1987 April 29

[LORIS J.]

NATIONAL IRANIAN TANKER COMPANY LTD.,
Plaintiffs-Applicants,

v

PASTELLA MARINE COMPANY LTD.,
Defendants-Respondents

(Application in Admiralty Action No. 212/86)

Admiralty - Interim order - The Merchant Shipping (Registration of Ships) Sales and Mortgages) Law 45/63 – Section 30 – «Any person interested» – Includes not only persons interested in the ship herself but also creditors and claimants of damages against the owners of the ship – Departure from principles laid down by cases decided by Court of co-ordinate jurisdiction

Injunctions – Interlocutory injunctions – The Civil Procedure Law Cap. 6 – Sections 4 and 9 – Restraining dealings with a ship – Relevant order cannot be granted in this case thereunder as the ship was no longer the subject matter of the action

Injunctions – Interlocutory injunctions – The Courts of Justice Law 14/60 – Section 32 - Mareva injunction – History and development of the doctrine – Doctrine applicable in Cyprus as developed in England until 1981, when the Supreme Court Act, 1981 was enacted in England – Said Act not applicable in Cyprus – Section 29 of Law 14/60

Equity Doctrine of - Applicable in Cyprus in virtue of section 29 of the Courts of Justice Law 14/60

Injunctions – Interlocutory injunction – Like all injunctions an interlocutory injunction is the offspring of equity

The claims of the plaintiffs in this case are in reality a claim for damages for breach of contract, whereby the defendants agreed to sell to the plaintiffs their ship «BURMBAC BAHAMAS» and a claim for the return of the U.S. $905,000 deposit, which, in accordance with the said contract, the plaintiffs had lodged with the defendants' solicitors in London. The ship is registered in Cyprus and is the only asset of the defendant company.

Upon ex parte application, based on sections 4 and 9 of Cap. 6, section 30 of Law 45/63, section 32 of Law 14/60 and rules 203 to 212 and 237 of the Cyprus Admiralty Jurisdiction Order, 1893, the plaintiffs obtained an interim order restraining the defendants from selling, mortgaging or otherwise alienating the said Cyprus ship for a period of three months as from the day of the order. On the day,

when the said order was returnable defendants opposed it and as a result the case was eventually heard whilst from time to time the period of the order was extended until the day when the judgment of the Court was delivered

The main question for determination was whether in the light of all the material before the Court the interlocutory order granted as aforesaid could be so granted under the said or any of the said legal provisions

Held *making the interlocutory injunction absolute pending the final determination of the action*

(1) As it is clear that the plaintiffs have renounced the contract to buy the ship in question the ship is not anymore the subject matter of the action notwithstanding that claims (a) and (c) of the action refer to possession and ownership of the ship transfer of ownership and delivery of possession of the same It follows that the interlocutory injunction could not be granted under ss 4 and 9 of the Civil Procedure Law Cap 6

(2) The Court of Appeal has left entirely open the issue of to what extent and in what circumstances «a creditor» would be entitled to obtain an order under s 30* of Law 45/63 Having given the matter anxious consideration this Court decided to depart from the principles laid down in a number of cases of Courts of co ordinate jurisdiction starting from the case of *Tokio Marine and Fire Insurance Co Ltd v Fame Shipping Co Ltd* (1976) 1 C L R 33 to the effect that the term «person interested» in the section means «a person having an interest in the ship itself»

The words «any interested person» are quite clear and unambiguous needing no construction They must apply according to their literal meaning It is arbitrary to construe them as meaning a person having an interest in the ship herself If that was the intention of the legislator he could have omitted the word «any» (πάντος) and added «a person interested in the ship» The phrase «any interested person» covers not only persons having an interest in the ship herself but also creditors and claimants of damages against the owners of the ship It follows that the interlocutory injunction in this case could be granted under the said section The initial order was for a specified period as provided by the section

(3) Section 32 of Law 14/60 was applied in some way as section 45 of the Supreme Court of Judicature (Consolidation) Act, 1925 was applied and on the basis of which Mareva injunctions were granted in England

The interlocutory injunction, which like all other injunctions is the offspring of equity, was known to the Law of England from old times being exercised on the basis of the *Lister v Stub* [1890] 45 Ch D 1 [1886-90] All E R Rep 797 line up to 1975, when the *Mareva* line was introduced by case law This line is not something new, but the evolution of the interlocutory injunction and only its name, after the vessel *Mareva*, marks the new era of evolution Such evolution continued ever after 1975 being extended by case law from

* *Quoted at p 129 post*

«foreign based defendants with assets in England» to «defendant out of the jurisdiction but with assets in England» and then onwards in 1980 to cover «a defendant who is not a foreigner or is not foreign based in any sense of these terms and also «preventing an aircraft from being removed out of the jurisdiction»

