

1988 August 13

(DEMETRIADES, J.)

NAGINA MARKETING CO.,

Plaintiffs,

v.

INTERTRUST SHIPPING CORPORATION AND ANOTHER,

Defendants.

(Admiralty Action No. 82/88).

Admiralty — Admiralty action in rem against cargo — The English Administration of Justice Act, 1956, s.3(3) — «Charge» — Meaning of — Persons not having possession of the cargo, but claiming to be its owners — Do not have a «charge» on the cargo — Therefore, in the absence of a claim for a maritime lien, no action in rem lies against the cargo. 5

Words and phrases: «Charge» in section 3(3) of the English Administration of Justice Act, 1956.

The plaintiffs instituted an action in rem against, inter alia, the cargo contained in certain containers and, upon ex parte application, obtained an order for the arrest of such cargo. 10

This is a motion for setting aside the warrant of arrest and the writ of summons.

The plaintiffs, who claimed to be the owners of the cargo, submitted that they were entitled to institute an action in rem by virtue of section 3(3) of the English Administration of Justice Act, 1956. Their counsel argued that a claim to title of property by a ~~person~~ person not in possession of such property is a «charge» within the meaning of the section. 15

Held, *setting aside the writ of summons*: (1) A plaintiff can only ~~proceed~~ proceed by an action in rem against cargo, if he has a maritime lien or ~~charge~~ charge on it or, else, he is not entitled to invoke the Admiralty ~~Jurisdiction~~ Jurisdiction, because his claim falls outside the ambit of section 3(3) of the English Administration of Justice Act 1956, which is applicable 20

in Cyprus. (*The ship Gloriana and Another v. Breidi* (1982) 1 C.L.R. 4 adopted).

5 (2) The issue is whether the plaintiffs, who claim that they are the owners of the defendant cargo and who do not claim to have a maritime lien on the cargo, have a «charge» on it.

(3) What is meant by a «charge» is a pecuniary burden or liability to pay money laid upon a person or an estate, in the present case laid upon a ship or cargo.

10 Here, the plaintiffs claim that they are the owners of the cargo. Therefore, it cannot be said that the cargo is burdened with a liability for payment to the plaintiffs. If the submission of counsel for the plaintiffs is correct, then that means that the plaintiffs can sue themselves for the recovery of money for which the cargo is liable for payment.

15 *Action against cargo dismissed. Costs of application against plaintiffs.*

Cases referred to:

The SHIP GLORIANA and Another v. Breidi (1982) 1 C.L.R. 4;

20 *Smith' s Dock Co. Ltd. v. The St. Merriel (owners), the St. Merriel* [1963] 2 W.L.R. 488.

Application.

Application by the shippers for an order of the Court setting aside the warrant for the arrest of the cargo and the writ of summons.

25 A. *Theophilou*, for the plaintiffs.

St. Mc Bride, for the shippers.

G. Michaelides, for Scandutch, the owners of the 56 containers.

E. Lemonaris with St. Kittis, for the interveners.

Cur. adv. vult.

30 DEMETRIADES J. read the following ruling. On the 1st July, 1988, the plaintiffs in this action, on an application filed by them, obtained an order by which the cargo, the second defendant in the action, was arrested.

35 On the 7th July, 1988, when the warrant of arrest was made returnable in order to give an opportunity to the respondents or

any one interested in the cargo to move the Court for its release, two lawyers, one representing the alleged shippers of the cargo and the other representing the owners of the containers in which the cargo is stored, appeared and stated that they intended to file, on behalf of their clients, a motion for the discharge of the arrest. 5

In view of this development, the Court ordered that motions, if any, for the discharge of the arrest of the cargo, be filed within seven days and oppositions to it within seven days thereafter. The shippers filed their motion on the 9th July, 1988 and the owners of the containers on the 14th July, 1988. As the plaintiffs filed their opposition within the time prescribed by the order of the 7th July, 1988, the motions were fixed for hearing on the 22nd July, 1988. 10

On the 19th July, 1988, a Corporation from Taipei, Taiwan, namely, «the Formosan Rubber Group, Ta Win Industrial Co. and Epoch Products Corporation», applied and obtained leave to intervene in the proceedings and on the 20th July, 1988 they filed a motion for the discharge of the arrest of the cargo. Their application was opposed by the plaintiffs. 15

On the 22nd July, 1988, the motions filed by the shippers and the owners of the containers were heard but as the motion filed by the Taiwan Corporation was served on the plaintiffs' counsel late in the day, he was given time to file an opposition. This motion was set for trial on the 26th July, 1988. 20

By the writ of summons filed by the plaintiffs, which is in the form prescribed by the Cyprus Admiralty Jurisdiction Order 1893, for a writ of Summons in REM (see Form A' in Schedule I of the Order), the plaintiffs claim: 25

«A. 1,264,450.- U.S.A Dollars or its equivalent in Cyprus Pounds, being the value of 1100 M. Tons of P.V.C. (Type Bovil M/Suspension Grade K 61 - 66, property of the Plaintiff, which was loaded on or about 27.1.88 on board M/V SANTA MARIA I, (which was at all material time owned by Defendants 1), under Bill of Lading Nos 1 to 22 inclusive, for carriage to India and which was never delivered to destination but was converted to Lebanon at first and now to Cyprus for re-exportation. 30 35

