

DISTOS COMPANIA NAVIERA S.A (NO. 3),
Plaintiffs,

v

THE CARGO ON BOARD THE SHIP "SISKINA",
Defendant.

DISTOS
COMPANIA
NAVIERA S A
(NO 3)
v
CARGO
ON BOARD
THE SHIP
"SISKINA"

(Admiralty Action No 43/76)

Admiralty—Arrest of Property (cargo)—Security—Increase of—Appeal—Application for an order enlarging the time within which to furnish such security until determination of the appeal—Uncertainty as to what part of the cargo under arrest the respondents (cargo owners) are beneficially interested—And uncertainty as to present position of judicial proceedings in England for damages against the plaintiffs in this action—Directions for production of affidavit evidence to clarify said uncertainties

After filing an appeal against the order of the Court whereby it was directed that the amount of security prescribed in a previously made order for the arrest of the defendant cargo, be increased from C£10,000 to C£30,000, plaintiff by means of an application by summons sought an order enlarging the time within which to furnish the said increased security until the determination of the appeal, they also, sought, in the alternative, an order staying the execution of the order increasing the security until the determination of the said appeal¹

As there was uncertainty as to what part of the cargo under arrest the respondents (cargo owners) were beneficially interested and as to the exact position of the judicial proceedings in England against the plaintiffs the Court directed that the application by summons will be proceeded after such uncertainties are clarified by the production of affidavit evidence (pp 383–384 *post*)

25 Application.

Application for (a) an order enlarging the time within which to comply with an order for increased security, made in relation to the arrest of the defendant cargo, pending the determination

of an appeal against such order and (b) in the alternative, for an order staying the execution of the order for increased security pending the determination of the said appeal.

Ph. Valiandis for *L. Papaphilippou*, for the appellants in C.A. 5618—Applicants (Plaintiffs in this action). 5

J. Erotokritou, for the respondents (defendants owners of cargo under arrest in this action).

The following ruling was delivered by:—

TRIANTAFYLLIDES, P.: On September 14, 1976 I ordered* that the amount of security, prescribed in paragraph 5 of the order for the arrest of the defendant cargo in the present action should be increased from C£10,000 to C£30,000, within one month. 10

On October 9, 1976, the plaintiffs filed two applications; one *ex parte* and one by summons. 15

By means of the application by summons they seek, in effect, an order enlarging the time, within which to furnish the increased security, until the determination of an appeal, C.A. 5618, filed on September 24, 1976, against my order of September 14, 1976; such appeal has not yet been fixed for hearing. They also, seek, in the alternative, an order staying the execution of my order of September 14, 1976, until the determination of the said appeal. 20

By the *ex parte* application the plaintiffs were seeking an enlargement of the time, within which to furnish the increased security, until the hearing and determination of their application by summons. On October 9, 1976, I made an *ex parte* order granting an enlargement of time as prayed by the *ex parte* application; and such order was made returnable on October 19, 1976. On that date, after hearing counsel, I reserved my Decision regarding the outcome of the application by summons, and I enlarged further the time for compliance with my order of September 14, 1976, until the delivery of my reserved Decision. 25 30

It has, unfortunately, taken me some time to deal with this interlocutory step in the present proceedings, because, mainly, of the fact that at various times during the period which has 35

* Vide p. 289 in this Part *ante*.

intervened since my order for increased security (of September 14, 1976) quite a few applications were made for the release of parts of the arrested cargo, and, in spite of time consuming perusal of the material in the file, in the light of statements made in this connection by counsel in the course of argument, I have not yet been able to deduce with sufficient certainty in respect of what part of the cargo still remaining under arrest the respondents cargo owners are beneficially interested; and this is, in my view, a material consideration in relation to the exercise of my discretionary powers concerning the granting or not of the interim relief sought now by the plaintiffs in this action pending the determination of their appeal.

Another relevant matter, about which there seems to be even greater uncertainty, and which I do have to take into account, too, in the exercise of my discretion, is the exact position at present of the judicial proceedings in England, to which reference has been made in my Decision of September 14, 1976, as well as in affidavits filed on behalf of the plaintiffs on September 6, and October 9, 1976, and on behalf of the defendants on October 16, 1976.

In the light of the foregoing, it is hereby directed—

(a) that, within seven days from today, counsel appearing for the respondents—defendants cargo owners, who are represented before the Court, should adduce, by way of affidavit, evidence specifying exactly the bills of lading related to cargo still under arrest, and in respect of which the said defendants are beneficially interested; such evidence should, also, show, approximately, the value of the goods to which such bills of lading relate;

(b) that, within seven days from today, counsel appearing for the respondents—defendants cargo owners should adduce, by way of affidavit, evidence regarding the exact position at present of the proceedings in England, and, in particular, of the interlocutory order obtained therein, to which reference has been made in the affidavits of S. Papadopoulos of September 6, 1976, and October 9, 1976, and the affidavit of E. Constantinides of October 16, 1976; such evidence should, also, show to what extent the plaintiffs in the said proceedings in

1976
Nov. 15

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DISTOS
COMPANIA
NAVIERA S.A.
(No. 3)
v.
CARGO
ON BOARD
THE SHIP
"SISKINA"

England are the same as the respondents-defendants cargo owners;

- (c) any counter-affidavit is to be filed by counsel for the applicants-plaintiffs within three days after the filing of the affidavits by counsel for respondents-defendants, as aforesaid, and if either side wishes to address the Court, on the affidavit evidence to be placed, as above, before the Court, written notice to that effect should be given.

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The case will be proceeded with as soon as possible after the time for taking the aforementioned procedural steps has elapsed.

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Order accordingly.