

22nd April, 1935

[**TRIANAFYLLIDES, P., LOIZOU, MALACHTOS, STYLIANIDES,
PIKIS, II.]**

G. KIRZIS AND CO LTD & OTHERS,

Appellants-Ex Parte Respondents

v.

KOTHARI TRADING CO, AND OTHERS,

Respondents-Plaintiffs.

(Civil Appeal No. 6703).

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- 5 *Discovery — Order made, in admiralty proceedings on an ex-parte application, against persons who were not parties to the action — Having regard to the order made and its terms, the position of the appellants and the claim in the writ of summons, the order could not have been made, and, even more so, on an ex-parte application.*
- Appeal — Against an order for discovery made by a Judge of the Supreme Court in admiralty proceedings against persons who were not parties to the action — Whether appeal lies, or application for review under Rules 165-167 of the Admiralty Rules.*
- 10 *Admiralty Rules — Application for review under Rules 165-167 — Whether it lies against an order for discovery made against persons who are not parties to the action.*
- Admiralty Rules — Meaning of "party" in Rule 29 — It means either the plaintiff or the defendant.*
- 15 *Admiralty Rules — Meaning of the phrase "relating to" in Rule 93 (Discovery of documents) — It means documents which may either directly or indirectly enable the party seeking discovery either to advance his own case or damage that of his adversary, or which may fairly lead to a train of enquiry which may have either of these*
- 20 *consequences.*
- Words and phrases — "Relating to" in Rule 93 of the Admiralty Rules (Discovery of documents) — It means documents which may either directly or indirectly enable the party seeking discovery either to advance his own case or damage that of his adversary, or which may*
- 25 *fairly lead to a train of enquiry which may have either of these consequences.*

The respondents brought an admiralty action in rem against the ship FORUM STAR and its cargo, and obtained ex-parte a mareva order against the appellants - ex parte respondents in respect of the sum of 100,000 U.S. dollars, or any other sum which their principals, the appellants, had placed in their hands for defraying the expenses for discharging and warehousing the cargo of the defendant ship. The appellants - ex parte respondents had been made such for the sole purpose of obtaining the mareva order and were not a party to the action. The appellants were not a party at all in the proceedings. They both opposed the continuation of the mareva order.

On 8.3.84 the respondents obtained, ex parte, an order against both the appellants and the appellants-ex parte respondents for discovery of documents relating to the issues raised in the mareva order proceedings. The order was, in effect, directed against the appellants, who had possession of the documents. The order for discovery was served on the appellants-ex parte respondents on 17.3.84. On 24.3.84 this appeal was filed against the order for discovery.

Both appellants argued that, since they were not parties to the action, an order for discovery could not have been made against them, or could have been made only in exceptional circumstances, which did not exist in this case. The respondents argued that the order for discovery could not be the subject of an appeal, but only of an application for review under Rules 165-167 of the Admiralty Rules.

Held, allowing the appeal:

(a) Since Rule 29 of the Admiralty Rules provided that parties to an admiralty action are either the plaintiff or the defendant, and Rule 165 provided that an application for review can be made by "any party", it followed that the review procedure did not apply in this case, where neither of the appellants was a party to the action.

(b) Although it might be possible to make an order for discovery against a person not a party to the action in exceptional circumstances, such did not exist in this case.

(c) Having regard to the order made and its terms, the position of the appellants, and the claim in the writ of summons, the order for discovery could not have been given.

(d) The correct interpretation of the phrase "relating to" in Rule 93 of the Admiralty Rules (*Discovery of documents*) was that it referred to documents, which may either directly or indirectly enable the party seeking discovery either to advance his own case or damage that of his adversary, or which may fairly lead to a train of

enquiry which may have either of these consequences.

Appeal allowed with costs.