The doctrines of equity are applicable in Cyprus in virtue of section 29 of Law 14/60 As at present advised there is no provision in any law which is repugnant to the doctrine of *Mareva* injunction which is the evolution of the interlocutory injunction exercised in virtue of the Supreme Court of Judicature Act 1873 and subsequently in virtue of section 45 of the Supreme Court of Judicature (Consolidation) Act 1925, i e long before the establishment of the Republic

It follows that the *Mareva* doctrine and its evolution up to 1981, when the Supreme Court Act 1981 was enacted (this Act is not applicable in Cyprus) is applicable in Cyprus

In the light of the material before this Court, it is clear that there is a serious question to be tried at the hearing that there is a probability that the plaintiffs are entitled to relief, and that bearing in mind that the defendants have no other asset except the vessel in question, it shall be difficult, if not impossible to do complete justice at a later stage, unless an interlocutory injunction is granted

(4) In the circumstances it is just and convenient that the interlocutory order given ex parte and which could be granted both under s 30 of Law 45/63 as well as section 32 of Law 14/60 on the *Mareva line* should continue in force pending the final determination of the action

Order accordingly with costs against respondents-defendants

Cases referred to

Sophoclis Mamas and Co v Carl F W Borgward and the Chartered Bank of Nicosia, 1962 C L R 209,

Cyprus Palestine Plantations v Olivier and Co, 16 C L R 122,

Eastern Mediterranean Maritime Ltd v Nava Shipping Co Ltd (1975) 5 J S C 666,

Verolme Dock and Shipbuilding Co Ltd v Lamant Shipping Co Ltd (1975) 11 J S C 1618,

Tokio Marine and Fire Insurance Co Ltd v Fame Shipping Co Ltd (1976) 1 C L R 33,

Gerling Konzern Allgemeine Versicherungs A G. (No. 1) v The Ship «Dimitrakis» and Another (1976) 1 C L R 385.

London and Overseas Co v. Tempest Bay Shipping (1978) 1 C L R. 367;

Algemeen Vrachtkantoor B.V. and Others v Sea Sprint Navigation Company Ltd (1976) 1 C.L.R 368;

Botteghi v. Bolt Head Navigation (1985) 1 C L R 114;

The Ship «Georghios C» and Another v Mutsui Sugar Ltd and Another (1976) 1 C L R 105;

Reederei Schulte and Bruns Baltic etc. v Ismini Shipping Co Ltd. (1976) 1 C L R. 132;

Re Cushla Ltd. [1979] 3 All E.R. 415.

Barclay – Johnson v. Yuill [1980] 3 All E R 190;

Rasu Maritima SA v Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina) and Government of Indonesia (as interveners) [1977] 3 All E R 324;

Allen and Others v. Jambo Holdings Ltd. and others [1980] 2 All E.R. 502.

Lister and Co. v Stubbs [1890] 45 Ch D. 1; [1886-90] All E.R Rep 797;

Nemitsas Industries Ltd. v. S and S Maritime Lines Ltd. and Others (1976) 1 C.L R 302

Application

Application for an order of the Court prohibiting the defendants, their servants or agents from selling, mortgaging or otherwise alienating the ship «BURMBAC BAHAMAS»

L. Papaphilippou, for the applicants - plaintiffs

P. Sarris with M. Christodoulou, for respondents-defendants.

Cur. adv. vult.

LORIS J. read the following decision. On the 25th September 1986 the plaintiffs filed Admiralty Action in personam, under No. 212/86 claiming:

(a) A declaration of the Court that they are entitled to the possession and ownership of the ship "BURMBAC BAHAMAS" fully classed under the terms and conditions of a Memorandum of Agreement dated 4th August 1986.

(b) Damages for breach of contract.

(c) An order directing the Defendants to transfer the ownership and deliver possession of the said vessel to the plaintiff fully classed.

(d) Interest at 12% p.a. from 4th August 1986

(e) Costs.

On the same day the plaintiffs filled an ex-parte application praying for:

An interlocutory order prohibiting the defendants their servants and or agents, from selling, mortgaging or otherwise alienating the Cyprus Ship «BURMBAC BAHAMAS» for a period of nine months or for such other time as the Court may specify.

The aforesaid ex-parte application was based on sections 4 and 9 of the Civil Procedure Law, Cap. 6, section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63), s. 32 of the Courts of Justice Law No. 14/60 and Rules 203 to 212 and 237 of the Cyprus Admiralty Jurisdiction Order, 1893.

