

1987 February 16

[A LOIZOU J]

COMPANIA PORTUGUESA DE TRANSPORTES
MARITIME OF LISBON,

Plaintiffs,

v

SPONSALIA SHIPPING COMPANY LIMITED,

Defendants

(Admiralty Action No 44/87)

5 *Provisional order—Admiralty action in personam—Application for an order restraining defendants from alienating, charging or disposing of their interest in a ship under Cyprus flag, but not within the jurisdiction—Section 30 of the Merchant Shipping (Registration of Ships and Mortgages) Law 45/63—The term «interest in the ship» does not include mere money claims—Mareva injunction—Section 32 of the Courts of Justice Law 14/60—Such an injunction cannot be issued against a ship not within the jurisdiction—Section 4 of the Civil Procedure Law, Cap 6—It is not applicable when the property in question is not the subject—matter of the action*

10 *Mareva injunction—See provisional order ante*

Practice—Ex parte application—Respondent taking part in proceedings—Modern practice—Unhly of process

15 *Words and Phrases «Interest in a ship» in section 30 of the Merchant Shipping (Registration of Ships and Mortgages) Law 45/63—A mere money claim is not within the ambit of the term*

20 The liquidating committee of the plaintiffs, a company duly registered in Portugal, invited tenders for the sale of the company's ship M V «BAILUNDO». It was, however, specified that the price would not include «bunkers and unused lubricating oils which will be acquired by buyers at net market price»

25 The defendants purchased the said vessel and registered same in their name under the Cyprus flag, but, as they failed to pay the sum of P Escudos 5,978,914 S00, which was claimed as being the value of the said bunkers and oils, the plaintiffs brought the present action in personam, claiming the said amount and eventually applied ex parte for a provisional order restraining the defendants from alienating, charging or in any way disposing of their interest in the said ship until final determination of the action or until further order

Compania Maritime v. Sponsalia Shipping (1987)

The application was based on section 30 of Law 45/63, section 32 of Law 14/60, and section 4 of Cap. 6.

Held, *dismissing the application*: (1) The defendants, though not served with the application, came to know of it and were present at its hearing, taking part in order to assist the Court. This procedure has been described by Megarry J. in *Pickwick International Inc. (G.B.) Ltd. v. Multiple Sound Distributors Ltd and Another* [1972] 3 All E.R. 384 as an opposed *ex parte* motion and has been commended upon and described as the «modern and very sensible practice.» 5

(2) Section 30 of Law 45/63 has been held to apply to claims by persons having an interest in the ship itself, such as legatees, shareholders, heirs or creditors but not mere creditors or claimants of damages. Though the circle of claimants having an interest in the ship has not been closed, it is clear that the term «interest in the ship» means something more than a mere money claim, an ordinary creditor's claim. 10 5

(3) Section 32 of Law 14/60 has been judicially considered on numerous occasions. Though a *mareva* injunction can be granted as against ships within the jurisdiction, it cannot be granted in the circumstances of this case, where the ship is out of the jurisdiction (*Mario Botteghi S.P.A. v. Bolt Head Navigation Ltd. and Another* (1985) 1 C.L.R. 114 at p.124 cited with approval). 20

(4) The essence of section 4 of Cap. 6 is that an order thereunder is granted against property «being the subject of the action.»

*Application dismissed
with costs.* 25

Cases referred to:

Pickwick International Inc. (G.B.) Ltd. v. Multiple Sound Distributors Ltd. and Another [1972] 3 All E.R. 384;

Mario Botteghi S.P.A. v. Bolt Head Navigation Ltd. and Another (1985) 1 C.L.R. 114. 30

Application.

Ex parte application for a provisional order restraining the defendants from alienating, charging or in any way disposing of their interest in the vessel «Bailundo L» until the final

determination of the present action or until further order of the Court.

C.K. Saveriades, for the applicants.

Chr. Christofides, for *L. Papaphilippou*, for the respondents.

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Cur. adv. vult.

A. LOIZOU J. read the following judgment. This is an ex parte application for «a temporary order restraining the defendants from: (a) alienating, charging or in any way disposing of their interest in the vessel «BAILUNDO L» until the final determination
10 of the present action or until further order of the Court. (b) Any other remedy or order the honourable Court would think just and equitable.»

The ex parte application has been made in the admiralty action in personam in which the plaintiffs' claim against the defendants is
15 «(A) Payment of the sum of P. Escudos, 5,978,915.500 or the equivalent in Cyprus currency representing the value of bunkers on board defendants' vessel, M/V «BAILUNDO L» registered under the Cyprus flag, at the time of the delivery of the said vessel by the plaintiffs to the defendants and which remain unpaid for. (B)
20 Legal interest. (C) Costs of the action.»

