

[A. LOIZOU, J.]

1973
Nov. 29

ELIAS RIGAS,

Plaintiff,

v.

THE SHIP "BAALBECK" NOW LYING AT LARNACA
HARBOUR,

Defendant.

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ELIAS
RIGAS
v.
THE SHIP
"BAALBECK"

(Admiralty Action No. 56/73).

Admiralty—Jurisdiction and powers—Governed by the (English) Administration of Justice Act, 1956—Sections 19(e) and 29(2)(a) of the Courts of Justice Law, 1960 (Law No. 14 of 1960)—Arrest of vessel—Law applicable—Power to arrest ship in same ownership other than the one in respect of which the cause of action is alleged to have arisen—Sections 1(1)(p) and (9) and section 3(4) and (b) of the Administration of Justice Act (supra).

Arrest of ship—Application ex-parte for warrant of arrest etc.—See supra.

By the present *ex-parte* application the applicant applies for a warrant for the arrest of the ship "Baalbeck" lying at Larnaca harbour in relation to a claim based on a cause of action which has arisen out of, or in respect of, acts etc. connected with another ship (the "Beiteddine") but in the same ownership. Granting the application the learned Judge of the Supreme Court:—

Held, (1). Once I am satisfied by the endorsement on the writ of summons and the affidavit filed in support of this *ex-parte* application and in the light of the provisions in particular of section 3(4) of the (English) Administration of Justice Act, 1956, whose purpose is to confer the right to arrest either the ship in respect of which the cause of action is alleged to have arisen, or any other ship in the same ownership, I feel I have the power to issue the warrant for the arrest of the sister ship.

(2) Warrant of arrest issued.

Application granted.

1973
Nov. 29
—
ELIAS
RIGAS
v.
THE SHIP
"BAALBECK"

Cases referred to :

Schwarz and Co. (Grain) Ltd. v. "St. Elefterio" (Owners)
[1957] 1 Lloyd's Rep. 283, at p. 287.

Application.

Application for the issue of a warrant of arrest of the defendant ship and for the keeping of same under safe arrest until satisfaction of plaintiff's claim for £5,298.249 mils in an action in *rem* instituted against such ship.

Fr. Saveriades, for—plaintiff-*ex-parte* applicant.

Cur. adv. vult.

The following decision was given by :—

A. LOIZOU, J.: By the present application the applicant applies for the issue of a warrant for the arrest of the Ship "BAALBECK" lying at Larnaca Harbour and that the same be kept under safe arrest until satisfaction of the plaintiff's claim or until further order of the Court.

The application is based on the Cyprus Admiralty Jurisdiction Order 1893, rules 50–59, 205 and 206 and on the Administration of Justice Act, 1956, section 1 (1) (p) and (q) and section 3 (1), (2) (4) (a) and (b).

The said arrest is sought in an action in *rem* in respect of a claim stated in the endorsement of the writ to be a claim for—

"(a) £5,298.249 mils as damages or compensation for disbursements and/or otherwise made by the plaintiff on account of the ship "BEITEDDINE" and/or "BAALBECK" as agent of the said ships and/or otherwise.

and/or

(b) £5,298.249 mils compensation or damages for work done and services rendered arising out of an act which is or is claimed to be a general average out and/or otherwise in respect of the ship "BEITEDDINE" and/or "BAALBECK" and/or otherwise.

and/or

- (c) £5,298.249 mils as damages for services rendered and work done on account of the said ships or either of them as agent in placing the claims of the said above ships and/or otherwise with a general adjuster."

1973
Nov. 29
—
ELIAS
RIGAS
v.
THE SHIP
"BAALBECK"

According to the affidavit sworn by plaintiff, it appears that on or about February, 1971, he had agreed with the defendant in Cyprus to represent the ship and collect all relevant documents and put them before the average adjusters in London for the different casualties and claims of the ship s.s. "BEITEDDINE" against the German underwriters for two consecutive years, 1969-1970 and be paid on the basis of 10 per cent on the general total of the claim of the said ship against the underwriters which was U.S. dollars 135,090.90 c. his fee being U.S. dollars 13,509 or Cyprus Pounds £4,744.000 mils. He, thereafter, acted on their behalf and in or about June, 1971, he placed them to the average adjuster.

It is also contended that it was a term of the said agreement that he would receive his commission or fee when the defendant receive it, or within a reasonable time thereafter and provided that the defendant had taken steps to receive and or place the claim in time. The defendant failed to do so with the German underwriters and the plaintiff was damaged thereby.

On the same terms there was an agreement regarding s.s. "BAALBECK" and his commission in Cyprus Pounds £554.249 is still owed to the plaintiff. The total indebtedness of the defendant's claim by the plaintiff being the amount given in the endorsement.

It is also stated that the ship "BEITEDDINE" and the ship "BAALBECK" were owned at the time when the cause of action arose, by the same owner who would be liable to the plaintiff in an action in *personam* and that the defendant ship at the time of the issue of the writ was beneficially owned as respects all the shares therein by the same owner.

It is in the light of the nature of the present claim and the aforesaid assertions that the plaintiff-applicant contends that the action is brought pursuant to section 1 (1) (p) and (q) and section 3 (4) (a) and (b) of the Administration of Justice Act, 1956.

