

1981 February 13

[MALACHTOS, J.]

BAGDIK GOGOSHIAN,

Plaintiff,

v.

AIRCRAFT DC 6 N 19CA NOW LYING AT LARNACA
AIRPORT,

Defendant.

(Admiralty Action No. 239/80).

Admiralty—Jurisdiction—Action in rem—Aircraft—Claim for work done and services rendered—Admiralty jurisdiction of this Court not concerned with such claim—Service and issue of writ set aside for want of jurisdiction—Section 1(1)(j)(k) and (l) of the English Administration of Justice Act, 1956—Section 19(a) of the Courts of Justice Law, 1960 (Law 14/60).

The plaintiff in this case issued a writ of summons against the defendant Aircraft claiming £473.500 mils for work done and services rendered and spare parts supplied to the said aircraft, and the date named therein for appearance before the Court was the 15th January, 1981. On that day when the case was called before the Court no appearance was entered on behalf of the defendant aircraft. In the affidavit of service it was stated that the writ of summons was served on the 4th December, 1980 by posting the same on the said aircraft in the presence of an employee at the Larnaca airport.

On the question whether proper service had been effected:

Held, that the admiralty jurisdiction of this Court is, by virtue of section 19(a) of the Courts of Justice Law, 1960 (Law 14/60) the one provided by section 1 of the English Administration of Justice Act, 1956; that the only jurisdiction given to this Court in relation to aircrafts is that mentioned in paragraphs (j), (k) and (l) of section 1(1) of the said Act of 1956, which are concerned with claims in the nature of salvage, towage and pilotage and is to these matters alone that in relation to aircraft section 1(4) of the Act of 1956 refers; that the claim

of the plaintiff in the present proceedings does not fall under any of the above categories and so this Court has no jurisdiction to adjudicate on it; that, therefore, the service effected on the defendant aircraft should be and it is hereby set aside for want of jurisdiction; that likewise for the same reasons the issue of the writ should also be set aside; accordingly the action will be dismissed. 5

Action dismissed.

Cases referred to:

Schempp-Hirth Kommandit-Gesellschaft (owners of the Glider Standard Austria S.H. 1964) v. Persons Having Possession of the Glider Standard Austria S.H. [1965] 2 All E.R. 1022. 10

Admiralty action.

Admiralty action for £473.500 mils for work done, services rendered and spare parts supplied to Aircraft DC 6 N 19 C A. 15

C. Gavrielides, for the plaintiff.

No appearance for the defendant aircraft.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The present proceedings have been instituted by the plaintiff before this Court in its admiralty jurisdiction against the defendant aircraft which was at the time landed at Larnaca airport. As it appears in the writ of summons which was issued on the 29th November, 1980, the claim of the plaintiff is for £473.500 mils for work done and services rendered and spare parts supplied to the said aircraft, and the date named therein for appearance before the Court was the 15th January, 1981. On that day when the case was called before this Court no appearance was entered on behalf of the defendant aircraft. In the affidavit of service in the file sworn by the process server it is stated that the writ of summons in the present action was served on the 4th December, 1980 by posting the same on the said aircraft in the presence of an employee at the Larnaca airport. 20 25 30

In view of the novel legal point involved in these proceedings, and in view of the fact that I was not satisfied that a proper service had been effected, I adjourned the case to the 9th February, 1981 to hear arguments by counsel for the plaintiff on the subject. 35

Counsel for the plaintiff in support of his submission that

the service effected on the defendant aircraft is a good service referred to section 19(a) of the Courts of Justice Law, 1960 (Law 14/60), which provides that the High Court (now the Supreme Court) shall, in addition to the powers and jurisdiction conferred upon it by the Constitution, have exclusive original jurisdiction—

(a) as a Court of admiralty vested with and exercising the same powers and jurisdiction as those vested in or exercised by the High Court of Justice in England in its admiralty jurisdiction on the day immediately preceding Independence Day.

He also referred to Halsbury's Laws of England, 4th edition, Vol. 1, paragraphs 304 and 307 where it is stated that the admiralty jurisdiction of the High Court in England has been extended to all ships and aircraft. These paragraphs read as follows:

“304. Foreign aspects of Admiralty jurisdiction. The jurisdiction of the Admiralty Court has long extended both to foreign ships on the high seas, except ships in the ownership or possession of a foreign sovereign state and used for public purposes, and over injurious acts done on the high seas. The Admiralty jurisdiction of the High Court now extends to all ships or aircraft, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and in relation to all claims, wheresoever arising.

The extent of jurisdiction is subject to rules governing the mode of exercise of jurisdiction. The jurisdiction of the Court is also restricted in collision and other similar cases where the action is in personam.

307. In general. The Admiralty jurisdiction of the High Court of Justice is derived partly from statute and partly from the inherent jurisdiction of the High Court of Admiralty. The Administration of Justice Act 1956 lists the areas of jurisdiction of the High Court under eighteen paragraphs. In addition the High Court has any other jurisdiction which either was vested in the High Court as being a Court with Admiralty jurisdiction by or under any Act which came into operation on or after that date, and also any other jurisdiction connected with

ships or aircraft vested in the High Court which is for the time being assigned by the rules of Court to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court. Although the jurisdiction of the High Court is concerned mainly with questions and claims arising in relation to ships, it extends to hovercraft and, in respect of certain questions and claims, also to aircraft. 5

Part I of the Administration of Justice Act 1956 is based, in part at least, on the International Convention relating to the Arrest of Sea-going and International Convention on certain Rules concerning Civil jurisdiction in Matters of Collision both signed at Brussels on 10th May 1952 and to both of which the United Kingdom is a signatory. Where the meaning of the Act is not clear the Court may look to the terms of these conventions to assist in the construction of the Act". 10 15