The defendants though not served with a notice or otherwise came to know of it, have been present in this ex parte application and took part in the proceedings in order to assist the Court. This procedure has been described by Megarry J., in *Pickwick
25 International Inc (G.B.) Ltd., v. Multiple Sound Distributors Ltd., and Another* [1972] 3 All E.R. 384, as an opposed ex parte motion and then pointed out the following :

«The fact that this is a contradiction in terms ought not to be allowed to obscure the utility of the process. The practice
30 seems to be of comparatively recent origin, though it has been pointed out to me that at least to some extent it may be a reversion to a procedure in the early part of the last century which, if not usual was at least permissible: see *Acraman v. Bristol Dock Co., (1830)* 1 Russ & M 321. The procedure
35 supplements without supplanting, the former practice of moving ex parte, with the party moved against being silently present and taking no part in the proceedings unless an injunction was granted, in which case he thereupon moved ex

parte to vary or discharge that injunction. Of course, if the party moved against is not present he can similarly move ex parte to vary or discharge the injunction when he learns of it.»

He then went on to explain the advantages and disadvantages of the procedure for the two parties and the Courts. It is commended and has been described as the «modern and very sensible practice.»

The application is based on section 32 of the Courts of Justice Law 1960, section 30 of the Merchant Shipping (Registration of Ships and Mortgages) Law 1963, (Law No. 45 of 1963) and section 4 of the Civil Procedure Law, Cap. 6 as well as on the relevant Rules of Court.

The facts relied upon are set out in the affidavit filed and in so far as essential for the determination of the issues in this application are these. The plaintiffs were a duly registered company in Portugal and were the owners of M/V «BAILUNDO», now dissolved and under liquidation and the liquidating committee of the above plaintiff company was given power to represent the company in and out of court and to wind-up the company assets. Public tenders were invited for the sale of the said vessel, the terms of which were specified in the relevant Memorandum of Obligations. By Clause 7 thereof the sale of the vessel and the price paid for her would not include «bunkers and unused lubricating oils which will be acquired by buyers at net market price.»

The defendants purchased the said vessel at the price of U.S.\$410,000.- and registered same in their name under the Cyprus flag under the name of «BAILUNDO L».

It is claimed that the bunkers on board the vessel were estimated at P. Escudos 5,978,914.500 and the relevant invoice was sent by plaintiffs to Messrs James Kawes & C.L. of Lisbon who were acting as agents for the defendants for the purchase of the vessel, who in their turn by a letter, dated 6.5.86 sent the said invoice to the defendants for direct settlement of same, but the defendants have not paid to plaintiffs the said sum. By virtue of the above, the plaintiffs contend that they have a lien on the above vessel for breach of contract, which gives a right for the arrest and/or sale of the said vessel. However as the vessel is not within Cyprus Jurisdiction this is not at present feasible. The defendants are the

registered owners of the above vessel which is their only property and they have no bank account or monies or any other property within the jurisdiction apart from the said vessel. Their share capital being C£100 only. They are a non-resident Cyprus
5 Shipping Company by virtue of a permit given to them by the Central Bank of Cyprus which enables them to sell their said vessel freely with no restriction whatsoever, and such dealings are allowed to be made in foreign currency and there is no need whatsoever that any money or amount due or receivable by the
10 respondents will come to Cyprus.

Upon being served with the writ of summons of the present action and as it is claimed in an obvious attempt to defeat plaintiffs just claim, the defendants applied to the Registrar of Cyprus Ships for the deletion of the vessel «BAILUNDO L» from the Cyprus
15 Registry. Under the circumstances they verily believe that if the order applied for is not now granted the applicants will never receive any money or recover their losses, and will suffer irreparable losses, and consequently great injustice will be sustained by the plaintiffs/applicants.

20 Sections 30 and 32 have been judicially considered and interpreted in numerous decisions to which reference is made in my judgment in *Mario Botteghi S.P.A., v. 1. Bolt Head Navigation Ltd., 2. M/V Maranar*, (1985) 1 C.L.R. 114 and need not really repeat them here. Section 30 has been all along held to apply to
25 claims by persons having an interest in the ship itself such as legatees, shareholders, heirs or creditors, but not mere creditors or claimants of damages.

Learned counsel for the applicants has drawn my attention to the fact that the circle of claimants found to have an interest in the
30 ship, in the sense of section 30 of the Law has not been closed but that it has always been left by the authorities to be considered in the particular circumstances of each case. He further drew my attention to the facts of this case, as capable of being considered as having such an interest in the ship.

35 Right as he is in his submission I am afraid he cannot derive assistance from the facts of the present case as bringing his clients claim within the ambit of the term «interest in the ship», which to say the least, means something more than a mere money claim, an ordinary creditor's claim.

40 As regards section 32, this Court had again on numerous

occasions judicially interpreted it and the authorities are referred to in the *Botteghi's* case (supra) at pp 123, 124

«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 Mineralimportexport (The 'Mane Leonhardt')* [1981] 2 Lloyds Law Reports p 458 »

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The Mareva Injunction has been gaining importance because of the international character of commerce and the constant combat to protect claimants from fraud and crime. It is a developing field of the law and though Mareva Injunctions can be granted as against ships within the jurisdiction, I do not think that I should grant the order applied for in the circumstances of this case. I shall only repeat here what I said in the *Botteghi* case (supra) at p.124.

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«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 »

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I need hardly deal with section 4 of the Civil Procedure Law, Cap.6 as the essence of section 4 is that it is granted against property «being the subject of the action »

For all the above reasons the application is dismissed with costs.
Application dismissed with costs.

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