- 5 Αποκάλυψη εγγράφων — Διάταγμα εκδόθηκε, σε διαδικασία ναυτοδικείου, μετά από μονομερή αίτηση, εναντίον προσώπων που δεν ήταν διάδικοι στην αγωγή — Έχοντας υπόψη το διάταγμα που εκδόθηκε και τους όρους του, την θέση των εφεσειόντων και την απαίτηση στο κλητήριο ένταλμα, το διάταγμα δεν μπορούσε να είχε εκδοθεί, και ακόμη περισσότερο μετά από μονομερή αίτηση.
- 10 Έφεση — Εναντίον διατάγματος για αποκάλυψη εγγράφων που εκδόθηκε από δικαστή του Ανωτάτου Δικαστηρίου σε διαδικασία ναυτοδικείου εναντίον προσώπων που δεν ήταν διάδικοι στην αγωγή — Κατά πόσο υπόκειται σε έφεση, ή σε αίτηση για αναθεώρηση σύμφωνα με τους Κανονισμούς 165 - 167 των Θεσμών Ναυτοδικείου.
- 15 Θεσμοί Ναυτοδικείου — Αίτηση για αναθεώρηση σύμφωνα με τους Κανονισμούς 165-167 — Κατά πόσο μπορεί να υποβληθεί εναντίον διαταγής για αποκάλυψη εγγράφων που εκδόθηκε εναντίον προσώπων που δεν ήταν διάδικοι στην αγωγή.
- 20 Θεσμοί Ναυτοδικείου — Έννοια του όρου "διάδικος" στον Κανονισμό 29 — Σημαίνει είτε τον ενάγοντα είτε τον εναγόμενο.
- 25 Θεσμοί Ναυτοδικείου — Έννοια της φράσης "έχοντα σχέση με" στον Κανονισμό 93 (αποκάλυψη εγγράφων) — Σημαίνει έγγραφα τα οποία μπορούν είτε άμεσα είτε έμμεσα να δώσουν την δυνατότητα στον διάδικο που ζητεί την αποκάλυψη είτε να προωθήσει την δική του υπόθεση είτε να προκαλέσει ζημιά στην υπόθεση του αντιπάλου του, ή τα οποία μπορούν λογικά να οδηγήσουν σε μία γραμμική έρευνας που μπορεί να έχει οποιαδήποτε των πιο πάνω επιπτώσεων.
- 30 Λέξεις και φράσεις — "Έχοντα σχέση με" στον Κανονισμό 93 των Θεσμών Ναυτοδικείου (αποκάλυψη εγγράφων) — Σημαίνει έγγραφα τα οποία μπορούν είτε άμεσα είτε έμμεσα να δώσουν την δυνατότητα στον διάδικο που ζητεί την αποκάλυψη είτε να προωθήσει την δική του υπόθεση είτε να προκαλέσει ζημιά στην υπόθεση του αντιπάλου του, ή τα οποία μπορούν λογικά να οδηγήσουν σε μια γραμμική έρευνας που μπορεί να έχει οποιαδήποτε των πιο πάνω επιπτώσεων.
- 35 Η εφεσίβλητη κίνησε αγωγή ναυτοδικείου in rem εναντίον του πλοίου FORUM STAR και του φορτίου του, και με μονομερή αίτηση πήρε διάταγμα τύπου *parens* εναντίον των εφεσειόντων -*ex parte* καθ' όν η αίτηση σχετικά με ποσό 100.000 Δολαρίων ΗΠΑ, ή

οποιοδήποτε άλλο ποσό που οι αντιπροσωπευόμενοι τους, οι εφεσεϊόντες, τους είχαν δώσει για την κάλυψη εξόδων για την εκφόρτωση και αποθήκευση του φορτίου του εναγόμενου πλοίου. Οι εφεσεϊόντες - ex parte καθ'ων η αίτηση είχαν γίνει καθ'ων η αίτηση στη μονομερή τύπο πάνω αίτηση για τον μοναδικό σκοπό της λήψης διατάγματος τύπου παρενα εναντίον τους και δεν ήταν διάδικος στην αγωγή. Οι εφεσεϊόντες δεν ήταν διάδικος καθόλου στην διαδικασία. Αμφότεροι έφεραν ένσταση στη συνέχιση του διατάγματος παρενα.

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Στις 8.3.84 η εφεσίβλητη πήρε, μετά απο μονομερή αίτηση, διάταγμα εναντίον αμφοτέρων των εφεσεϊόντων και των εφεσεϊόντων - ex parte καθ'ων η αιτηση για αποκάλυψη εγγράφων που είχαν σχέση με τα επίδικα θέματα στην διαδικασία για το διάταγμα παρενα. Το διάταγμα απευθυνόταν στην πράξη εναντίον των εφεσεϊόντων, που είχαν κατοχή των εγγράφων. Το διάταγμα για αποκάλυψη επιδόθηκε στους εφεσεϊόντες - ex parte καθ'ων η αίτηση στις 17.3.84. Στις 24.3.84 καταχωρήθηκε η παρούσα έφεση εναντίον της διαταγής για αποκάλυψη εγγράφων.