The ex-parte application in question was supported by an affidavit sworn on the same day by a certain Simos Papadopoulos, an employee of the firm of advocates representing the plaintiffs; the following facts, inter alia, are stated therein by the affiant:

«(a) According to the records of the Registrar of Cyprus Ships the defendant company is the registered owner of the ship 'BURMBAC BAHAMAS', a tanker built in 1975, of 126,468.62 gross tonnage (104,442 net tonnage.)

(b) In virtue of a memorandum of agreement dated 4th August 1986 (A photo-copy of which is attached to the affidavit together with appendices and marked ex. SP1) the defendants agreed to sell the said ship to the plaintiffs at the

price of U.S.$9,950,000.

(c) Pursuant to the terms and conditions of ex. SP.1, the plaintiffs have lodged with the solicitors of the defendants a ten per cent of the sale price i.e. U.S.$905,000.

(d) The defendants have failed under clause 14 of exhibit SP. 1 to deliver the vessel in the manner and within the time in S.P.1 provided.

(e) The vessel was in fact out of class and for this reason Messrs Berwin Leighton (the London Solicitors of the plaintiffs-applicant) sent to-day (25.9.86) a telex to the defendants. (This telex is attached to the affidavit and it is market ex. SP2 – I shall have the opportunity later on in the present decision to refer to the nature and effect of this telex.)

(f) There is a fear that the defendants will sell, mortgage or alienate the said ship and such risk, as advised is imminent.

(g) According to my investigations the said ship is the only asset of the Defendants.»

This ex-parte application was urgently placed before me on 25.9.86 at 1.45 p.m.; after considering same in the light of the accompanying affidavit with the exhibits aforesaid appended thereto, and the address of counsel appearing for the ex-parte applicant, I have granted the interlocutory injunction applied for, limiting the time of its duration to three months from the date of the order.

On 3.10.86, the date on which the said order was returnable counsel for respondents-defendants appeared and opposed same; it was directed by this Court that the opposition be filed within the next 15 days and the hearing thereof was fixed on 26.11.1986.

In order to complete the picture the following may be added:

On 15.10.1986 counsel for the defendants appeared in the main action under protest stating that he will be filing an application with a view to setting aside the service of the writ on the defendants. It was directed that such an application be filed by the defendants within a month from 15.10.86.

The opposition of the respondents to the continuance of the interlocutory order was not filed as directed; it was belatedly filed on 14.11.1986; it was accompanied by an affidavit in support sworn by leading counsel appearing for the defendant Co., namely Mr. Polakis Sarris.

On the same day (i.e. 14.11.86) the defendants filed an application praying for:

(a) An order staying further proceedings in this matter «due to the fact that any disputes between the parties by virtue of a special condition in their agreement dated 4.8.86... must be referred to arbitration» and

(b) An order setting aside «the service and/or the writ of Summons in the present proceedings due to the fact that all proceedings and/or the writ of Summons is contrary to an explicit provision of their agreement dated 4.8.86, and especially section 15 which provides that all disputes should be referred to arbitration.»

The plaintiffs opposed this application.

On 25.11.86 the respondents filed a supplementary affidavit sworn by Mr. Sarris, without first obtaining the leave of the Court, in relation to their opposition in the continuance of the interlocutory injunction.

Owing to the fact (a) that objections were raised by the applicants-plaintiffs as to the filing of the opposition of respondents out of time and the filing of a supplementary affidavit on 25.11.86, i.e. just the day before the hearing of the opposition to the continuance of the interlocutory injunction,

(b) that I had to sit in an urgent Appeal, the application in connection with the interlocutory injunction was adjourned to the 24.1.87; on the same time the initial order for 3 months which was expiring on 25.12.86 was extended up to the 31st January, 1987.

On 28.11.86 on the oral application of counsel for defendants-respondents, counsel for the plaintiffs-applicants consenting, I refixed the hearing in connection with the interlocutory injunction on 18.12.1986.

On 29.11.86 respondents filed an application for leave of this Court with a view to covering their delay in filing the opposition and the filing of the supplementary affidavit of 25.11.86; such leave was granted with the consent of the Plaintiffs on 8.12.86.

On 18.12.86 the hearing of the application commenced; on notice given earlier by the plaintiffs Mr. Sarris took the oath and was cross-examined in connection with the affidavits sworn by him in opposition. Unfortunately his cross-examination was protracted due to the fact that the affiant was very slow in answering questions as he had to go through huge bundles of documents connected with his affidavits. On occasions in order to answer relevant questions he had to consult some of his files which were not in Court. (He is the Secretary of the defendant company). And I had to allow breaks in order to enable him to trace such files.

The hearing was repeatedly adjourned and I had to extend the interlocutory injunction pending the determination of the application.