The Administration of Justice Act, 1956, which, according to section 19(a) of our Courts of Justice Law, 1960, is applicable in Cyprus, makes provision for the powers and jurisdiction vested in the High Court of Justice in England, in its Admiralty jurisdiction. Section 1 of the said Law reads as follows: 20

"1. Admiralty jurisdiction of the High Court

(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims— 25

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship; 30
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage done by a ship;
- (e) any claim for damage received by a ship;
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default 35

- 5 of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- 10 (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- 15 (j) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section fifty-one of the Civil Aviation Act, 1949, of the law relating to salvage to aircraft and their apparel and cargo);
- 20 (k) any claim in the nature of towage in respect of a ship or an aircraft;
- (l) any claim in the nature of pilotage in respect of a ship or an aircraft;
- 25 (m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (n) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- 30 (o) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Acts, 1894 to 1954, is recoverable as wages or in the Court and in the manner in which wages may be recovered;
- 35 (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

- (q) any claim arising out of an act which is or is claimed to be a general average act;
- (r) any claim arising out of bottomry;
- (s) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty. 5

together with any other jurisdiction which either was vested in the High Court of Admiralty immediately before the date of the commencement of the Supreme Court of Judicature Act, 1873 (that is to say, the first day of November, eighteen hundred and seventy-five) or is conferred by or under an Act which came into operation on or after that date on the High Court as being a Court with Admiralty jurisdiction and any other jurisdiction connected with ships or aircraft vested in the High Court apart from this section which is for the time being assigned by rules of Court to the Probate, Divorce and Admiralty Division. 10 15 20

(2) The jurisdiction of the High Court under paragraph (b) of subsection (1) of this section includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the Court thinks fit. 25

(3) The reference in paragraph (j) of subsection (1) of this section to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or an aircraft or in preserving cargo, apparel or wreck as, under sections five hundred and forty-four to five hundred and forty-six of the Merchant Shipping Act, 1894, or any Order in Council made under section fifty-one of the Civil Aviation Act, 1949, are authorised to be made in connection with a ship or an aircraft. 30 35

(4) The preceding provisions of this section apply

- (a) in relation to all ships or aircraft, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be;

(b) in relation to all claims, wheresoever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and

5 (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law:

10 Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Acts, 1894 to 1954”.

15 It is clear from this section that this Court has jurisdiction in relation to aircraft on claims falling under subsections (j) (k) and (l) only i.e. claims for salvage, towage and pilotage. The claim of the plaintiff in the present proceedings does not fall under any of the above categories and so this Court has no jurisdiction to adjudicate on it.

20 This view finds support in the case of *Schempp-Hirth Kommandit-Gesellschaft (Owners of the Glider Standard Austria S.H. 1964) v. Persons Having Possession of The Glider Standard Austria S.H. 1964* [1965] 2 All E.R. 1022, where it was decided that the only jurisdiction given to the Admiralty Court in relation to aircraft is that mentioned in paragraphs (j) (k) and (l) of section 1(1) of the Administration of Justice Act, 1956 which are concerned with claims in the nature of salvage, towage and pilotage, and it is to these matters alone that in relation to aircraft subsection 4 of section 1 of the Act of 1956 refers.

At page 1023 of this report Hewson J. had this to say:

30 “Now, the preceding provisions of this section define in considerable detail the Admiralty jurisdiction of this Court. They are put under a number of headings in s.1(1) of the Act. They run from (a) to (s). In all of those paragraphs the word ‘ship’ is either mentioned or necessarily implied. In only three of those paragraphs does the word ‘aircraft’ appear, namely, in (j), (k) and (l). These are respectively in relation to claims in the nature of salvage, towage and pilotage. In para. (k) and para. (l) they are in relation to claims in the nature of towage and pilotage respectively in respect of a ship or an aircraft. The aircraft referred to in s. 1(4) are, in my view, the aircraft

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which are referred to in s. 1(1)(j)(k) and (l), to which I have just referred, and to them alone.

Counsel for the applicants has submitted that, if I have any doubts about that, I should resolve the question in favour of the plaintiffs, and I would most gladly do so; but I have no doubt in my mind that the only jurisdiction given to this Court in relation to aircraft is that to which I have just referred.

Section 3 of the Administration of Justice Act, 1956, is, as I have already held in *The Acrux*, a procedural section and does not extend the Admiralty jurisdiction of this Court beyond that which is defined in s. 1 of the Act of 1956. I am further fortified in this opinion by the definition of 'ship' which is given in s. 8 of the Act of 1956, in which 'ship' includes any description of vessel used in navigation'. In the same section the following provisions also appear: 'towage' and 'pilotage', in relation to an aircraft mean towage and pilotage, while the aircraft is waterborne. In these circumstances, much as I should wish to be able to allow a warrant of arrest to issue against this glider, I feel myself constrained by statute. It may be as well at this juncture to remark that there are ever increasing numbers of aircraft owned by both English and foreign corporations. It may be that facilities in rem for the enforcement of any claim against owners of aircraft, or those in possession of aircraft, should be provided. Aircraft, like ships, do not usually remain for long in any jurisdiction. They generally move out of one, over the high seas, into another. As I said, this Court has no Admiralty jurisdiction over aircraft except in the circumstances provided by the Act of 1956. Any extension of this jurisdiction, which, in my view, would be helpful, must be provided by the legislature. There is no power in me to extend the Admiralty jurisdiction of this Court".

For the reasons stated above the service effected on the defendant aircraft should be and it is hereby set aside for want of jurisdiction. Likewise for the same reasons the issue of the writ should also be set aside. The action, therefore, is dismissed.

Action dismissed.