

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU,
A. LOIZOU, JJ.]

THE SHIP "GEORGHIOS C", AND ANOTHER,
Appellants-Defendants.

v.

MITSUI SUGAR LTD. AND ANOTHER,
Respondents-Plaintiffs.

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THE SHIP
"GEORGHIOS C"
AND ANOTHER
v.
MITSUI
SUGAR LTD.
AND ANOTHER

(Civil Appeal No. 5518).

5 *Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45 of 1963)—Prohibition of dealing with ship—Section 30 of the Law—Creditor—To what extent and in what circumstances would be entitled to obtain an order thereunder—Question left open—Fraud—Not necessary for fraud in the strict sense of the term to be established before an order under section 30 could be made—Discretion of the Court—Delay in applying—Does not prevent granting of the order—Mere fact that respondents would not have much to gain from an order under said s. 30 not a sufficient reason to interfere with the relevant exercise of discretion by trial Judge—Duration of Order—It cannot be made for unlimited period ("until further order") but for "a time specified".*

15 The appellants appealed against an order made under section 30* of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, by virtue of which any dealing with the Cyprus Ship "Georghios C" was prohibited "until further order".

20 Appellant contended (a) that the Judge should not have made the order under section 30 because there had not been proved, or even alleged, any fraud on the part of appellant 2, and (b) that the Judge in making the order exercised his discretion wrongly because: (1) There has been great delay on the part of the respondents to apply for an order under section 30, in view of the fact that the action was filed on March 10, 1972 and the application for the order was made in September, 1975
25 (2) in view of other liabilities of the ship owners an order under s.30 would be futile in the sense that it could not benefit the respondents and (3) the order under s. 30 could not be made

* See p. 108 *post*.

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for an unlimited period ("until further order") but for "a time specified".

Held, (I) with regard to contention (a) above:

It was not necessary for fraud, in the strict sense of the term, to be established; it sufficed that there did exist, on the basis of the affidavits before the trial Judge, adequate evidence as regards the imminent prospects, and declared intention, of the appellants ship owners to have further dealings in relation to the ship in question (issue as to what extent and in what circumstances a creditor, such as the respondents, would be entitled to obtain an order under section 30 left open.)

Held (II) with regard to contention (b) above:

1(a) The argument of the appellants about delay in applying misses the essential point that it was only in September, 1975, that the respondents found it necessary, due to the course of events in the meantime, to apply for an order under section 30; we do not think that the Judge should not have granted the order merely because it was applied for quite some time after the admiralty action was filed.

1(b) It is for a party who takes a certain procedural step to consider whether he is going to benefit therefrom; the mere fact that it might not have appeared that the respondents would had much to gain from an order under s. 30 is not a sufficient reason for us to interfere with the relevant exercise of the discretion of the Judge. (See *The Horlock* [1876-77] 2 P.D. 243, 250).

1(c) In the light of the clear wording of section 30 and in the light of all relevant considerations in this case, we should vary the order so as to limit its application up to March 31, 1976.

Appeal partly allowed. No order as to the costs in the appeal.

Cases referred to:

Eastern Mediterranean Maritime Ltd. v. Nava Shipping Co. Ltd.
(1975) 5 J.S.C. 666;

Beneficial Finance Corporation Ltd., v. Price [1965] 1 Lloyd's Rep. 556;

Reederei Schulte and Bruns Baltic, Schiffahrts K.G. v. Ismini Shipping Company Limited (1975) 1 C.L.R. 433;

The Horlock [1876–77] 2 P.D. 243 at p. 250;
La Blanca and El Argentino [1908] 77 L.J. (P.) 91.

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Appeal.

5 Appeal by defendants against an order of a Judge of the
Supreme Court (Malachtos, J.) dated the 25th November, 1975
(Admiralty Action No. 14/72), made under section 30 of the
Merchant Shipping (Registration of Ships, Sales and Mortgages)
Law, 1963 (Law 45/63), by virtue of which any dealing with the
Cyprus Ship "Georghios C" was prohibited "until further
10 order".

Gl. Talianos, for the appellants.

