1989 March 14

(DEMETRIADES, J.).

JAYEE PVC PIPES PVT LTD. & OTHERS,

Plaintiffs,

v.

INTERTRUST SHIPPING CORPORATION,

Defendants.

(Admiralty Action No. 96/88).

Appeal — Stay of execution pending appeal — (In this case pending an application to review a ruling) — Principles applicable.

In the circumstances of this case and in view of the principles governing stay of execution pending appeal, the Court dismissed the application for stay of execution of a ruling of the Court in respect of which an application for review was filed.

Application dismissed.

Cases referred to:

Sheepswerf Bodewes - Gruno v. The Ship ALGAZERA (1980) 1 C.L.R. 595.

Application.

Application by interveners for directions for the postponing of the effect of the ruling of the 28th December, 1988 so that the status quo be maintained pending the result of an application filed by them for review.

St. McBride, for applicants - interveners - receivers of the cargo.

A. Theophilou, for respondents - plaintiffs.

G. Michaelides, for interveners - owners of the containers.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. On the day the writ of summons in this action was filed in the Registry, the plaintiffs obtained, after they had applied to the Court ex-parte, an order by which the Marshal of the Court was appointed as «sequestrator» with powers to enter upon and take the cargo which was described in the bills of lading referred to in the writ and to keep them in safety doing everything necessary for their preservation till the final determination of the action and/or further order of the Court.

In September 1988, the Marshal, in his capacity as «sequestrator», applied to the Court for directions regarding the cargo, the subject of this action. His application was then opposed by the Formosan Rubber Group, Ta Win Industrial Co. and Epoch Products Corporation, all of Taiwan, (hereinafter to be referred to as «the first interveners»). The directions the Marshal was asking for were, inter alia, the unstuffing of the cargo from the containers which are the property of persons that are not a party to these proceedings, who, however, applied and were, by consent of all parties appearing in the proceedings, allowed to be joined as interveners (hereinafter to be referred to as «the second interveners»).

When the application of the Marshal for directions came up for hearing, the first interveners submitted that the Marshal had no right to apply for directions as he was not a party to the action; that the plaintiffs had to move the Court to vary and/or seek directions on the order they had obtained and that, in any event, the Marshal had to make a formal application to the Court for directions, that is by filing an application by summons.

The relevant part of the Ruling I gave on the issue raised by the first interveners reads:

> «According to the opinion expressed by Sir G. Jessel M.R. in the case of *In re Australian Direct Steam Navigation Company* L.R., XX Equity 325 at pp. 326 to 327:-
>
> 'The term 'sequestration' has no particular technical meaning. It simply means the detention of property by a Court of Justice for the purpose of answering a demand which is made. That is exactly what the arrest of a ship is.'
>
> I am in full agreement with the above statement of Sir Jessel M.R. because in the case of arrest and sequestration, as well as

in the case of a Court appointing a receiver, the purpose of the Court order is to preserve the property under the custody of the Court until the claim of the plaintiff is finally determined. In my view, it is immaterial if a ship or cargo can be released from arrest after the filing in the Registry of a security because the effect of that security is to preserve the property under the custody of the Court in lieu of the ship or the cargo. Therefore, it is my opinion that the Admiralty Marshal, who is an officer of the Supreme Court in its Admiralty Jurisdiction, can, whenever he deems it fit, apply for directions as to how he can proceed to execute the services and duties required of him in furtherance of the best interests of the parties in a litigation.

I am further of the view that the Marshal is not bound to formally apply to the Court for directions, that is by filing an application by summons, provided that his letter asking for directions, as in this case, is served on all parties concerned and/or involved in the proceedings.

To sum up, I find that the Admiralty Marshal, when he is appointed as a receiver under the provisions of section 32 of the Courts of Justice Law (Law 14/60), has the same rights, obligations and duties as when a ship or cargo is arrested and that it is in his absolute discretion to take such steps as he considers it necessary for the preservation and safe custody of the ship or cargo, as well as steps that will minimise the costs for their preservation and safe custody.

In the present case, the Marshal - receiver - is authorised to take all steps that are necessary for the preservation and custody of the cargo at the minimum expense and if he considers it necessary, to destuff the cargo from the containers in which they are stuffed (and which are not the subject of these proceedings) in which case he should allow their owners to take possession of them.

In the result, the opposition of the interveners opposing the application of the Marshal is dismissed and they must pay any costs resulting from their opposition, whether these are Marshal's expenses and/or for this litigation».

