

1979 October 19

[DEMETRIADES, J.]

KUEHLSCHIFFFAHRTS—KOMMANDITGESELLSCHAFT
ORCHIDEA
SCHIFFFAHRTSGESELLSCHAFT M.B.H. & CO.
AND ANOTHER (NO. 2),

Plaintiffs,

v.

TROODOS SHIPPING CO. LTD. AND OTHERS,

Defendants.

(Admiralty Action No. 466/78).

Admiralty—Practice—Security—To cover damages that may result from interlocutory order prohibiting dealing with ships—Principles applicable—Amount of security inadequate considering, particularly, the value of the vessels—Increased.

Injunction—Interlocutory injunction—Security.

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On November 7, 1978, the Court, on the *ex parte* application of the plaintiffs, made an interlocutory order prohibiting the defendants from dealing with four ships, belonging to the defendants, for a period of three months and directed that the plaintiffs should give security in the sum of £12,000.— According to the defendants the value of the said ships, as valued by a firm of valuers, was C£320,000 and they had an offer to sell them at C£633,000. The vessels were laid up on or about the 10th July, 1978 because they could not pay the capital expenses involved in running them.

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Upon an application by the defendants for the increase of the said security:

Held, that considering, in particular, the value of the vessels and the alleged offer for their sale, as well as the principles governing applications of this nature, and not losing sight of the fact that the vessels were laid up, the amount of £12,000 ordered as security is really inadequate in the circumstances and is hereby increased to the sum of £4,000.

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Application granted.

Cases referred to:

American Cyanamid Co. v. Ethicon Ltd. [1975] 1 All E.R.
504 at p. 509.

Application.

5 Application by defendants for an order increasing the security, which the plaintiffs were ordered to furnish on the 7th November, 1978, as being inadequate to cover the damage that the defendants may suffer as a result of the interim injunction granted on that date.

10 *P. A. Anastassiades*, for the applicants-defendants.

L. Papaphilippou, for the respondents-plaintiffs.

Cur. adv. vult.

15 DEMETRIADES J. read the following ruling. This is an oral application by the defendants by which they pray that the security which the plaintiffs were, on the 7th November 1978, ordered by the Court to furnish, be increased as being inadequate to cover the damage that the defendants may suffer as a result of the interim injunction granted on that date. The applicants-defendants did not file an affidavit in support of their application
20 but they relied on evidence that they adduced at the hearing of the proceedings to show cause why the interim injunction ought not to be made final.

Counsel for the applicants, in his able address, submitted that there are five reasons why the security should be increased:—

- 25 1. Because of the long period for which the injunction has remained in force;
2. the plaintiffs are foreign entities with no assets whatsoever in Cyprus;
3. the plaintiffs have been in default of payments in the past;
- 30 4. the sweeping nature and extent of the prohibition contained in the interlocutory injunction which has remained in force for almost one year now, during which the defendants could in no way deal with their vessels; and
- 35 5. the value and the earning capacity of the vessels involved, as this appears from the evidence adduced by the defendants.

The plaintiffs—respondents opposed the application orally and have filed an affidavit, dated 2nd October 1979, in support of their opposition.

As it is stated in the *American Cyanamid Co. v. Ethicon Ltd.*, [1975] 1 All E.R. 504 at p. 509:—

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“ The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. But the plaintiff’s need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff’s undertaking in damages if the uncertainty were resolved in the defendant’s favour at the trial. But the Court must weigh one need against another and determine where the balance of convenience lies.”

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I find that reasons 1, 4 and 5, are closely connected and I shall deal with them after reasons 2 and 3.

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The second reason submitted by counsel for the applicants is that the plaintiffs are foreign entities with no assets whatsoever in Cyprus. This reason cannot, however, stand as the security given by the plaintiffs is a bank guarantee issued by a Cyprus Bank. Therefore, the defendants—applicants are fully covered, if they suffer damage to the extent of £12,000.—, which is the security given by the plaintiffs.

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I feel that the third ground can neither be discussed nor decided at this stage, as it is an issue which is one of the main points of defence of the defendants and this will be tried and decided when the action comes up for hearing.

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With regard now to grounds 1, 4 and 5, the facts as they appear from the record and the evidence of Mr. Koefoed—the witness who gave evidence for the defendants in the proceedings to show cause why the interlocutory injunction ought not to have been made—are that the interim injunction was granted on the 7th November, 1978 and it is still in force; that by this

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injunction the defendants are prohibited from dealing with the four vessels named in the order (and which vessels are their property) or with any share in these vessels; that the four vessels were valued by a firm of valuers at C£320,000.-; that the
5 defendants had an offer to sell them at C£633,000.-; that their earning capacity would be U.S. 100,000.- expenses paid less capital costs; and that the vessels are mortgaged in a sum of over £1,000,000.-.

According to the evidence of this witness, however, these
10 vessels were laid up on or about the 10th July, 1978 because they could not pay the capital expenses involved in running them, as they were not able to earn enough interest and rates on the amount of money presently invested in them. The operation, he said, of the vessels was detrimental and the
15 defendants were losing money, perhaps due to the very poor market.

As I have already said, the respondents—plaintiffs have filed an affidavit in support of their opposition. This affidavit was sworn by a certain Simos Papadopoulos who is a clerk in the
20 firm of counsel for the respondents. It is based on information given to him by a solicitor in London and from, as he alleges, his personal knowledge and belief. I must say that I am not satisfied with the contents of this affidavit and I find that I cannot rely on it as most of the allegations made therein are
25 either hearsay, irrelevant or contradictory.

Having considered the facts, in particular the value of the vessels and the alleged offer for their sale, as well as the principles governing applications of this nature, I have come to the conclusion that the amount of £12,000.—ordered as security is really
30 inadequate in the circumstances and that it should be increased. However, the amount of security suggested by the applicants, i.e. £150,000.—is, I find, excessive as made at random. I think that the fair amount of security should be £40,000.—. In reaching this conclusion I have not lost sight of the fact that the
35 vessels involved in these proceedings were laid up for the reasons explained by Mr. Koefoed.

In the result, I find that the plaintiffs—respondents should enter into a recognisance in the sum of £40,000.—to be answerable in damages to the defendants—applicants against who the

injunction was made. This amount must be secured by a bank guarantee or by a deposit in Court within 21 days from today. If the plaintiffs-respondents fail to do so, the order—i.e. the injunction granted on the 7th November 1978—will automatically lapse.

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As regards the costs of this application, I find that the applicants, though successful, are not entitled to them as they have unsuccessfully opposed the application for the extension of the order.

*Application granted. No order
as to costs.*

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