

1988 December 5

(DEMETRIADES, J.)

GREENOCK NAVIGATION CO. LTD.,

*Plaintiffs,*

v.

TRADAX OCEAN TRANSPORTATION S.A.,

*Defendants.*

*(Admiralty Action No. 101/86).*

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5 *Admiralty — Practice — The Admiralty Jurisdiction Orders 1893, Rule 89 — Setting down for hearing prior to the hearing of the action questions of law — Principles applicable — When serious questions of law, that do not involve facts for deciding them, are raised and are apparent on the pleadings and, if decided in favour of the party raising them, would dispense with further trial the practice is to determine them prior to the hearing — As in this case the substratum of the questions raised involves the determination of facts, the application must be dismissed.*

10 The facts sufficiently appear from the judgment of the Court.

*Application dismissed with costs.*

*Cases referred to:*

15 *Heirs of the late Theodoros Panayi v. The Administrators of the Estate of the late Stylianos Georghis Mandrioti, (1963) 2 C.L.R. 167;*

*Michaelides v. Diakou, (1968) 1 C.L.R. 392;*

*Jupiter Electrical (Overseas) Ltd. v. Christide, (1975) 1 C.L.R. 144;*

*Paschalis v. The ship «Tania Maria» (1977) 1 C.L.R. 53;*

20 *Overseas Shipping & Forwarding Co. v. Kappa Shipping Co. Ltd. (1971) 1 C.L.R. 248.*

**Application.**

Application by defendants for an order of the Court directing that the questions of law raised in paragraphs 1, 2 and 3 of their answer be set down for hearing at a date prior to the hearing of the action.

*X. Xenopoulos*, for applicants-defendants. 5

*L. Papaphilippou*, for respondents-plaintiffs.

*Cur. adv. vult.*

DEMETRIADES J. read the following ruling. The present proceedings arose as a result of an application made by the defendants, by which they seek an order of the Court directing that the questions of law raised in paragraphs 1, 2 and 3 of their answer, be set down for hearing at a date prior to the hearing of the action. The application is based on rule 89 of the Cyprus Admiralty Jurisdiction Order 1893. 10

The application was opposed by the plaintiffs, respondents in these proceedings, on the ground that the facts relied upon by the defendants - and which are apparent on the face of the proceedings - involve issues of facts without proof of which the points of law cannot be resolved and, also, that the summons for directions was filed belatedly and while the action had been set down for hearing. 15 20

The questions of law for the hearing of which the defendants pray for their hearing prior to the hearing of the action, are the following:

«1. Defendants raise the preliminary objection that this Action cannot proceed as there applies the doctrine of Res Judicata in that the same claim was tried and finally adjudicated in Admiralty Action 113/85 upon the Application of the Plaintiffs dated 4 April, 1986. This application was dismissed by the Court on the 29th of April 1986, due to the default of the Plaintiff to appear at the Hearing. 25 30

2. Without prejudice to the above, Defendants further raise the preliminary objection that the plaintiffs are estopped from raising the present action and claim in that they accepted and consented to the withdrawal of the Admiralty Action No. 113/ 85, in which the interlocutory Order was granted, without any 35

5 reservation as to Plaintiffs' (Defendants in the said Admiralty Action 113/85) rights whatsoever: Particularly at the Appearance before the Court on the 28th of September 1985 the Plaintiffs (Defendants in Action 113/85) unreservedly and unconditionally agreed to the withdrawal of the said action with reservation of the Defendants' (Plaintiffs in the said Action 113/85) rights to file a fresh action on the same subject matter.

10 3. Furthermore and without prejudice and/or in the alternative to the above, Defendants raise the preliminary objection that Plaintiffs' claim discloses no cause of action and the present action is not legally founded as the action in which the interlocutory order was given and on which they base their claim, has been dismissed and does not exist  
15 anymore and therefore no legal rights of any nature of the plaintiffs can be created thereinto.»

Written addresses were filed by counsel, in which the case and submissions of each party were put forward.

20 It is well established by authority that although it is highly undesirable for cases to be heard piecemeal, when serious questions of law that do not involve facts for deciding them are raised, and which are apparent from the pleadings, and which, if decided in favour of the party raising them, would dispense with any further trial, they should be decided before the trial and that in  
25 such a case the party raising them must apply to the Court for their determination.

The above were decided and applied in a number of cases and in this respect see *Heirs of the late Theodoros Panayi v. The Administrators of the Estate of the late Stylianos Georghis Mandrioti*, (1963) 2 C.L.R. 167; *Michaelides v. Diakou*, (1968) 1 C.L.R. 392 at p. 395; *Jupiter Electrical (Overseas) Ltd. v. Savvas Costa Christide*, (1975) 1 C.L.R. 144, at p. 152; *Paschalis v. The ship «TANIA MARIA»*, (1977) 1 C.L.R. 53, at p. 58; *Overseas Shipping & Forwarding Co. v. Kappa Shipping Co. Ltd.*, (1971) 1  
35 C.L.R. 248, at p. 252; Rules of the Supreme Court (White Book) 1960, 0.25, r.3, at p. 572.

As it appears from the pleadings filed in this action, the defendants-applicants filed in the Admiralty Registry an Action under No. 113/85, against the present Plaintiffs, by which they

claimed damages for alleged freight, demurrages, premia and consequential losses alleged to have been caused by the breach of a charter party. Later on, the present defendants obtained, on an ex-parte application, an interlocutory injunction, by which the plaintiffs were restrained from selling, mortgaging, alienating or otherwise dealing with the ship NIC, the property of the plaintiffs. The plaintiffs then moved the Court for the discharge of the order and on the 3rd September, 1985, the Court discharged it. On the 28th September, 1985 the defendants withdrew the said Admiralty Action, which was then dismissed with an order that each party would bear its own costs.

It is the allegation of the plaintiffs that before the issue of the said order, they were negotiating the sale of the ship at the price of U.S. Dollars 121 per L.D.T. and that because of the order they lost the opportunity to sell their ship. In addition, by their petition they claim additional damages.

In reply to the allegations made by the plaintiffs in their petition, the defendants allege that Action No. 113/85 was withdrawn without prejudice to their rights to file a fresh action on the same subject matter and that the plaintiffs made no reservation whatsoever as to their rights. They further allege that the plaintiffs are estopped from raising such claim as they had consented to the discharge of the order and to the return of the document of guarantee.

Having in mind the case of each side as this appears in their pleadings, I am inclined to agree with counsel for the plaintiffs - respondents in these proceedings - that the substratum, upon which the issues of res judicata and estoppel are raised in the Answer, is based on facts and that the issues cannot be resolved without the Court having before it all the facts of the case.

In view of my above finding, I consider it unnecessary to deal with the question raised by counsel for the respondents that the application was filed belatedly.

In the result, the application is dismissed with costs.

*Application dismissed with costs.*