M. Papas with *E. Montanios* and *M. Cleopa (Mrs.)* for the
respondents.

The judgment of the Court was delivered by:—

15 TRIANTAFYLIDES, P.: The appellants—who are the defen-
dants in admiralty action No. 14/72—appeal against an order*
made by a Judge of this Court on November 25, 1975, under
section 30 of the Merchant Shipping (Registration of Ships,
Sales and Mortgages) Law, 1963 (Law 45/63), by virtue of
20 which any dealing with the Cyprus ship "Georghios C" (defen-
dant 1 in the action) was prohibited "until further order".

The said order under section 30 was initially applied for *ex*
parte, and was so granted, on September 24, 1975, by another
Judge of this Court.

25 The appellants opposed the making of the order and the trial
Judge, after hearing counsel for the parties, confirmed it, even-
tually, on November 25, 1975; during the proceedings before
him there were filed affidavits from which it emerged that the
ship was already mortgaged to a bank in England, that it had
30 been arrested in India by judgment creditors who had to receive
over 300,000 U.S.A. dollars and that it was about to be sold
by public auction in the course of execution set in motion by
the said judgment creditors, that appellant 2 was anxious to
35 effect a private sale of the ship to a purchaser who had offered
850,000 dollars and that the aforementioned bank was prepared
to satisfy the judgment debts on condition that it would receive
the said sale price.

From affidavits which have been filed, by consent, during the

* Reported in (1975) 11 J.S.C. 1622.

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hearing of this appeal, in order to establish facts which have supervened since the making of the order appealed from, it appears that a memorandum of agreement for the sale of the ship for the amount of 850,000 dollars was signed, the liabilities under the judgment debts have been satisfied and the mortgage debt to the bank has been paid off, although the mortgage is still registered in the relevant Register in Cyprus.

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The appeal was argued on two grounds only: First, that the Judge should not have made the order under section 30 because there had not been proved, or even alleged, any fraud on the part of appellant 2, and, secondly, that the Judge in making the order exercised his relevant discretion wrongly.

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As it appears from the judgment of the learned Judge counsel for the appellants did concede, in effect, that the expression "any interested person" in section 30 of Law 45/63 may be taken to include a person, such as a creditor, who does not have a proprietary or other beneficial interest in the ship concerned.

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The said section 30 reads as follows:—

"The High Court"—now the Supreme Court—"may, if the Court thinks fit (without prejudice to the exercise of any other power of the Court), on the application of any interested person make an order prohibiting for a time specified any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions the Court may think just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires; and the Registrar, without being made a party to the proceedings, shall on being served with an official copy thereof obey the same".

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It is, in all material respects, identical with section 30 of the Merchant Shipping Act, 1894, in England.

As it appears (at p. 23) from a book on the Merchant Shipping Acts, by Porges and Thomas (vol. 11 in the series "British Shipping Laws") there is not, really, much case-law in England in relation to the application there of section 30 of the Merchant Shipping Act, 1894.

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In Cyprus this matter was considered (by the same Judge who has made the appealed from order) in the case of *Eastern Mediterranean Maritime Ltd. v. Nava Shipping Co. Ltd.* (1975)

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5 J.S.C. 666; there, after reference to, *inter alia*, the Australian case of *Beneficial Finance Corporation Ltd., v. Price*, [1965] 1 Lloyd's Rep. 556, the conclusion was reached that, in its application, section 30 of Law 45/63 should be given a liberal interpretation so as to "cover all cases where a person is generally interested"; but, in the *Nava* case, *supra*, there were stated, also, the following (at p. 677), on the strength of a dictum of Moffitt J. in the *Beneficial* case (at p. 561):—

10 "The procedure under section 30 of the 1894 Act, as stated by Mr. Justice Moffitt, in the case of *Beneficial Finance Corporation Ltd., supra*, at page 561, 'is *prima facie* intended to be summary, the order being temporary in nature, no doubt taking into account the probable rights of the parties to adjust their permanent rights by other procedures. The
15 foundation of the order is to protect dealings for a specific time but leaving the Court to impose conditions which *prima facie* protect the person whose dealings are prohibited and confine the effect of the order so it will not put the applicant in an overadvantageous position'".

20 The matter of the application of section 30 of Law 45/63 was, also, dealt with later in the case of *Reederei Schulte and Bruns Baltic, Schiffahrts K.G., v. Ismini Shipping Company Limited*, (1975) 1 C.L.R. 433. The judgment in the above case is the subject matter of Civil Appeal No. 5535, which was
25 filed on January 3, 1976, and has not been heard yet.