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Αμφότεροι οι εφεσεϊόντες ισχυρίστηκαν ότι, εφόσον δεν ήταν διάδικος στην αγωγή, δεν μπορούσε να είχε εκδοθεί διάταγμα για αποκάλυψη εναντίον τους, ή μπορούσε να είχε εκδοθεί μόνο σε εξαιρετικές περιπτώσεις που δεν υφίσταντο στην παρούσα περίπτωση. Οι εφεσίβλητοι ισχυρίστηκαν ότι το διάταγμα για αποκάλυψη δεν μπορούσε να ήταν αντικείμενο έφεσης αλλά μόνο αντικείμενο αίτησης για αναθεώρηση σύμφωνα με τους Κανονισμούς 165-167 των Θεσμών Ναυτοδικείου.

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Αποφασίσθηκε, επιτρέποντας την έφεση:

(α) Εφόσον ο Κανονισμός 29 των Θεσμών Ναυτοδικείου προνοούσε ότι διάδικος σε αγωγή Ναυτοδικείου είναι είτε ο ενάγων είτε ο εναγόμενος, και ο Κανονισμός 165 προνοούσε ότι αίτηση για αναθεώρηση μπορεί να υποβληθεί από "οποιοδήποτε διάδικος", έπεται ότι η διαδικασία αναθεώρησης δεν είχε εφαρμογή στην παρούσα περίπτωση, όπου κανείς από τους εφεσεϊόντες δεν ήταν διάδικος στην αγωγή.

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(β) Αν και είναι πιθανόν δυνατό να εκδοθεί διάταγμα για αποκάλυψη εγγράφων εναντίον προσώπου που δεν είναι διάδικος στην αγωγή σε εξαιρετικές περιπτώσεις, τέτοιες δεν υφίσταντο στην παρούσα περίπτωση.

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(γ) Έχοντας υπόψη το διάταγμα που εκδόθηκε και τους όρους του, την θέση των εφεσεϊόντων, και την απαίτηση στο κλητήριο ένταγμα, το διάταγμα για αποκάλυψη δεν μπορούσε να είχε εκδοθεί.

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- 5 (δ) Η σωστή ερμηνεία της φράσης "έχοντα σχέση με" στον Κανονισμό 93 των Θεσμών Ναυτοδικείου (αποκάλυψη εγγράφων) ήταν ότι αφορούσε έγγραφα, τα οποία μπορούν είτε άμεσα είτε έμμεσα να δώσουν την δυνατότητα στον διάδικο που ζητεί την αποκάλυψη είτε να προωθήσει την δική του υπόθεση είτε να προκαλέσει ζημιά στην υπόθεση του αντιπάλου του, ή τα οποία μπορούν λογικά να οδηγήσουν σε μια γραμμή έρευνας που μπορεί να έχει οποιαδήποτε από αυτές τις επιπτώσεις.

Η έφεση επιτράπηκε με έξοδα.

10 Cases referred to:

Williams & Glyn's Bank v. Kouloumbis (1984) 1 C.L.R. 569

The National Bank of Greece S.A. v. Mitsides (1962) C.L.R. 40

James Nelson & Sons Ltd v. Nelson Line (Liverpool) Ltd [1906] 2 K.B. 217

- 15** *Gould v. National Provincial Bank Ltd [1960] 1 All E.R. 544.*

Appeal.

Appeal against the order of discovery of documents given in an ex parte application by a Judge of this Court.

G. Triantafyllides, for appellants.

- 20** *E. Lemonaris*, for respondents.

Cur. adv. vult.

TRIANTAFYLLIDES, P.: The Judgment of the Court will be delivered by Mr. Justice Stylianides.

- 25** STYLIANIDES, J.: This is an appeal against an order for discovery of documents given in an ex parte application by a Judge of this Court.

The plaintiffs raised an action against the ship "FORUM STAR" and her cargo laden on the said ship.

On the 10th of January, 1984, the plaintiffs applied for an interim order and/or mareva injunction restraining the ex parte respondents from removing from the jurisdiction of this Court or otherwise deal with the sum of U.S. Dollars 100,000.-, or its equivalent in Cyprus pounds, or any other sum placed by West of England Protection and Indemnity Association in the hands or account of the ex parte respondents for defraying the expenses for discharging and warehousing the cargo on board M/V "FORUM STAR" including the cargo of the plaintiffs claimed in this action, pending the determination of this action or until further order of the Court.

The ex parte respondents are the agents in Cyprus of the West of England Protection and Indemnity Association - (the "Club").

The Club is an insurance company abroad which affords protection to shipowners, such protection varying in each particular case, according to the cover which the particular shipowner may have.

On the 1st of March, 1984, the ex parte respondents filed notice of intention to oppose the aforesaid application of the plaintiffs. The notice was accompanied by an affidavit sworn by John Aiken McKinley, a barrister-at-law, an Associate Director and legal advisor to the Club.

