

1979 March 10

[DEMETRIADES, J.]

KUEHLSCHIFFFAHRTS—KOMMANDITGESELLSCHAFT
 ORCHIDEA
 SCHIFFFAHRTSGESELLSCHAFT M.B.H. & CO.
 AND ANOTHER (NO. 1),

Plaintiffs,

v.

TROODOS SHIPPING CO. LTD. AND OTHERS,

*Defendants.**(Admiralty Action No. 466/78).*

Injunction—Interlocutory injunction—Order prohibiting dealing with ship for period of three months—Extension of validity of—As motion whether it could be made absolute had not been concluded, to do otherwise would have amounted to depriving plaintiffs of their rights thereunder without giving them the opportunity to plead their case—Whether the application for extension of validity should be based on section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63).

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This was an application by the plaintiffs in the action for the extension of the validity of an order which was made on November 7, 1978, upon an *ex parte* application, and by virtue of which the defendants were prohibited from dealing with the four ships named therein for a period of three months.

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The defendants opposed the application mainly on the ground that, because of the nature of the interlocutory injunction prayed for, the only provision on which the Court might rely was section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63) and the application was not based on that section; and on the ground that plaintiffs, if finally successful in the action will not be entitled to the prayers set out in their petition but only, if at all, to damages.

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Held, (1) that by this application only the extension of the validity of the order originally granted is prayed for and there

is no reason why the provisions of section 30 of Law 45/63 ought to have been invoked.

5 (2) That as the validity of the interlocutory order in question is still at the stage of hearing—the defendants having not yet closed their case; that as the case of the plaintiffs that the
interlocutory order should not be made absolute has not yet
been presented; and that as the hearing has not been concluded
the interlocutory order cannot be discharged at this stage because
10 by doing so the plaintiffs will be deprived of their rights under that order without giving them the opportunity to plead their case; and that, therefore, the validity of the order is extended until the 30th April, 1979.

Application granted.

Application.

15 Application by plaintiffs for an order extending the validity of an order, made on the 7th November, 1978, by virtue of which the defendants were prohibited, for a period of three months, from dealing with the ships Ixia, Acacea, Primrose and Fleur.

20 *L. Papaphilippou*, for the applicants—plaintiffs.

A.P. Anastassiades, for the respondents—defendants.

Cur. adv. vult.

25 DEMETRIADES J. read the following ruling. On the 7th November, 1978, after an *ex-parte* application was filed by the plaintiffs—applicants, the Court granted an order by which the defendants—respondents were prohibited—for a period of three months as from the 7th November, 1978 or until further order—from dealing with the ships Acacea, Ixia, Primrose and Fleur, or any shares in these four ships.

30 The order was made returnable on the 5th December, 1978 and on that day the defendants—respondents entered an appearance and also stated that they intended to oppose the order granted on the 7th November, 1978. The defendants—respondents filed their opposition on the 30th December, 1978.
35 The hearing of the motion as to whether the interlocutory order should be made absolute commenced on the 12th January, 1979 and has not yet been concluded.

Before the validity of the interlocutory order granted on the

7th November, 1978 expired, and on the 25th January 1979, the plaintiffs-applicants filed two applications, one *ex-parte* and the other by summons, by which they applied for the extension of the validity of that order. The *ex-parte* application was granted till the 23rd February, 1979 when the application by summons was fixed. The application by summons was opposed by the defendants-respondents and it is for this that I am called upon to give a ruling. 5

Mr. Anastassiades for the respondents-defendants submitted that the application should not be granted for the following three reasons:- 10

1. That no material has been put before the Court to justify the granting of the order applied for.
2. That because of the nature of the interlocutory injunction prayed for, the only provision on which the Court might rely is section 30 of Law 45/63 and that the application is not based upon that section. 15
3. That the plaintiffs, if finally successful in their action, will not be entitled to the prayers set out in their petition but only, if at all, to damages. 20

As regards ground 1, I note that by paragraph 2 of the affidavit accompanying this application, the contents of the affidavit filed in support of the application by virtue of which the order of the 7th November, 1978 was granted, are reiterated. This ground, therefore, cannot stand. 25

As regards now ground 2, I have to say this: By the present application only the extension of the validity of the order originally granted is prayed for and I see no reason why the provisions of section 30 of Law 45/63 ought to have been invoked. 30

Coming now to ground 3, I find that at this stage I cannot discharge the interlocutory order granted on the 7th November, 1978, because by doing so I shall be depriving the plaintiffs-applicants of their rights under that order, without giving them the opportunity to plead their case. To this conclusion I have arrived having in mind (a) that the validity of the interlocutory order of the 7th November, 1978 is still at the stage of hearing— 35

the defendants-respondents having not yet closed their case—,
(b) the case of the plaintiffs-applicants that the interlocutory
order should be made absolute has not yet been presented, and
(c) the hearing has not been concluded.

- 5 In the circumstances and in the light of the above, I have
decided to extend the validity of the order dated 7th November,
1978 until the 30th April, 1979.

Application as to the validity of the order of the 7th
November, 1978, to continue on the 13th April, 1979 at 9.30 a.m.

- 10 *Application granted.*