During the period that the hearing in connection with the interlocutory injunction was being continued the defendants filed a supplementary affidavit sworn by Mr. Sarris on 21.1.87, to his affidavit of 14.11.86 in support of defendants' application for stay of proceedings already referred to above. The plaintiffs on 26.1.87 filed an application with a view to setting aside the affidavit of Mr. Sarris of 21.1.87 as same was filed without leave.

On 2.2.87 the defendants prior to the commencement of the continued hearing in connection with the interlocutory injunction, withdrew their application of 14.11.86 for stay of proceedings and the setting aside of the writ of summons in the action and as a consequence thereof the controversial affidavit of Mr. Sarris dated 21.1.87 was carried away and the plaintiffs withdrew their relevant application of 26.1.1987.

When the evidence given by Mr. Sarris viva voce was concluded, on the application of both sides I have directed the filing of written addresses which are now in the file and finally on 4.3.1987 I heard oral clarifications by counsel on both sides on matters which I considered necessary.

I have originally fixed the 27th March 1987 for the delivery of the present decision but unfortunately for reasons beyond my control appearing on record, which I need not repeat, I was unable to prepare my decision in time, something for which I would like to express my regret, so I had to adjourn for today extending the time of the interlocutory injunction accordingly.

As already stated on 25.9.86 upon the ex-parte application of the plaintiffs-applicants an interlocutory injunction restraining dealings with the ship was granted; the period of the duration of the injunction aforesaid was initially fixed for three months and after the respondents-defendants opposed the making of the order the duration of the interlocutory injunction was extended till the present day.

I shall now proceed to examine in the light of all the material before me whether the interlocutory injunction granted could be so granted under Sections 4 and 9 of the Civil Procedure Law, Cap.6, s.30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 1963 (Law 45/63), and s.32 of the Courts of Justice Law No. 14/60:

(A) *Under Sections 4 and 9 of the Civil Procedure Law, Cap. 6*

Although claims (a) and (c) of the action refer to possession and ownership of the ship and transfer of ownership and delivery of possession of same, yet it was abundantly clear throughout from exh. SP2 that the plaintiffs have renounced the agreement to buy the ship as the defendants failed to deliver the vessel in the manner and within the time specified in exhibit SP1. The Claim of the plaintiffs was therefore in damages and the return of the 10% of the sale price they have lodged with the solicitors of the defendants. It is clear therefore, that the ship in question was not anymore the subject matter of the action; therefore an interlocutory injunction could not be granted under ss. 4 and 9 of the Civil Procedure Law Cap. 6. (Vide in this connection the Judgment of our Court of Appeal in *Sophoclis Mamas Co., v. Carl F.W. Borgward and the Chartertered Bank of Nicosia,* 1962 C.L.R. 209, where the decision in *Cyprus Palestine Plantations v. Olivier and Co., 16* C.L.R. 122 given by the Court of Appeal of the former Colony of Cyprus was cited with approval).

(B) Under *section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages,Law 1963 (Law 45/63)*

Section 30 reads as follows:

«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 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 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.»

This section received judicial interpretation in a number of cases. With the exception of two cases I could trace, which were decided by the Full Bench of this Court on Appeal (reference to them will be made later on in the present decision) all the remaining cases were decided by Judges of this Court sitting alone in the Admiralty Jurisdiction. Thus in the case of the *Eastern Mediterranean Maritime Ltd. v. Nava Shipping Co., Ltd* (1975) 5 J.S.C. 666, where the applicants brought an action against the respondents claiming damages for wrongful withdrawal of their vessel from the service of the plaintiff and for breach of a charter party it was decided by my brother Malachtos J. that the application of s. 30 of Law 45/63 should not be limited to cases where the applicant has a proprietary or beneficial interest in a ship but it should be given liberal interpretation so as to cover cases where a person is generally interested.

In the subsequent case of *Verolme Dock and Shipbuilding Co. Ltd. v. Lamant Shipping Co. Ltd* (1975) 11 J.S.C. 1618, the same Court decided that section 30 covers cases of mere creditors of the owners of a ship.

In the case of the *Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co., Ltd.* (1976) 1 C.L.R. 33, Malachtos J. after elaborating at length on the same topic reconsidered his stand

taken in the aforesaid two cases stating verbatim:

> «I must say that it seems to me that in interpreting section 30 of the Law in both the *Nava* and the *Lamant* cases, I went too far in holding that section 30 applies also to mere creditors of the owners of the ship» (vide p. 340 of the report-lines 17-20) and my learned brother concluded «I am now, therefore of the view that section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortages) Law 1963, does not apply to mere creditors or claimants of damages against the owners 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 a creditor..»

This latter line of construction placed on section 30 of Law 45/63 was followed by the same Judge in *Gerling Konzern Allgemeine Versicherungs A.G. (No.1) v. The ship «Dimitrakis» & Another* (1976) 1 C.L.R. 385, (a claim for the value of cargo which was destroyed or damaged by the fault or neglect of the defendants whilst on board the defendant ship) where it was held that the plaintiffs were not «interested persons» within the meaning of s.30.

