

GRADE ONE SHIPPING LIMITED, OWNERS OF
THE CYPRUS SHIP "CRIOS II" (NO. 3),

Applicants-Appellants (plaintiffs),

v.

THE CARGO ON BOARD THE SHIP "CRIOS II",
NOW LYING IN THE PORT OF LARNACA,

Respondents (Defendants).

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GRADE ONE
SHIPPING LTD.
(NO. 3)
v.
CARGO ON
BOARD
THE SHIP
"CRIOS II"

(Application in Civil Appeal No. 5626).

*Admiralty—Practice—Arrest of property—Order for arrest of cargo—
Discharged—Appeal against order of discharge—Application, by
summons, before the Full Bench of the Court, to preserve status quo
of cargo and "stay the force" of the order for discharge pending
the final determination of the appeal—Ex parte application before
a single judge (member of the Full Bench) for an interlocutory
order prohibiting owners of part of cargo from receiving and ex-
porting it until determination of the application by summons—
Whether arrest of cargo can be secured under the guise of the
order applied for—Question left open—Court not sufficiently
satisfied, at this stage, that applicants are entitled in law to the
order applied for ex parte.*

*Civil Procedure—Appeal—Against Order discharging order for arrest
of property—Application for interlocutory order pending deter-
mination of appeal.*

Interlocutory order—Appeal—Application for interlocutory order.

The appellants appealed against the discharge* of an order for the arrest of the defendant cargo, which had been obtained *ex parte*. Simultaneously with the filing of the appeal they applied *ex parte* to the Judge, who discharged the said order, for an order that the status quo of the cargo, be preserved until the final determination of the appeal.

The Judge refused to make the order applied for; and the applicants by a new *ex parte* application, made in relation to the appeal, sought exactly the same order as the one sought

* See p. 350 *ante*.

earlier from the trial Judge. The Full Bench of the Supreme Court directed that the application should be made by summons. The application by summons was fixed for hearing on November 11, 1976 before the Full Bench of this Court. In this application there was sought, in addition to the order for the preservation of the status quo, an order "staying the force" of the order discharging the order of arrest of the cargo. 5

On November 4, 1976 the present *ex parte* application was filed whereby there was sought an interlocutory order prohibiting the owners of part of the cargo from receiving and exporting it until determination of the application by summons which was to be heard on November 11, 1976. 10

Held, (1) on the basis of what has been placed before me it appears to be quite debatable whether after an order of arrest, which was obtained under the specific for the purposes of the Admiralty Jurisdiction provision, has been discharged, and an appeal has been made against the decision to discharge it, the arrest can nevertheless be secured once again, pending the appeal, under the guise of an order such as the one now applied for. I am not deciding that this course is definitely excluded in law but I am not satisfied, at present, that this is a clear-cut instance where I would be justified to intervene by way of an urgent interim measure such as the one sought by the application before me. 15 20

Application dismissed with costs. 25

Cases referred to:

American Cyanamid v. Ethicon [1975] 1 All E.R. 504, at p. 509;
Acropol Shipping Company Ltd. and Others v. Rossis (reported in this Part at p. 38 *ante*, at p. 46);
Erinford Properties Ltd. v. Cheshire County Council [1974] 2 All E.R. 448. 30

Application.

Application for an order that the status quo of the cargo, the subject matter of the action, be preserved until the final determination of an appeal against an order of the Court, discharging an order for its arrest, which had been made earlier on the *ex-parte* application of the plaintiffs. 35

L. Papaphilippou, for the applicants-appellants (plaintiffs).
C. Erotokritou with *J. Erotokritou*, for the respondents (defendants). 40

The following decision was delivered by:-

TRIANAFYLLIDES,P.: The history of the present proceedings is as follows:-

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—
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5 In a pending admiralty action No. 83/76 the applicants obtained, *ex parte*, on June 9, 1976, under rule 50 of the Rules applicable to the exercise of the Admiralty jurisdiction of our Supreme Court, an order for the arrest of the defendant cargo, which was on board the ship "CRIOS II" lying in the port of Larnaca.

10 On October 29, 1976, the Judge of this Court, who had granted *ex parte* the order of arrest, discharged it, after hearing the parties, and he has given his reasons for doing so in a decision* against which an appeal (C.A. 5626) was filed on October 30, 1976.

15 On that date counsel for the applicants applied *ex parte* to the same Judge for an order that the status quo of the cargo, the subject matter of the action, be preserved until the final determination of the said appeal.