By virtue of sections 19 (a) and 29 (2) (a) of the Courts of Justice Law, 1960, Law 14/60, this Court as a Court of Admiralty is vested with and exercises 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 the 16th August, 1960, the day of Independence. In the exercise of such jurisdiction it applies the Law as applied in England on the day in question subject to the overriding provisions of the Constitution and save in so far as other provision has been, or shall be made by any law.

At present, therefore, and in relation to the case in hand, the Admiralty jurisdiction of this Court and the manner in which it may be invoked, are governed by the Administration of Justice Act, 1956, of the United Kingdom, hereinafter referred to as "the Act", and in particular by the following sections of the Act whose terms in so far as material are hereinbelow set out :—

" 1.—(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 —

(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 ;

3.—(4) In the case of any such claim as is mentioned in paragraphs (d) to (r) of sub-section (1) of section one of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in *personam* was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court and (where there is such jurisdiction) the Admiralty jurisdiction of the Liverpool Court of Passage may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by action in *rem* against—

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person ; or

(b) any other ship which, at the time when the action is brought is beneficially owned as aforesaid."

The plaintiff maintains that his claim falls within section 1 (1) (p) and (q) of the Act and that it arose in connection with a ship, namely, "BEITEDDINE" whose owners would be liable to the claim in an action in *personam* and who were also owners of the ship "BAALBECK" and that they were consequently entitled to invoke the Admiralty jurisdiction of this Court by an action in *rem* against the sister ship "BAALBECK" under section 3 (4) (b) of the said Act in addition to the direct claim they have against the said sister ship.

For the purposes of deciding whether to issue a warrant for the arrest of the said ship or not, it is not, in my view, necessary, at this stage, to go into the merits of the action and decide whether the plaintiff's factual and legal contentions are right or wrong. It is sufficient to say that the plaintiff has a right to have these issues tried.

Once I am so satisfied by the endorsement on the writ of summons and the affidavit filed in support of this *ex parte* application and in the light of the provisions of the aforesaid sections and in particular section 3 (4) of the Act whose purpose is to confer the right to arrest either the ship in respect of which the cause of action is alleged to have arisen, or any other ship in the same ownership, I feel I have the power to issue the warrant for the arrest of this sister ship.

It is very helpful at this stage to refer to a passage from the judgment of Mr. Justice Willmer in *Schwarz & Co. (Grain) Ltd. v. "St. Elefterio" (Owners)* [1957] 1 Lloyd's Rep., p. 283 at p. 287 :—

"In my judgment, that proposition rests upon a misconception of the purpose and meaning of section 3 (4). As it appears to me, that sub-section, so far from being a restrictive provision, is a sub-section introduced for the purpose of enlarging the Admiralty jurisdiction of the Court. As I view it, its purpose is to confer, and to confer for the first time in England, the right to arrest either the ship in respect of which the cause of action is alleged to have arisen or any other ship in the same ownership. That is an entirely new right so far as the law of England is concerned, although it previously existed in other countries including Scotland; and the reason for conferring that right now is for the purpose of bringing this country into line with other countries as a result of an international convention. In my judgment, the purpose

of the words relied on by Mr. Roskill, that is to say the words, 'the person who would be liable on the claim in an action in *personam*', is to identify the person or persons whose ship or ships may be arrested in relation to this new right (if I may so express it) of arresting a sister ship. The words used, it will be observed, are 'the person who would be liable', not 'the person who is liable', and it seems to me, bearing in mind the purpose of the Act, that the natural construction of those quite simple words is, 'the person who would be liable on the assumption that the action succeeds'. This action might or might not succeed if it were brought in *personam*; that would depend upon the view which the Court ultimately took of the various contentions raised by Mr. Roskill. But clearly, if the action did succeed, the person or persons who would be liable would be the owner or owners of the steamship St. Eleferio. In such circumstances, in the absence of any suggestion that the action is a *frivolous* or *vexatious* action, I am satisfied that the plaintiffs are entitled to bring it and to have it tried, and that, whether or not their claim turns out to be a good one, they are entitled to assert that claim by proceeding in *rem*."

In the light of the above and their being *prima facie* sufficient material to show that at the time when the cause of action arose the owners would have been liable in *personam*, the requirements of section 3 (4) of the Act have been complied with and I grant the application, on the following terms :—

1. Let a warrant issue for the arrest of the ship "BAALBECK" which is now lying in the Larnaca Harbour.
2. Notice of such arrest shall be served on the master of the ship.
3. The Marshal shall release the ship upon directions from the Registrar of this Court on the filing of a security bond by or on behalf of the ship in the sum of £6,000 answerable for the satisfaction of any order or judgment for the payment of money made against the ship or her owners in this action.
4. The plaintiff shall comply with the following requirements :—
 - (a) lodge in Court the sum of £30 as deposit for any expenses which may be incurred by the Marshal

in connection with the custody of the ship while under arrest—subject to this sum being increased later ; and

- (b) file a security bond in the sum of £6,000 answerable in damages to the defendant ship and her owners against whom the present order is made.

5. The Marshal is required to report to Court by the latest at 9.30 a.m. on 3rd December, 1973, with regard to the arrest of the ship and the probable costs to be incurred in connection with such arrest.

I have thought it useful to deal with this present application at some length, in view of the nature of the issues raised and the general interest they present, particularly to the extent that the issue of the warrant for the arrest was also directed against a sister ship.

Application granted.

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