The same line of reasoning was followed in the case of *London & Overseas Co. v. Tempest Bay Shipping* (1978) 1 C.L.R. 367 by Malachtos J. In the case of *Algemeen Vrachtkantoor B.V. & Others v. Sea Spirit Navigation Company Ltd* (1976) 1 C.L.R. 368 my brother A. Loizou J. discharged the initial interlocutory Order under s. 30 of Law 45/63 on the ground that the applicant was a mere creditor and could not be considered as an «interested person» within the ambit of s. 30 of the Law. In discharging the Order the learned Judge added: «Needless to say that the arrest of the ship does not make the applicants 'interested persons' within the meaning of section 30 of the law as claimed in this case...» (vide p. 377 of the report lines 11-13).

In the recent case of *Botteghi v. Bolt Head Navigation* (1985) 1 C.L.R. 114, (a claim for the sum of £175,564 Italian lire for materials and/or spare parts supplied to the defendant 2 ship) A. Loizou J. although subscribing fully to the construction placed on s. 30 by Malachtos J. in the above cited cases, granted an

interlocutory injunction restraining dealings with the defendant No. 2 ship under s. 30 of Law 45/63 basing his order «on the narrow ground... which 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.» (vide p. 122 of the report – lines 32-38).

This much concerning construction placed by Courts of co-ordinate jurisdiction, on section 30 of Law 45/63.

As I said earlier in the present decision I could trace only two cases decided on Appeal concerning section 30 of Law 45/63. They are:

(a) *The Ship 'Georghios C' and Another v. Mitsui Sugar Ltd. and Another* (1976) 1 C.L.R. 105.

In the above appeal the decision of a Judge of this Court refusing to discharge the initial interlocutory injunction granted ex-parte was affirmed, but the final order made by the trial Judge was varied so as to limit its application for «a time specified» as expressly provided by s. 30 of Law 45/63.

The Court of Appeal clearly stressed the following in the above appeal: «... as our case-law is, in this respect, still in the process of developing, we leave entirely open the issue of to what extent and in what circumstances a creditor, such as the respondents in the present case, would be entitled to obtain an order under section 30...»

(b) *Reederei Schulte and Bruns BALTIC etc v. Ismini Shipping Co., Ltd.*, (1976) 1 C.L.R. 132.

In this appeal the order of the trial Judge discharging the initial Order granted ex-parte was affirmed.

The learned President of this Court in delivering the judgment in the aforesaid appeal stated inter alia that «our own case-law as not yet fully defined the situations in which an order under section 30 may be made in the exercise of the relevant discretionary powers...» (vide p. 135 of the report).

It is clear from the cases cited above that our Court of Appeal has left entirely open the «issue of to what extent and in what circumstances a creditor...» would be entitled to obtain an order under s. 30 of Law 45/63. The remaining decisions cited above, are decisions of my brethren of co-ordinate jurisdiction. Having given the matter anxious consideration I propose to depart (*Re Cushla Ltd* [1979] 3 All E.R. 415) from the principles laid down orginally in the case of *Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd (supra)* and followed thereafter in the remaining first instance decisions.

The wording of section 30 is clear and unambiguous. It enables the High Court (now the Supreme Court under Law 33/64) to make an order prohibiting for a time specified any dealing with a ship... *on the application of any interested person* (the underlining is mine).

The words «any interested person» are quite clear and unambiguous. They need no construction. They must be applied according to their literal meaning; and this is a fortiori so if we read the relevant part of the Greek text of the Law which was enacted by our House of Representatives (The Greek text is the original) which provides as follows:«Κατόπιν αιτήσεως παντός ενδιαφερομένου προσώπου».

With respect, it is quite arbitrary to construe «any interested person» so as to convey the meaning «of a person having an interest in the ship herself». If the legislator wanted to eliminate its meaning he could do so by omitting «any» and adding «a person interested in the ship». I hold the view that «any interested person» covers not only persons having an interest in the ship herself but also creditors and claimants of damages against the owners of the ship.

Assuming that a ship is worth three million pounds. We shall protect an heir or a legatee who has a small share in the ship worth £10,000.-, and we shall refuse the protection afforded by s. 30 to a creditor, say a company which has effected repairs on the ship amounting to £500,000? or is it just to refuse protection to a claimant, say the dependants of a deceased sailor who has met his

death on the ship due to the negligence of the owners thereof in providing safe appliances on board the ship, when such dependants would be entitled to £100,000 or £150,000 damages?