B. Interest.

C. Costs and interest.»

The warrant of arrest was given as a result of an affidavit filed by Mrs. Dora Socratous, an advocate in the Office of counsel for the plaintiffs, in which it was stated that the plaintiffs had agreed with the first defendants to transport from Turkey to India by their ship «M/V SANTA MARIA I» 1100 cubic meters of P.V.C; that the plaintiffs paid the freight and that after the cargo was loaded, they were given 22 bills of lading (photocopies of the Bills of lading are appended to the affidavit as exhibit No. 1). Mrs Socratous in her affidavit further stated that the cargo was never delivered at its destination but it was first transported to Lebanon and part of it was then shipped to Limassol port where at the time of swearing her affidavit it was being loaded on the ship «NL CLARENCE» for transportation to Taiwan.

By their motion the shippers pray for an order-

(a) setting aside the warrant for the arrest of the cargo arrested by the order of the Court dated the 1st July, 1988,

(b) setting aside the writ of summons, and

(c) increasing the security which the plaintiffs were ordered to furnish.

Counsel for the shippers submitted that the warrant of arrest should be discharged as no cause of action in rem lies against the cargo. In support of his argument he relied on the judgment in the case of *the ship «GLORIANA» & another v. Breidi*, (1982) 1 C.L.R. 4.

In arguing his case in opposition to the motion of the shippers, counsel for the plaintiffs stated that their action was based on an action in rem. I shall here quote the relevant extract from his address as this appears at pages 10 - 11 of the record:

«Here the plaintiffs sued the cargo in rem because they have a charge, and I will explain myself in a second, on the cargo and under section 3(3) of the Administration of Justice Act 1956 having a maritime or a charge you can file an action in rem against the ship, the cargo or any other property. The charge in the sense of section 3(3) is nowhere defined in full. The charge is not defined in full and it should be taken as meaning any registered or unregistered charge on the res. In this instance the plaintiffs claim that the res belongs to them,

they are the owners of the res, they are not in possession of the res and it is obvious from the appearance of Mr. McBride and his clients the shippers that somebody else together with defendant No. 1 are claiming a right on that res. If any encumbrance should be a charge I suggest that a claim on title on a res which is in possession of some other people is a charge in the sense of section 3(3) of the Administration of Justice Act 1956. The claim of the plaintiffs I believe is proved by the bills of lading exhibited in the application for the arrest.» 5

In the case of *The ship «GLORIANA»*, (supra), on which the shippers rely, it was held that a plaintiff can only proceed by an action in rem against cargo if he has a maritime lien or charge on it or, else, he is not entitled to invoke the Admiralty jurisdiction of this Court by an action in rem against the cargo because, in that case, his claim falls outside the ambit of section 3(3) of the English Administration of Justice Act 1956, which is applicable in Cyprus, and thus he has no maritime lien or a charge on the cargo. In that case it was further held that if the Court found that it lacked jurisdiction to issue a warrant of arrest or such warrant was issued on insufficient grounds, then such order may be discharged and the property may be released. 10 15 20

Subsection (3) of section 3 of the Administration of Justice Act 1956, on which the plaintiffs rely, reads:

«In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, the Admiralty jurisdiction of the High Court, the Liverpool Court of Passage and any County Court may be invoked by an action in rem against that ship, aircraft or property.» 25

The issue, therefore, that poses for decision in these proceedings, in the light of the argument put forward by counsel for the plaintiffs, is whether the plaintiffs, who claim that they are the owners of the defendant cargo and who do not claim to have a maritime lien on the cargo, have a «charge» on it. 30

As to what the word «charge» means in the context of section 3(3) of the Administration of Justice Act 1956, I found some assistance in the case of *Smith' s Dock Co. Ltd. v. The St. Meriel (owners), the St. Meriel*, [1963] 2 W.L.R. p. 488, in which it was held that the words «other charge» do not bear a more extended meaning 35

than the words «charge upon the ship» in the Merchant Shipping Acts, and do not include a possessory lien as that for repairs.

To my mind, what is meant by a «charge» is a pecuniary burden or liability to pay money laid upon a person or an estate, in the
5' present case laid upon a ship or cargo.

Here, the plaintiffs claim that they are the owners of the cargo. Therefore, it cannot be said that the cargo is burdened with a liability for payment to the plaintiffs. If the submission of counsel for the plaintiffs is correct, then that means that the plaintiffs can
10 sue themselves for the recovery of money for which the cargo is liable for payment.

In the result, I find that I have no jurisdiction to try the action of the plaintiffs against defendants No. 2, i.e. the cargo. Therefore, the writ against defendants No. 2 must be set aside. It follows that
15 the action against the cargo is dismissed and that the warrant of arrest is discharged and the cargo should be released.

Costs of this application against the plaintiffs.

Costs to be assessed by the Registrar.

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*Action dismissed with
costs against the plaintiffs.*