We do not intend, in the present case, to go extensively into the problem of the exact ambit of section 30, especially as this matter was not argued before us for the purposes of this appeal; as our case-law is, in this respect, still in the process of developing, we leave entirely open the issue of to what extent and in what circumstances a creditor, such as the respondents in the present case, would be entitled to obtain an order under section
30 30.

As regards the first ground of appeal, namely that fraud on the part of the appellants shipowners ought to have been alleged and established before an order under section 30 could be made, we think that this contention was rightly rejected by the trial Judge. It was not necessary for fraud, in the strict sense of the term, to be established; it sufficed that there did exist, on
35 40 the basis of the affidavits before the trial Judge, adequate evidence as regards the imminent prospect, and declared intention,

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of the appellants shipowners to have further dealings in relation to the ship in question.

As regards the second ground of appeal various reasons were put forward, by counsel for the appellants, as to why the discretion of the trial Judge was, allegedly, wrongly exercised. We shall deal with only those of them which, in our view, merit specific reference in this judgment:

It has been argued that there has been great delay on the part of the respondents to apply for an order under section 30, in view of the fact that the action was filed on March 10, 1972, the pleadings were closed on July 19, 1975, and an application for the order was not made until September 24, 1975. This argument of the appellants misses the essential point that it was only in September, 1975, that the respondents found it necessary, due to the course of events in the meantime, to apply for an order under section 30; so, we do not think that the Judge should not have granted an order under this section merely because it was applied for quite some time after the admiralty action concerned was filed.

Another argument which has been advanced by counsel for the appellants is that, in view of other liabilities of the appellants shipowners, and especially as the ship concerned was mortgaged and was, also, the subject of execution in India in respect of judgment debts exceeding 300,000 dollars, an order under section 30 would be futile, in the sense that it could not benefit the respondents, as plaintiffs.

It is for a party who takes a certain procedural step to consider whether he is going to benefit therefrom; and the mere fact that it might not have appeared that the respondents would had much to gain from an order under section 30 is not, in our opinion, a sufficient reason for us to interfere with the relevant exercise of the discretion of the Judge who granted such order in the present case.

Apparently, the respondents felt that, notwithstanding the said mortgages and judgment debts, it was necessary, in order to protect their rights, to prevent any further dealings in relation to the ship in question.

Useful reference may be made, in this connection, to a case which was decided before the enactment of the Merchant

Shipping Act, 1894; it is the case of *The Horlock*, [1876-77] 2 P.D.243, 250; there in an action arising out of co-ownership of a ship an order was made, similar to an order that can be now made under our section 30, even though the ship was already burdened by two mortgages; and it was stated that:—

5 "..... unless the defendant was restrained from creating any further charge on the said shares, the said shares would not be of sufficient value to satisfy the plaintiff's claim for the earnings of the vessel from 1874 to the time
10 of the making of the affidavit, and the costs of the action."

It has been complained of by counsel for the appellants that, in the case now before us, the order under section 30 was made for an unlimited period ("until further order") and that in section 30 it is expressly provided that an order under it should
15 be made for "a time specified".

It is correct that it appears from the case of *La Blanca and El Argentino*, [1908] 77 L.J. (P.) 91, that an order, under section 30 of the Merchant Shipping Act, 1894, in England, was made until further order, but this was done, as shown by the report
20 of that case, at only an early *ex parte* stage of the proceedings. We are of the view, in the light of the clear wording of section 30, and in the light of all relevant considerations in this case, that we should vary the order which was finally made by the trial Judge, so as to limit its application up to March 31, 1976;
25 and, in the meantime, the respondents can take all other necessary steps for the protection of their interests, including expediting the trial of the action. Of course, there is nothing to prevent the discharge of the order earlier if the parties come to an agreement as regards the provision of security for the claim in
30 the action and its costs; and, also, a further order under section 30 may always be applied for in the light of the situation existing at the time when the application for it is to be made.

In the circumstances, this appeal is allowed partly, to the extent to which the order under section 30 has been varied as
35 above; but, we have decided that there should be no order as to the costs in the appeal.

Appeal partly allowed. No order as to costs in the appeal.