Having dealt with the legal aspect in connection with s. 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 1963 (Law 45/63) and having held as I did, bearing in mind the facts which have been explained earlier on in the present decision to which I shall make further reference when dealing later on with s. 32 of Law 14/60, I hold the view that the interlocutory injunction granted could be so granted under s. 30 of Law 45/63. I should perhaps repeat that the initial order was for a specified period as provided by s. 30 and I was obliged to extend it pending the determination of the present proceedings for reasons already stated earlier on.

I shall now proceed to examine whether the interlocutory injunction granted could be so granted under s. 32 of the Courts of Justice Law 1960 (Law No. 14/60).

(C) Under Section 32 of the Courts of Justice Law 1960 (Law No. 14/60)

The aforesaid section reads as follows:

«32.- (1) Subject to any Rules of Court every Court, in the exercise of its civil jurisdiction, may, by order, grant an injunction (interlocutory, perpetual or mandatory) or appoint a receiver in all cases in which it appears to the Court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith:

Provided that an interlocutory injunction shall not be granted unless the Court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage.

(2) Any interlocutory order made under subsection (1) may be made under such terms and conditions as the Court thinks just, and the Court may at any time, on reasonable cause shown, discharge or vary any such order.

(3) If it appears to the Court that any interlocutory order made under subsection (1) was applied for on insufficient grounds, or if the plaintiff's action fails, or judgment is given against him by default or otherwise, and it appears to the Court that there was no probable ground for his bringing the action, the Court may, if it thinks fit, on the application of the defendant, order the plaintiff to pay to the defendant such amount as appears to the Court to be a reasonable compensation to the defendant for the expense and injury occasioned to him by the execution of the order.

Payment of compensation under this subsection shall be a bar to any action for damages in respect of anything done in pursuance of the order; and any such action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks just.»

This section of our Law was applied in some way as section 45 of the Supreme Court of Judicature (Consolidation) Act 1925 was: on the basis of the Act of 1925 Mareva Injunctions were granted in England. The first thing which I have to consider is the nature and extent of Mareva Injunction in the country of its origin and the next question is whether same is applicable in Cyrpus.

The basis of Mareva Jurisdiction has been explicitly stated in an admirable way by Sir Robert Megarry V.C. in the case of *Barclay-Johnson v. Yuill [1980] 3 All E.R. 190* where at p. 193 of the report the following were stated verbatim:

«The Mareva jurisdiction takes its name from Mareva Compania Naviera SA v. International Bulkcarriers SA (1975) [1980] 1 All E.R. 213, [1975] 2 Lloyd's Rep 509, a case which concerned the vessel Mareva: I shall call it 'the Mareva case'. Its immediate precursor was Nippon Yusen Kaisha v. Karageorgis [1975] 3 All E.R. 282, [1975] 1 WLR 1093. Both are decisions of the Court of Appeal on ex-parte applications, and in both cases injunctions of the type now sought before

me were granted against foreign defendants who had assets within the jurisdiction. I think that it is the Mareva case which has given its name to the injunction because in the earlier case the court had not been referred to Lister & Co. v Stubbs [1890] 45 Ch. D.1, [1886-90] All E.R. Rep. 797 or any of the other cases in that line which pointed in the opposite direction, and it was in the Mareva case that the Court of Appeal held that, notwithstanding those authorities, the injunction should be granted.

There are thus two lines of authority. First, there is the Lister & Stubbs line. In broad terms, this establishes the general proposition that the court will not grant an injunction to restrain a defendant from parting with his assets so that they may be preserved in case the plaintiff's claim succeeds. The plaintiff, like other creditors of the defendant, must obtain his judgment and then enforce it. He cannot prevent the defendant from disposing of his assets pendente lite merely because he fears that by the time he obtains judgment in his favour the defendant will have no assets against which the judgment can be enforced. Were the law otherwise, the way would lie open to any claimant to paralyse the activities of any person or firm against whom he makes his claim by obtaining an injunction freezing their assets. Of course, the due exercise of the court's discretion would exclude flagrant abuses: but the disruptive peril to commercial activities might be grave. This refusal to grant injunctions was well-settled law before 1975: *see Siskina (Cargo owners) v Distos Compania Naviera S.A* [1977] 3 All E.R. 803 at 828 [1979] A.C. 210 at 260 per Lord *Hailsham; and see the Pertamina* case [1977] 3 All E.R. 324 at 332, [1978] QB 644 at 659 per Lord Denning MR (The correct name of this case, even omitting the name of the party intervening, is Rasu Maritima SA v Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, but in mercy to all I impose a short title by reference to the name of the company concerned). Furthermore, this doctrine was, as it is now, a power to do so in all cases in which it appeared to the court to be just or convenient to do so: see the Supreme Court of Judicature (Consolidation) Act 1925, s 45 (1).

