1987 March 5

[SAVVIDES J.]

AL THULLAH TRADING EST.,

Plaintiffs,

v.

FAIVIEW NAVIGATION CO LTD.,

Defendants

(Admiralty Action No. 143/86)

Admiralty Practice Plaintiffs not resident in Cyprus - *Security for costs* - *Principles applicable – Amount of security – Should be sufficient to cover the costs likely to be incurred by the party applying for the security – The Cyprus Admiralty Jurisdiction Order, 1893, rule 185 – The old (1960) English Rules, Ord. 65, rules 6 and 6A – The relaxation introduced by the new English Rules Ord. 23(1)(1)– Practice in England and in Cyprus*

The plaintiffs who are a foreign company resident in Saudi Arabia, from where they carry on their business, claim U.S. $5,761.20 as damages for short delivery of goods. The defendants applied for security for costs. The plaintiffs opposed the application.

Held, granting the application. (1) The question is governed by rule 185 of the Cyprus Admiralty Jurisdiction Order 1893. A similar provision existed in the old English Rules in force in 1960 (Ord. 65, rules 6 and 6A). The principles underlying such rules are analysed in the *Annual Practice* 1960 at pp. 1884, 1885. Under the new English Rules (Ord. 23(1)(1)) the rule became more flexible by the introduction of the words "that the Court may order security for costs if having regard to all the circumstances of the case the Court thinks it just to do so". However, even under the new Rules, it is the usual practice in England to make a foreign plaintiff give security for costs.

(2) From what emanates from the English Authorities and from a line of decisions of this Court in the exercise of its Admiralty Jurisdiction it has become the usual, ordinary or general rule and practice to require the foreign plaintiff to give security for costs because it is ordinarily just to do so. The plaintiffs in this case did not raise a valid reason why an order for security of costs should not be made.

(3) The amount of the security should be such as to cover the costs that are likely to be incurred by the party applying for the order. In the present case and at this stage of the proceedings an amount of £1,000 is sufficient. The defendants are not precluded from applying at any later stage for an increase

of the security, if the said amount proves to be manifestly insufficient

Application granted
£1,000 to be given as security
for the defendants' costs

Cases referred to

Aeronave S P A and Another v Westland Charter Ltd and Others [1971] 3 All E R 531,

Hesham Enterprises v Ship Rami (1978) 1 C L R 195,

World Shipping v Vassiliko Cement Works (1979) 1 C L R 242,

Ashour v Claudia Maritime Co Ltd (1980) 1 C L R 64

Application.

Application by defendants for security for costs in an admiralty action whereby the plaintiffs claim U.S. $5,761.20 as damages for short delivery of goods.

C Saveriades, for applicants – defendants.

No appearance for respondent – plaintiff.

Cur. adv. vult.

SAVVIDES J. read the following decisions. This is an application for security for costs in an Admiralty Action whereby the plaintiffs claim a sum of U.S. Dollars 5,761.20, as damages for short delivery of goods. It is admitted in the petition filed, that the plaintiffs are a foreign company resident in Saudi Arabia from where they carry on their business.

The action was filed on the 21st July, 1986 On the 18th September, 1986 directions were given that the plaintiffs should file and deliver their petition within six weeks and the defendants should file and deliver their reply within one month from the delivery to them of the petition. The plaintiffs filed their petition on 13th November, 1986, and on 27th November, 1986 the defendants filed the present application asking for security for costs without having, in the meantime, filed their answer.

The plaintiffs opposed the applications both in its substance and also the amount claimed as security by the defendants. By an affidavit in support of their opposition and without prejudice to their contention that the application was unjustified they suggested that an amount of £400.- was more than sufficient to cover the defendants' costs in case they succeed on their claim.

At the hearing of the application, counsel for respondents – plaintiffs failed to attend, though duly aware of the date of hearing and I heard argument on the part of counsel for applicants in support of his application.

The application is based on the Civil Procedure Rules, Order 48, rules 1, 2, 3 and 9(t), Order 60, rule 1 and the Cyprus Admiralty Jurisdiction Order 1893, rule 185. Irrespective of the fact that rule 185 is comparable to rule 1 of Order 60 of the Civil Procedure Rules, once there is express provision under rule 185 of the Admiralty Rules on the matter, I find it unnecessary to refer to the provisions of Order 60, rule 1, or any other provision of the Civil Procedure Rules which are applicable to Civil proceedings but not to Admiralty proceedings. In case no provision exists in the Admiralty Rules then under the provisions of rule 237 of the Admiralty Rules of this Court, reference should be made to the practice of the Admiralty Division of the High Court of Justice in England to the extent same should appear to be applicable.