In the said affidavit it is stated that the ex parte respondents were wrongly joined both from the substantive, as well as, from the procedural point of view and the mareva injunction is not directed against the funds of the defendants, but against the funds of the stranger to the difference between the litigants, as the shipowner has no cover in respect of any of the claims appearing in the Writ of Summons.

On the 8th of March, 1984, a Judge of this Court, in an ex parte application by the plaintiffs, issued the order for

discovery appealed against, which reads:-

5 "IT IS ORDERED that the ex-parte respondents and their principals West of England Protection and Indemnity Association do make discovery by affidavit of all documents which are in their possession or power relating to any matter in question in an interlocutory injunction dated 11th January, 1984 and more particularly:-

10 (a) All telexes, correspondence, documents, minutes, cover notes entries and policies exchanged made and issued in respect of the ship "FORUM STAR" by, with or through the West of England Protection and Indemnity Association.

15 (b) All claims, vouchers and receipts concerning a remittance of US\$100,000 by the West of England Protection and Indemnity Association to the Ex-parte respondents. AND IT IS ORDERED that the discovery do take place within fifteen days from service of the present order on the ex-parte
20 respondents or on their advocates."

The order was served on the ex parte respondents on the 17th of March, 1984.

On the 24th of March, 1984, this appeal was filed by the ex parte respondents and the Club.

25 Counsel for the respondents-plaintiffs strenuously argued that appeal does not lie against that order and only an application for review could be entertained by the Court under Rules 165-167 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction.

30 These Rules, which provide for review proceedings of any order made by a Judge not being a final order or judgment disposing of the claim on the application of any party

filed within seven days of the making of the order, were judicially considered in *Williams & Glyn's Bank v. Kouloumbis* (1984) 1 C.L.R. 569.

The Club is admittedly not a party at all in the proceedings - the action, the mareva application or the application for discovery. 5

The ex parte respondents are not a party to the action. Parties to an admiralty action are either the plaintiff or the defendant - (see Rule 29).

Rule 165 provides for application for review by "any party" and Rule 166 sets a peremptory period of seven days from the date of the making of the order for the filing of the application. 10

The combined effect of these two provisions makes the procedure for review inapplicable in cases such as the one in which the appellants were neither parties - the one of them was conceded by the respondents that was not a party in any proceedings - nor present when the order was made. 15

The order was served after the lapse of the seven days period. In view of the above, the objection of counsel for the respondents-plaintiffs is unfounded. Appeal lies against the order for discovery. 20

We turn to the substance of the appeal.

The order is in effect directed against the Club because the documents are in their possession. 25

The ex parte respondents were added as ex parte respondents for the first time on the application for mareva injunction for the sole reason to restrain them from transferring U.S.\$100,000.- outside the jurisdiction.

Under Rule 93 an order for discovery may be made 30

against a party to an action for discovery by affidavit of all documents which are in his possession or power relating to any matter in question therein.

5 The correct interpretation of the words "relating to" is
"Documents are relevant which may either directly or indirectly enable the party seeking discovery either to advance his own case or damage that of his adversary, or which may fairly lead to a train of enquiry which may have either of these two consequences" - (see *The National Bank of Greece S.A. v. Paraskevas Mitsides and Another* (1962) 10 C.L.R. 40 at p. 42).

As a general rule only the parties to a proceeding between whom some matter in question arises are required or can be ordered to give discovery of documents - (see 15 *James Nelson & Sons Ltd. v. Nelson Line (Liverpool) Ltd.* (1906) 2 K.B. 217, at pp. 223, 224, CA).

In Halsbury's Laws of England, 4th Edition, Volume 13, paragraph 16, we read:-

20 "Discovery is not confined to plaintiff and defendant, or to opposite parties in the ordinary sense of the word, for it may be ordered wherever there are parties between whom there is some right to be adjusted or some question to be decided in the cause."

25 Discovery will not be ordered against a defendant who is not a proper party - (see *Gould v. National Provincial Bank Ltd. and Another* (1960) 1 All E.R. 544).

There is a number of exceptions to this general rule.

30 Having regard to the order made and the terms thereof, the position of the appellants, the claim in the Writ of Summons, the order challenged could not have been given. More so, it should not have been given in an ex parte application without giving the opportunity to the appellants to

state their case before the Court. There were no exceptional circumstances in this case. In the result this appeal is allowed.

The order for discovery is set aside.

Respondents-plaintiffs to pay the costs of this appeal. 5

Appeal allowed.