The other line of authority is of course the Mareva line This was based on the statutory language that I have just mentioned and it shows that in certain circumstances it is just or convenient to grant such an injunction The question is what those circumstances are In the *Siskina* case [1977] 2 All E R 803 at 829 [1979] AC210 at 261 Lord Hailsham referred to foreign based defendants with assets in England In the *Pertamina* case [1977] 3 All E R 324 at 333 [1978] QB 644 at 659 Lord Denning MR referred to a defendant who is out of the jurisdiction but has assets in this country The contrast is with those who are within the jurisdiction of the court and have assets here, (see the *Pertamina* case [1977] 3 All E R 324 ast 332 [1978] QB 644 at 659 per Lord Denning MR) a phrase which in Chartered Bank v Daklouche [1980] 1 All E R 205 at 209 [1980] 1 W L R 107 at 112 Lord Denning MR explained as meaning cases where the defendants 'were permanently settled here and had their assets here' He added 'if a defendant is likely to leave England at short notice a Mareva injunction may well be granted »

And the noble Lord proceeded in the aforesaid case to hold «(1) that it is no bar to the grant of a Mareva Injunction that the defendant is not a foreigner, or is not foreign-based, in any sense of those terms, (2) that it is essential that there should be a real risk of the defendant's assets being removed from the jurisdiction in such a way as to stultify any judgment that the plaintiff may obtain, and (3) that, in determining whether there is such a risk, questions of the defendant's nationality, domicile, place of residence and many other matters may be material to a greater or a lesser degree » (vide p 195 letter c - d)

In the case of *Rasu Mantima SA v Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina) and Government of Indonesia (as interveners)* [1977] 3 All E R 324 which may be cited with the short title as *Pertamina case* Lord Denning MR in his historical and comparative survey which commences at p 331 of the report and further down in examining the present law pp 332, 333 and 334 makes it clear that this new procedure was known to the Law of England from old times and the Supreme Court of Judicature Act 1873 as well as the Supreme Court of Judicature

(Consolidation) Act 1925 mark the evolutionary process of the Injunction which is the offspring of equity

In the case of *Allen and others v Jambo Holdings Ltd and others* [1980] 2 All E R 502 Mareva Injunction was granted preventing an aircraft from being removed out of the jurisdiction It was held in the aforesaid case that there was no difference in principle between commercial actions and actions for personal injuries or other causes of action in regard to the issue of Mareva Injunction nor was the issue of Mareva Injunction to be determined solely by a plaintiff s financial standing, in each case the issue of an injunction depended on the balance of Justice and convenience

It is clear from the cases cited above that the interlocutory injunction – which like all other injunctions is the offspring of Equity – was known to the Law of England from old times being exercised on the basis of the *Lister v Stubbs* line (supra) up to 1975 when the Mareva line was introduced by case law The Mareva line is not something new it is simply the evolution of the interlocutory injunction and only its name – after the vessel Mareva marks the new era of evolution Such evolution continued even after 1975 being extended by case law as above from 'foreign based defendants with assets in England to «defendant who is out of the jurisdiction but has assets in this country» and then onwards in 1980 to cover «a defendant who is not a foreigner, or is not foreign-based in any sense of these terms» and also «preventing an aircraft from being removed out of the jurisdiction»

The Supreme Court Act 1981 was enacted in England whereby the evolution of the Mareva injunction by case law was embodied in s 37(3) of the Act

Of course the Supreme Court Act 1981 is not applicable in Cyprus But the doctrines of equity are applicable here in virtue of s 29 of our Courts of Justice Law (Law No 14/60) the relevant part of which reads as follows

«s 29 - (1) Every Court shall apply

(c) The common law and the doctrines of Equity save in so far as other provision has been made or shall be made by any law made or becoming applicable under the Constitution or any law saved under paragraph (b) of this section in so far as they are not inconsistent with, or contrary to, the Constitution;»

.....

As at present advised I am not aware of any existing provision in any law saved by Article 188 of our Constitution or in any law enacted by our House of Representatives, which is repugnant to the doctrine of Mareva injunction which is as already stated the evolution of the interlocutory injunction exercised in virtue of the Supreme Court of Judicature Act 1873 and subsequently in virtue of s. 45 of the Supreme Court of Judicature (Consolidation Act) 1925 i.e. long before the establishment of our Republic in 1960.

In view of the above I hold the view that the Mareva doctrine and its evolution through case law up to the enactment of the Supreme Court Act 1981, is applicable to Cyprus; of course I need not repeat that the Supreme Court Act 1981 is not applicable.

In Cyprus the Mareva line was followed in the case of *Nemitsas Industries Ltd v. S & S Maritime Lines Ltd & others* (1976) 1 C.L.R. 302.