Rule 185 reads as follows:

> "If any Plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision) or any Defendant making a counterclaim is not resident in Cyprus, the Court or Judge may, on the application of the adverse party, order him to give such security for the costs of such adverse party as to the Court or Judge shall seem fit; and may order that all proceedings in the action be stayed until such security be given."

The provision for security for costs is a provision intended to safeguard a defendant in recovering any costs awarded in his favour in cases where the plaintiff is resident abroad and has no property in Cyprus on which execution may levy.

Under the English Rules and Practice applicable to Admiralty

proceedings in force in 1960, the old Rules, (which according to the Courts of Justice Law 14 of 1960, to the extent they refer to the Admiralty practice in England are the only ones which can be invoked) a similar provision for security for costs exists in the case of Plaintiffs resident abroad under Order 65, rule 6 and 6A of the R.S.C. (see Annual Practice 1960). Concerning the principles underlying such rule we read the following in the explanation notes to the Annual Practice 1960 at pp. 1884 and 1885.

> "The ordinary ground on which security is ordered is residence abroad, see Re *Percy and Kelly, etc., Co.* [1876] 2 Ch.D.531; and, subject to the exceptions hereinafter mentioned the Rule is inflexible *(Crozat v. Brogden* [1894] 2 Q.B. 30) even when he is suing as executor ..... Thus, where the sole plaintiff or all the plaintiffs are resident abroad security will be ordered *Republic of Costa Rica v. Erlanger* [1876] 3Ch.D. 62) and there is no rule that the Court will not grant more than two applications for security *(Merton v. The Times Publishing Co.* [1931] 48 T.L.R. 34). No order will be made if there are co-plaintiffs resident in England but they must be genuine co-plaintiffs and not merely the English attorney joined to avoid giving security. ..... So, where the plaintiff goes to reside permanently abroad after institution of the suit, security may be ordered ..... Temporary residence within the jurisdiction is not now sufficient to avoid giving security (see r. 6A infra) ..... Security will not be required from a person permanently residing out of the jurisdiction, if he has substantial property, whether real or personal, within it (*Redondo v. Chaytor* [1879] 4 Q.B.D., p. 457;..... and the same rule applies to a foreign company (*Re Apollinaris Co.'s Trade Marks.* [1891] 1 Ch.D.1); but simple, the property must be of a fixed and permanent nature, which can certainly be available for costs *(Edward v. Gassier* [1884], 28 Ch. 232)."

Under the new English rules and in particular Order 23(1)(1) the rule became more flexible by the introduction of the words "that the Court may order security for costs if having regard to all the circumstances of the case the Court thinks it just to do so." As to the principles which will guide the Court in the exercise of its discretion under the new rule we read in the notes of the Supreme Court Practice 1976 at p.385 the following:

«In exercising its discretion under Rule 1(1), supra, the Court will have regard to all the circumstances of the case. Security cannot now be ordered as of course from a foreign plaintiff, but only if the Court thinks it just, to order such security in the circumstances of the case. For the circumstances which the Court might take into account whether to order security for costs, see per Lord Denning M.R. in *Sir Lindsay Parkinson & Co. Ltd., v. Triplan Ltd.* [1973] Q.B.609; [1973] 2 W.L.R. 632, 646-47; [1973] 2 All E.R 273, 285-86 ..... A major matter for consideration is the likelihood of the plaintiff succeeding. If there is a strong prima facie presumption that the defendant will fail in his defence to the action, the Court may refuse him any security for costs (see per Collins J., *Crozat* v. *Brogden* [1894] 2 Q.B. 30 at p. 33 (the judgment of the C.A. in that case was in substance reversed by the former 0.65 r.6B, made in 1920, which in substance is repeated in Rule 1(1), supra). It may be a denial of justice to order a plaintiff to give security for the costs of a defendant who has no defence to the claim. Again, if a defendant admits so much of the claim as would be equal to the amount for which security would have been ordered, the Court may refuse him security, for he can secure himself by paying the admitted amount into Court (*Hogan v. Hogan (No. 2)* (1924) 2 Ir.R.14). Further, where defendant admits his liability, plaintiff will not be ordered to give security (*De St. Martin v. Davis & Co.* (1884) W.N.86) even where he counterclaims (*Winterfield v. Bradnum* [1878], 3 Q.B.D 324)."

