

1988 July 9

(STYLIANIDES, J.)

MICHAEL I. WARDE,

Plaintiff,

v.

THE SHIP «EL SEXTO», NOW LYING AT LARNACA PORT,

Defendant.

(Admiralty Action No. 220/84).

Admiralty — Admiralty action — Plaintiff resident abroad — Security for costs — Failure to give the security ordered — Effect — Principles applicable — Applicability of old English Rules in virtue of Rule 237 of the Admiralty Jurisdiction Order, 1893 and of the fact that our Rules are silent on the matter.

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The plaintiff in this case, who is a resident of France, was ordered under Rule 185 to give £3,000 security for costs. The order contained a term that in case of failure to give the security, further proceedings should be stayed.

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As the plaintiff did not give the said security, the defendant filed this application for dismissal of the action for want of prosecution.

Counsel for the plaintiff informed the Court that though he notified his client in respect of the present application, there was no response.

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Held, *granting the application*: (1) The Admiralty Order, 1893 is silent on the matter. Therefore, and in virtue of Rule 237, the old English Rules are applicable.

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(2) Under such Rules in case of default to give security of costs as ordered, the proceedings are either stayed or dismissed. However, the defendant should not be subjected to the alternative of having the action hanging over him indefinitely, or of giving up his security for costs. The defendant is entitled to have his civil dispute determined within reasonable time according to Law.

(3) In the present case the plaintiff not only has not given security for costs within the appointed time, but even he failed to respond to the communications of his own counsel.

Action dismissed with costs.

Cases referred to:

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Asimenos v. Paraskeva (1982) 1 C.L. R. 145;

La Grange v. McAndrew [1879] 45 Q.B.D. 210;

Re Hurter's Trade Mark [1887].W.N. 71.

Application.

Application by defendant for the dismissal of the action for want of prosecution, as the plaintiffs failed to give security for costs ordered by the Court. 10

M. Montanios, for defendant-applicant.

St. Mc Bride, for plaintiff-respondent

Cur. adv. vult. 15

STYLIANIDES J. read the following decision. The applicant-defendant applied for the dismissal of the action for want of prosecution, as the plaintiff failed to give security for costs ordered by the Court.

The plaintiff in this action is a permanent resident of Paris. By this action he claims damages for breach of contract of carriage. 20

The pleadings closed and the action was listed for hearing.

The defendant applied by summons for an order for security for costs, under Order 185, which provides that:-

«If any Plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision) or any Defendant making a counterclaim is not resident in Cyprus, the Court or Judge may, on the application of the adverse party, order him to give such security for the costs of such adverse party as to the Court or Judge shall seem fit; and may order that all proceedings in the action be stayed until such security be given.» 25 30

On 25th February, 1988, with the consent of counsel for the plaintiff an Order was made that the plaintiff do give security for

costs in the sum of £3,000.-, either by Bank guarantee or payment into Court. Such security to be given not later than the 28th March, 1988. It was, further, ordered that if the security was not given, the proceedings in the action be stayed.

- 5 The plaintiff failed to comply with the above Order. Hence this application for dismissal of the action for want of prosecution

The drafters of the Civil Procedure Rules in Cyprus, which came into operation in 1938, made specific provision in Order 60, rule 5 as follows:-

- 10 «5. Where the Court orders security for costs to be given it may stay the proceedings in the action until such security is given, and in the event of the security not being given within the time appointed, may dismiss the action.»

- 15 These Rules are not, however, applicable in the Admiralty Jurisdiction of this Court.

The application is based on Orders 185 and 237 of the Rules of the Supreme Court in its Admiralty Jurisdiction 1893, Order 65, rule 6 of the Rules of the Supreme Court of England (old Rules) and on the inherent jurisdiction and powers of the Court

- 20 The application was adjourned to enable counsel for the respondent to communicate with his client abroad. He informed the Court that, though he duly notified his client, to his regret there was no response, neither has any security for costs been received

- 25 The question that poses is whether the Court should further stay the action or dismiss it for want of prosecution?

Our Admiralty Rules are silent on the matter and, therefore, the Rules and practice obtaining in England before Independence Day are applicable - (see O.237 and *Asimenos v. Paraskeva* (1982) 1 C.L.R. 145).

- 30 In England if a plaintiff who has been ordered to give security for costs does not do so, the action may be stayed until security is given or dismissed for want of prosecution - (*The Annual Practice* 1958, p. 1891; *Halsbury's Laws of England*, 4th Edition, Volume 37, para. 308).

- 35 In *La Grange v. McAndrew* [1879] 4 Q.B.D. 210, the plaintiff was a foreigner resident abroad, and an order had been made staying the action until he should give security for costs. The time

for delivery of statement of claim had expired and no security for costs had been given. The defendant thereupon applied at chambers to dismiss the action for want of prosecution, and Field, J., made an order dismissing the action accordingly. The plaintiff moved to rescind the order of Field, J., but the order of dismissal was upheld. Cockburn, C.J. said that the defendant ought not to be subjected to the alternative of having the action hanging over him indefinitely, or of giving up his security for costs. 5

See, also, *In re Hurter's Trade-Mark* (1887) W.N. 71.

A plaintiff has to prosecute his case according to the Rules and comply with the Order of the Court for security for costs. 10

A defendant who desists the claim is entitled to have his civil dispute determined within reasonable time according to Law.

If an order of security for costs is made and the Court appoints time within which such security should be given, the defendant may apply to the Court, either for a stay of the action until security is given, or dismissal for want of prosecution. He is not bound, however, to wait indefinitely and have an action hanging over him indefinitely. This would be against justice and reason. 15

In the present case the plaintiff not only has not given security for costs within the appointed time, but even he failed to respond to the communications of his own counsel. 20

Justice compels that this action should come to an end and the defendant be free from the burden of having a claim in Court pending against him indefinitely, due to the fault of the plaintiff. 25

In the result this action is dismissed with costs against the plaintiff.

Action dismissed with costs against plaintiff.