

1988 May 31

(KOURRIS J)

RAYMOND IVOR BOWMAN,

Plaintiff,

v

THE SHIP «CUTTER»,

Defendant

(Admiralty Action No 3/87)

Companies—Contract by a company limited by shares—Absence of resolution by the Board of Directors for entering into the agreement and absence of resolution authorising the actual signatories of the contract to sign it—Contract invalid

- 5 *Estoppel—Agreement that plaintiff's claims for wages and for equipment left on a ship amounted to no more than £2 600—Agreement held to be invalid—Whether plaintiff precluded by estoppel from claiming on another basis more than £2,600 in respect of such wages and equipment—As position of defendant was not changed for the worse as a result of such agreement, no question of estoppel arises*
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Contracts—Implied terms—Agreement to employ plaintiff as Master of a Ship—Whether term that employer should secure the necessary under the law work permit for the plaintiff implied—Question determined in the negative

- 15 *Admiralty—Action in rem—Master of ship claiming salaries due and value of equipment belonging to him and put on board for enabling him to navigate her—Such claims give rise to a maritime lien—It follows that, notwithstanding change of ownership of ship, an action in rem could be filed—By defending such action, the new owners added their liability in personam*
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The facts of the case appear in the judgment of the Court

*Judgment for the plaintiff
for £2,600 with costs*

*Cases referred to**Dupleix [1912] P 8,**The Feronia (1868) L R 2 A and E 65***Admiralty action.**

Admiralty action for Master's wages for the period 30 6 1985 - 5
2 6 1987 and for £2,600 - disbursements made by plaintiff as a
Master on behalf of the defendant ship

St Mc Bride, for the plaintiff

A Poets, for the defendant

Cur adv vult 10

KOURRIS J read the following judgment By this action the
plaintiff claims

(a) Master's wages for the period 30 6 1985 - 2 6 1986 at £500
per month, amounting to £5,533 33,

(b) Master's wages for the period 3 6 1986 - 2 6 1987 15
amounting to £4,800 less £1,148 35 - amount received,

(c) Disbursements made by the plaintiff as a Master on behalf of
the defendant ship amounting to £2,600,

(d) An order for the delivery to the plaintiff of various items of
equipment which belong to the plaintiff and which he put on 20
board in order to enable him to navigate the ship «CUTTER» to
Cyprus and which still remain on board or alternatively their value
amounting to £2,130 23. The plaintiff's claim for £202 for
repatriation expenses was abandoned

By their answer, the defendant ship denies the claim of the 25
plaintiff and allege that on 13 5 1986 the plaintiff entered into a
written agreement with a certain Andreas Protopapas as agent of
Christodoulos Protopapas and a certain Michael Pilides as agent
of Theodoros Georghiou of the one part, Captain R. Bowman of
the other part, and Coastal Cruisers Ltd, which is a company which 30
owns the defendant ship of the third part and that this agreement
is binding on the parties as regards their claims against each other
(exhibit 2A)

The defendant ship alleges also that it owes nothing for the 35
period 3 6 1986 - 2 6 1987 because the plaintiff did not fulfil his

part of the contract as he did not secure the necessary work permit to enable him to perform his part of the agreement, (exhibit 7).

5 According to the answer of the defendant ship, the agreement dated 13.5.1986 provides that the only amount due by Coastal Cruisers Ltd. to the plaintiff is £2,600 and for this amount, no legal action should be taken against the company for non-payment unless a period of 12 months as from the date of the agreement had lapsed.

10 The plaintiff challenged the validity of this agreement on several grounds and the issue which falls for determination is whether the agreement is valid or not.

Counsel for the plaintiff contended that the agreement does not reveal on the face of the document itself that it has been signed by or on behalf of Coastal Cruisers Ltd. and this is contrary to s.33(1) (d) of the Companies Law Cap. 113. Further, he said, that even if the agreement does, on the face of it, comply with the requirements of s.33(1) (b) of Cap. 113, the document does not show that the persons, who signed it, have acted under the authority of Coastal Cruisers Ltd., express or implied. He went on to say that a person who is acting on the implied authority of a company must depend upon the Articles of that company and the Articles of the company in question do not show any such authority having been delegated or capable of being delegated to the persons alleged by the defence witnesses to have signed it. He pointed out that a Manager or official may be given authority to sign on behalf of the company by some resolution of the board and no resolutions of the company are recorded in the books of the company that Directors' meetings have taken place dealing with such matter. He said, that two deliberations by the Board of Directors are necessary: the first is to decide if the company will enter into the proposed agreement; and the second is to authorise its signature of the actual signatories, and the minute book of the meetings of the Board of Directors is the only substantial evidence that such resolutions were ever taken and no such minute book was produced by the defence.

Counsel for the defendant argued that the said agreement was signed by all parties, i.e. Protopapas and Pilides, the plaintiff, and the persons representing the interest of the company, including Nina Procopiou, who was the person nominated by the plaintiff as representing his interest in the company. He said that, even if no special meeting of the company has been held, and even if there

are no minutes, the fact is that the persons who signed the agreement could bind the company as it is mentioned in the agreement that the company is a party thereto.