And, also, under the heading, "Plaintiff Resident Abroad" at the same page:

'There is no longer any inflexible rule or practice that a plaintiff resident abroad will be ordered to give security for costs; the power to make such order is entirely discretionary under rule 1(1), supra (see *Aeronave S.P.A. v. Westland Charters Ltd.* [1971] 1 W.L.R. 1445; [1971] 3 All E.R. 531, C.A. and reversing *Crozat v. Brogden* [1894] 2 Q.B. 30); *Re Pretoria Pietersburg Ry. (No.2)* [1904] 2 Ch. 359). On the other hand, as a matter of discretion, it is the usual ordinary or

general rule of practice of the Court to require the foreign plaintiff to give security for costs, because it is ordinarily just to do, and this is so, even though by the contract between the parties, the foreign plaintiff is required to bring the action in England (*Aeronave S.P.A. v. Westland Charters Ltd.*, (supra)). There is, moreover, no rule or practice that a plaintiff resident abroad suing on a dishonoured bill of exchange should not be ordered to give security (*Banque du Rhone S.A v. Fuerst Day Lawson Ltd.*, [1968] 2 Lloyd's Rep. 153, C.A.)"

Though the inflexibility of the rule was relaxed under the new English rules nevertheless from what appears from the decided cases after the amendment of the old rules it is the usual practice even under the new rules to order so. Thus in *Aeronave S.P.A. and Another v. Westland Charter Ltd. and others* [1971] 3 All E.R. 531 Lord Denning M.R. said the following at p. 533:

"In 1894 in *Crozat v. Brodgen Lopes L J said that there was* an inflexible rule that if a foreigner sued he should give security for costs. But that is putting it too high. It is the usual practice of the Courts to make a foreign plaintiff give security for costs. But it does so, as a matter of discretion, because it is just to do so. After all, if the defendant succeeds and gets an order for his costs, it is not right that he should have to go to a foreign country to enforce the order. It is to be noted that Italy is not within the provisions as to the recognition of foreign judgments under the Foreign Judgments (Reciprocal Enforcement) Act 1933. But even if it were, *Kohn v. Rinson & Stafford (Brod) Ltd.*, shows that is not a ground for refusing security. The ordinary rule still remains, that it is a matter of discretion. I certainly did not mean to say anything different in *Banque du Rhone S A v. Fuerst Day Lawson Ltd.*"

Notwithstanding the fact that the inflexibility of rules 6 and 6A of the 1960 R.S.C. in England (the rules which are more in line with our Rule 185 and the only ones that can be invoked) has been

relaxed by Order 23(1)(1) of the new rules, nevertheless from what emanates from the English Authorities and from a line of decisions of this Court in the exercise of its Admiralty Jurisdiction it has become the usual, ordinary or general rule and practice to require the foreign plaintiff to give security for costs because it is ordinarily just to do so. (See *Aeronave S.P.A. v. Westland Charter Ltd. and others* (supra) the dicta in which have been adopted in a number of cases in this Court. As to the practice of this Court useful reference may be made to *Hesham Enterprises v. Ship Rami* (1978) 1 C.L.R. 195, *World Shipping v. Vassiliko Cement Works* (1979) 1 C.L.R. 242 and *Ashour v. Claudia Maritime Co. Ltd* (1980) 1 C.L.R. 64.

Bearing in mind all the above authorities I find that in the circumstances of the present case the defendants have not raised any valid reason why in the circumstances of the present case an order for security for costs should not be made. In any case I find that in the circumstances it is just to make such order.

On the question of the amount which the Court may order for security for costs, the amount should be such as to cover the costs that are likely to be incurred by the party applying for such order. According to what counsel for applicants stated in his address in support of the application, witnesses will be coming from abroad at considerable costs and an amount of at least £1,000. - should be given as security for costs.

I find that an amount of £1,000. - for security will be sufficient at this stage of the proceedings. This, of course, does not preclude defendants at any later stage to apply for an increase of such security, if the above amount proves manifestly insufficient to cover the defendants' costs in case they are successful.

In the result I grant the application and I make an order that the plaintiffs-respondents do give security for costs in the sum of £1,000.- by either cash deposit with this Court or by bank guarantee to the satisfaction of the Registrar of this Court. Such security to be given within three months from today. In the meantime all proceedings in this action should be stayed until

security is given Costs of this application should be costs in favour of the applicants-defendants

Application granted with costs in favour of applicants