20 The application was based on the Cyprus Admiralty Jurisdiction Rules and, particularly, rule 50 et seq. and rule 237 thereof, on section 4 of the Civil Procedure Law, Cap. 6, on section 32 of the Courts of Justice Law, 1960 (Law 14/60), and on the inherent powers of the Court.

25 On the same day the Judge refused to make an order as aforesaid, having taken—as he stated—into consideration the facts and circumstances of the case and having in mind the case of *American Cyanamid v. Ethicon*, [1975] 1 All E.R. 504, 509.

30 I might point out, at this stage, by way of a parenthesis, that the *American Cyanamid* case has, indeed, been incorporated into our own case-law by the judgment given in *Acropol Shipping Company Ltd. and Others v. Rossis*, (reported in this Part at p. 38, 46).

35 I would like to stress that though in the aforementioned *ex parte* application made to the trial Judge reference was made to rule 50 of our Admiralty Rules the relief sought by such application was not to the effect that a further order of arrest

* Vide p. 350 in this Part, *ante*.

under rule 50 should be made pending the determination of the appeal; had a further order of arrest been applied for, pending the appeal, the Judge might have had to consider whether he could make such an order (see, *inter alia*, *Erinford Properties Ltd. v. Cheshire County Council*, [1974] 2 All E.R. 448). 5

Later, on November 1, 1976, an *ex parte* application was made in relation to the appeal seeking exactly the same order as the one sought earlier on from the trial Judge; and the same legislative provisions were relied on once again. 10

On November 2, 1976, the Full Bench of this Court, before which the appeal is to be heard, directed that the *ex parte* application in the appeal should be made by summons. Such application was duly filed on November 3, 1976; there is being sought, again, the same order for the preservation of the status quo, as before, plus an order "staying the force" of the order made by the trial Judge on October 29, 1976, namely, the order discharging the order of arrest; and there are being relied on, on this occasion (in addition to the other already mentioned legislative provisions) rules 18 and 19 of Order 35 of the Civil Procedure Rules. 15 20

The application by summons is fixed for hearing on November 11, 1976, at 4 p.m., before the Full Bench of this Court.

On November 4, 1976, the present *ex parte* application was filed; it seeks an interlocutory order prohibiting the owners of part of the cargo involved in this case from receiving and exporting it until determination of the application by summons which is to be heard on November 11, 1976. There are relied on, in this respect, the powers of the Court under rules 18 and 19 of Order 35 of the Civil Procedure Rules, sections 4 and 9 of the Civil Procedure Law, Cap. 6, and section 32 of the Courts of Justice Law, 1960 (Law 14/60). 25 30

On November 5, 1976, the above *ex parte* application was fixed for hearing on the same day (at 3.30 p.m.) and, also, it was directed to serve a copy of it on the respondents by way of notice. 35

Counsel for the respondents objected that in view of the previous and anticipated future proceedings in this case I have no competence, in the circumstances, to deal with this *ex parte* application. 40

I do not have to decide this issue, namely to what extent a Judge of this Court who is going to sit as a member of the Full Bench in order to hear an appeal and who is, also, going, as a member of such Bench, to deal prior to the appeal with an interlocutory application by summons by means of which it is sought to preserve the status quo pending the determination of the appeal, may, sitting alone, prior to the hearing of the application by summons, grant urgently interim relief, pending the hearing of the said application (perhaps only under r. 18 of Order 35 of the Civil Procedure Rules) because I have decided that, in any event, even if I were competent to do so, I would not be prepared to grant the order applied for, as this is not a case in which I am, as at present advised, at this stage, sufficiently satisfied that the applicants are entitled in law to the order applied for *ex parte*; on the basis of what has been placed till now before me it appears to be quite debatable whether after an order of arrest, which was obtained under the specific *for the purposes of the Admiralty jurisdiction provision*, has been discharged, and an appeal has been made against the decision to discharge it, the arrest can nevertheless be secured once again, pending the appeal, under the guise of an order such as the one now applied for. I am not deciding that this course is definitely excluded in law—(as this may have to be dealt with when the interlocutory application by summons is to be heard)—but I am not satisfied, at present, that this is a clear-cut instance where I would be justified to intervene by way of an urgent interim measure such as the one sought by the application before me.

The present application is, therefore, dismissed, with costs.

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Application dismissed with costs.