As a result of my Ruling, the first interveners applied for directions for the postponing of the effect of my Ruling of the 28th

December, 1988, so that the status quo was maintained pending the result of an application that had been filed by them for review.

After hearing counsel for the first interveners, I made the following order:

«Stay of the effect of the Ruling granted till the 7th January, 1989. In the meantime, copy of the application, the affidavit and all attached documents to be delivered to counsel appearing for all interested sides in these proceedings, including the Marshal of this Court».

The plaintiffs and the second interveners opposed the application of the first interveners.

Having heard the arguments, it is clear that the two parties who oppose the application of the first interveners do not object to the grant of a stay provided, they say, the first interveners put up sufficient guarantees for the running costs of keeping the cargo in containers. In addition, counsel appearing for the owners of the containers, that is the second interveners, submitted that for the Court to make an order for a stay of execution, there must be an enforceable order and that such order does not exist because the Court, in its Ruling on the application of the Marshal, made no order but it merely gave the guidelines as to the duties and the rights the Mashal has in order to keep the cargo safe.

In support of his argument that his client should not be ordered to put up secutity, Mr. McBride submitted that only when there is final judgment and the party aggrieved wishes to appeal, in the normal exercise of a Judge's discretion, the party who is appealing and who wants a stay of execution, is usually ordered to put up security. Although, he said, he did not dispute that there were a lot of authorities to that effect, in the present case there is no final Judgment but a ruling which condemned the applicants to put up security in the first instance or to deposit the costs of the storage ot the containers, without having been heard. Further, he said the claim for the detention of the containers has not been established.

As regards the submission made by counsel for the second interveners, that is that there is no enforceable order, I am incluned to the view that from what I said in the last but one paragraph of my ruling, it is clear that anybody attempting to interfere with the Marshal - if he considers it necessary to destuff the cargo from the containers - will be the subject of a contempt of Court. Therefore, the directions I gave, I consider them to be «an enforceable order».

I now come to the issue of whether an order for stay ought to be made pending an appeal (in this case pending an application for «Review»). In the case of *Scheepswerf Bodewes-Gruno v. The ship «ALGAZERA»*, (1980) 1 C.L.R. 595, at p. 598, I said the following regarding this issue:

«The principles governing a stay of execution pending an appeal can be summarized as follows (see *Polini v. Gray, Sturla v. Freccia*, [1879] 12 Ch. D. 438; *Wilson v. Church (No. 2)* 12 Ch. D. 454; *Orion Property Trust and others v. Du Cane Court Ltd. and others*, [1962] 3 All E.R. 466; *Erinford Properties Ltd. v. Cheshire Country Council [1974] 2 All E.R. 448; London and Overseas (Sugar) Co. and another v. Tempest Bay Shipping Co. Ltd. and others*, (1978) 1 C.L.R. 367; *Tafco (Foreign Trade Organization for Chemicals and Food-stuffs) of Syria (No. 2) v. The Ship «Lambros L.» and her cargo*, (1977) 1 C.L.R. 159):

(a) The Court, in granting or refusing a stay, has a discretion, depending on the particular circumstances of each case.

(b) The Court should not deprive a successful litigant of the fruits of his litigation pending an appeal.

(c) That when there is an appeal about to be prosecuted, the litigation is to be considered as not at an end, and that being so, if there is reasonable ground of appeal, and if by not making the order to stay the execution of the order, it would make the appeal nugatory, not to deprive the appellant of the results of the appeal, and that if such is the case, it is the duty of the Court not to interfere and suspend the rights of the party who has established his rights for a stay of execution».

Going through the record in the file of this action and the arguments I have heard, I find that the containers in which the cargo is stuffed are not the subject of the proceedings; that they belong to persons that have nothing to do with the plaintiffs, the defendants or the first interveners and that there is no allegation by the first interveners that the owners of the containers are under an obligation to them to keep the containers stuffed with the cargo allegedly belonging to them till the final determination of litigation that might have arisen. In any event, there is no allegation by the first interveners that if the cargo allegedly belonging to them is unstuffed, damage will be caused to it.

In the light of the above, I am not prepared to grant the stay applied for by the first interveners.

The first interveners to pay the costs resulting from the keeping of the cargo in the containers until today, plus the costs of these proceedings both to the plaintiffs and the second interveners. The costs of these proceedings to be assessed by the Registrar.

Application dismissed.
Order for costs as above.