This was an admiralty action in personam for £2,000 being an amount paid by the plaintiffs to the defendants under two Bills of lading on account of the freight and charges, for the carriage of goods. The assets of the defendant were money; the learned trial judge held that there was a reasonable fear that it may be transmitted out of the jurisdiction and granted an injunction restraining its removal from the Bank pending trial of the action.

In a small number of other reported cases here, the Mareva line was considered with scepticism and eventually Mareva Injunction was refused whilst an interlocutory injunction under s. 30 of Law 45/63 was granted.

Reverting now to the facts of this particular case: The picture now before me as it emerges from the affidavit sworn on behalf of the applicants the affidavits sworn on behalf of the respondents and the cross-examination of the Secretary of the Defendant

Company, is as follows

The defendant Company, an off-shore company registered in Cyprus on 3 8 86 agreed by virtue of Memorandum of Agreement (Ex SP1) dated 4 8 1986 to sell its only asset the tanker "BURMBAC BAHAMAS" (Registered in Cyprus) to the plaintiff Company for the sum of U S $ 9,950,000

The plaintiffs pursuant to terms of M O A lodged with the solicitors of the Defendant Company 10% of the purchase-money i e U S $905,000

It is the allegation of the plaintiffs that the Defendant Company failed under Clause 14 of Ex SP1 to deliver the vessel in the manner and within the time specified by the said exhibit

The time of delivery of the vessel as stated in para 5 of Ex SP1 is as follows

"End August/early September, with 15th September cancelling in Buyer's option"

According to Ex SP2 the time of delivery was extended by agreement first to the 19th September 1986 and subsequently to the 24th September 1986 with cancellation at buyers' option

On 25 9 86 the defendants had not delivered the vessel to the plaintiffs and the plaintiffs addressed through their London Solicitors to the Defendants Ex SP1, a notice of cancellation

On the same day plaintiffs filed the present action and application for interlocutory injunction In their affidavit in support of the application they maintain that "there is a fear that the Defendants will sell or alienate the said ship and such risk as advised is imminent "

Although the defendant company did not file an application with a view to setting aside the order (they have simply filed an opposition for the continuance of the interlocutory order given ex-parte) I have decided to treat their opposition as an application with a view to setting aside the order

It was the stand of the Defendant company from the time of the filing of the opposition that the plaintiff company is to blame for the breach of the said agreement

The Secretary of the defendant Company admitted in cross-examination (a) that the only asset of the defendant company is the vessel in question

(b) that the amount of U S $905,000 deposited by plaintiffs in the name of the London Solicitors acting for the defence is still so deposited

The answers of this witness on two important issues were very evasive

The one issue was in connection with the vessel being properly classed, the plaintiffs were alleging in Ex SP2 that the defendants failed to deliver a confirmation of class certificate from American Bureau of shipping under clause 18 of the M O A The witness did not know whether the vessel was "classed" or not, at the date it had to be delivered, he added that what he knew was "that the vessel had been bombed and this event was known to both parties "

The other issue on which the witness could not give a definite answer was about an application for the deletion of the vessel from the Cyprus Registry He was asked repeatedly and inspite of the fact that he said he would be producing such an application he failed to do so at the adjourned hearing

In this connection it was put to him that on the 25th September 1986 at 3 00 p m the defendants attended the Consul of Cyprus in England for the deletion of the vessel from the Cyprus Registry and that had it not been for the injunction the vessel would have been deleted from the Cyprus Registry of Ships

The witness denied such an allegation and added that "if there will be any deletion such deletion will have the effect of the vessel been transferred to the ownership of the plaintiffs."

I need not go further into the facts of this case Suffice it to say that I am satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and in this connection it must be remembered that the plaintiffs apart from the damages which they may be entitled to recover they have deposited with the defendants almost a million

American Dollars which were not returned to them so far, and unless an interlocutory injunction is granted it shall definitely be difficult if not impossible to do complete justice at a later stage, bearing in mind that the defendants have no other asset except the vessel in question.

Having already held that the Mareva line can be followed in Cyprus subject to what I have stated earlier in the present decision, I hold the view that the particular facts of this case do warrant the granting of an interlocutory injunction on the said line.

In the circumstances I consider it just and convenient that the interlocutory order given ex-parte should continue in force; as the present interlocutory order could be made both under s. 30 of Law 45/63 as well as under s. 32 of our Courts of Justice Law 1960 (Law No. 14/60), I do hereby order that the interlocutory order granted ex-parte and thereafter extended till the present day, be continued pending the final determination of the action.

Respondents-Defendants to pay the costs of this application incurred by their opposition till to-day.

Costs to be assessed by the Registrar.

Order accordingly