaintiffs which amounted to 15,000 U.S.A. Dollars and which had been paid on the 21st January 1984. The said deposit to be kept for the good execution of the charter-party. Due to the said breach of the charter-party by the defendants, the plaintiffs could not execute in time and or at all their agreements with the cargo owners mentioned in paragraph 2 of the Petition with the result that such agreements were cancelled by the cargo owners and the plaintiffs sustained damage in the sense of losses of profits which they would have otherwise made being as they allege in paragraph 4 of the petition, out of time and for a period of two months unable to substitute the vessel with another ship despite their efforts and/or being unable to obtain new contracts

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of carriage until 3rd April 1984, thus resulting an amount of 34,950 U.S.A. Dollars as follows:

	A. Earnings: For 12 trips X 10400:-U.S.A. Dollars	124800\$
	B. Costs: Fuel 12 trips X 1500:- U.S.A. Dollars	18000\$
5	Hire (57 days X 1050:- U.S.A. Dollars)	59850\$
	Port and other expenses	12000\$
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	TOTAL COSTS	89850\$
	TOTAL LOSSES	34950\$

10 The allegations contained in the statement of claim were substantiated on oath and by the evidence of Yiannakis Christodoulou Aravi, an employec of the plaintiff company. The plaintiffs maintained that these losses of profit is recoverable on the true construction of section 73(1) of
15 our Contract Law and in particular on its second part.

As regards loss of profit this Court had the opportunity of dealing with the matter in the case of *E. Philippou Ltd., v. Josephy Hoyle & Son Ltd.*, (1982) 1 C.L.R. 625 at p. 634 where it was held by reference to our Case Law and
20 that of England and India that loss of profit is not recoverable as a rule but only in exceptional cases where the seller is held liable for such loss of profits or expenses under the sub-sale, when his liability is based on the contemplation of the parties of the consequences of a breach of the contract
25 which depends on the knowledge actual or imputed, of the seller at the time of the contract. The prerequisites for awarding such damages in this case exist in the evidence adduced and which has remained uncontradicted.

In the result therefore there will be judgment for the plain-
30 tiffs for the equivalent in Cyprus pounds of the amount of 34,950 U.S. Dollars legal interest from to-day and costs.

*Judgment for 34,950 U.S.
Dollars with costs.*