I do not agree with the submission of counsel for the defendant ship that all the persons representing the interests in the company were present, and consequently could bind the company. 5

I am in agreement with the argument of counsel for the plaintiff on this issue. It is obvious that no resolution was passed by the company to enter into the agreement of 13.5.1986 (exhibit 2A) and no resolution was passed by the company to authorise the signature of the actual signatories in the said agreement. In these circumstances, I hold that the agreement, exhibit 2A is not valid. 10

But, the matter does not end there; the plaintiff, in his evidence, admitted that the amount which he was claiming against Coastal Cruisers Limited was only £2,600 but he tried to differentiate between the company and the defendant ship by stating that during the meeting of 13.5.1986 he did not raise his claims against the defendant ship. I do not accept the explanation of the plaintiff as a correct one. One fails to see why the plaintiff did not raise his claim against the defendant ship during that meeting when all the parties concerned were present and there was no other person who would represent the ship and to whom the applicant should raise his claim. Further, I fail to see why the plaintiff did not make any reservation as to his claim against the defendant ship during the meeting. Furthermore, the evidence of the plaintiff on this point is contradicted by the evidence of Michalakis Pilides, whose evidence I accept, that the plaintiff's claims up to 13.5.1986 were agreed at £2,600. 15
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Another point raised by counsel for the defendant ship is that the action is premature and should be dismissed for this reason. He said, that according to the agreement dated 13.5.1986 (exhibit 2A), the only amount due by the Coastal Cruisers Limited to the plaintiff is £2,600 and for this amount, no legal action should be taken against the company for non-payment unless a period of 12 months as from the date of the agreement had lapsed; as this action was filed on 10.1.1987, it is, he said, premature. In view of my finding that the agreement of 13.5.1986 (exhibit 2(A) is not a valid one, also, this term which is contained in the said agreement, is not valid and this point also fails. 30
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Again counsel for the defendant ship contended that even if the agreement (exhibit 2A) was not valid, then the plaintiff is estopped from alleging now that his claim for wages and equipment amounts to more than £2,600 as he signed these documents in which he admits that he has no other claim against the company whatsoever. I do not think that «estoppel» arises in the present case because it has not been contended by counsel for the defendant ship and there is no evidence that the position of the company has been changed for the worse in view of the signing of the said agreement.

I now propose to deal with the plaintiff's claim for master's wages for the period 3.6.1986 - 2.6.1987. There has been an agreement between Coastal Cruisers Limited and the plaintiff which on 3.6.1986 was reduced in writing and was produced in Court as exhibit 7. According to this agreement, the plaintiff was appointed as Captain of the defendant ship «Cutter» at the agreed salary of £400 monthly. It should be noted that Coastal Cruisers Ltd. bought the ship «Cutter» on 23.5.86 and that it is still its owner.

Counsel for the defendant alleged that due to the failure of the plaintiff to secure a work permit from the appropriate authorities of the Republic he has not been able to render his services and, therefore, he failed to perform his part of the contract and, therefore, he cannot succeed on his claim. Evidence has been adduced that Andreas Protopapas and Michalakis Pilides who were acting on behalf of Coastal Cruisers Limited, made efforts to the appropriate authorities, on behalf of the plaintiff, but the appropriate authorities of the Republic refused to grant a work permit to the plaintiff.

Counsel for the plaintiff contended that there was an implied term in the said agreement that the Coastal Cruisers Limited were to secure the work permit for the plaintiff and in failing to do so, they are guilty of breach of the agreement. Furthermore, he said that there has been no aversion in the answer that this agreement failed for impossibility of performance. It has not been specifically pleaded, counsel for the plaintiff contended, and, consequently, they cannot rely on impossibility of performance of the contract. Pausing here for a moment, I would like to state that no objection was taken by counsel for the plaintiff when evidence on this point was tendered in Court and he cannot complain now.

I have considered the matter and I do not agree that there is an implied term that Coastal Cruisers Limited would obtain a work permit for the plaintiff and that their failure to do so made them guilty of breach of the agreement. As there has been no express term in the agreement stating that the Coastal Cruisers Limited would obtain a work permit for the plaintiff, then it was upon the plaintiff to secure a work permit and his failure to do so does not entitle him to any claim against Coastal Cruisers Limited. For these reasons, the plaintiff's claim for wages for the period 3.6.86-3.6.1987 fails.

Counsel for the defendant ship contended that there is no jurisdiction in rem in the present action because the ship was registered in the name of the company Coastal Cruisers Ltd. on 23.5.1986 and this means that on the date of the institution of these proceedings the owner is Coastal Cruisers Ltd., and not the persons who were the owners when the plaintiffs claim for salaries for the sum of £5,000 and for the sum of £2,600 for equipment arose.

Counsel for the plaintiff argued that all the claims of the plaintiff as set out in the petition, confer upon the plaintiff in respect thereof, maritime liens which follow the ship despite any change of ownership. He submitted that the defendant in this action is the ship itself, «Cutter», and despite the intervention of Coastal Cruisers Ltd., the liability of the defendant ship, in rem, towards the plaintiff has not been extinguished thereby, but the liability of the owners of the defendant ship has been added thereto in personam. In respect of his argument, he relied on the case *Dupleix*, [1912] P. 8. He also contended that claims for wages give rise to a maritime lien on the ship as also do claims by a Master in respect of disbursements made on account of a ship and that these maritime liens follow a ship even after the sale into the hands of a third party. He cited *Maritime Liens by Thomas*, paras. 13, 18 and 438. He further said that the fact that a Master may also be a part owner does not affect the matter, and he cited the case *The «Feronia»*, [1868] L.R. 2A & E 65 (*Maritime Liens by Thomas* § 343).

I have considered this issue and I am in agreement with the submission of counsel for the plaintiff. The claims of the plaintiff as agreed on 13.5.1986 between the parties for the sum of £2,600,

give rise to a maritime lien and I also hold that Coastal Cruisers Ltd.. by defending this action, have added their liability in personam.

For all the above reasons, there will be judgment for the plaintiff for £2,600 with costs to be assessed by the Registrar.

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Judgment for plaintiff
for £2,600.- with costs.