

GERLING KONZERN ALLGEMEINE  
VERSICHERUNGS A.G. (NO. 1),

*Plaintiffs,*

v.

THE SHIP "DIMITRAKIS", AND ANOTHER,

*Defendants.*

(Admiralty Action 54/73).

*Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law No. 45 of 1963)—Prohibition of dealing with ship—Section 30 of the Law—Application of—Action for damages against owners of the ship—Plaintiffs have no "interest" in the ship herself and they are not "interested persons" within the meaning of the said section—Order made thereunder discharged—Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd. (reported in this Part at p. 333 ante) followed.*

5

10

The plaintiffs in this action, as assignees of the consignees of the cargo, claimed against the defendant ship and its owners the sum of £53,173.886 mils being the value of cargo which was destroyed and/or damaged by the fault and/or neglect of the defendants, whilst on board the defendant ship.

15

After the filing of the action the plaintiffs applied by *ex parte* application and obtained an order under s. 30\* of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law No. 45 of 1963) prohibiting any dealing with the said ship or any shares therein.

20

When the said order was made returnable the defendants opposed it and the Court heard argument from counsel on the matter.

25

*Held*, (1) section 30 does not apply to mere creditors or claims of damages against the owners of the ship and that "interested person" in this section means a person who is interested in the ship herself. He may be a legatee or heir or a creditor. Whether he is an interested person within the meaning of the said section is a question depending on the facts of the particular case.

\* See p. 388 of the judgment *post*.

(2) In the present case even if we assume that the plaintiffs were entitled to bring this action in their own name being the assignees of the consignees of the cargo, a question which I leave entirely open, it is clear that they have no interest in the ship herself and they are not interested persons within the meaning of the section. Their claim is for damages against the owners of the ship and has nothing to do with the ship herself.

5

(3) Therefore, the Order of this Court prohibiting any dealing with the defendant ship is hereby discharged. (*Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.* (reported in this Part at p. 333 *ante*) followed).

10

Order accordingly.

Cases referred to:

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

15

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

*Verolme Dock and Shipbuilding Company Ltd. v. Lamant Shipping Co. Ltd.* (1975) 11 J.S.C. 1618;

*Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.* (reported in this Part at p. 333 *ante*).

20

### Application.

Application under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63) for an order prohibiting any dealing with defendant ship "Dimitrakis" until final determination of an admiralty action whereby plaintiffs claim the sum of £53,173.886 mils for damages caused to a cargo of sunflower seed, due to defendants' negligence.

25

*M. Papas*, for the applicants.

*E. Psillaki (Mrs.)*, for the respondents.

30

The following judgment was delivered by:—

MALACHTOS, J.: On the 14th November, 1973, the plaintiff, an insurance company of West Germany, instituted legal proceedings against the defendants claiming according to the writ of summons the following relief:

35

(a) £53,173.886 or thereabouts or the pound equivalent for the time being of U.S. Dollars 151,333.28 (at the rate of U.S. \$ 2.846 to the pound) or thereabouts for damages by fire and/or from measures taken to extin-

guish the fire and/or otherwise to a consignment of 2,000 tons sunflower seed expeller in bulk and/or bags shipped on board the ship "DIMITRAKIS" which is registered in Famagusta as a Cyprus ship flying a Cyprus flag and owned by Stella Shipping Company Ltd., at Tekirdag under bills of lading No. 1 and 2, for carriage to Lorient and Aalborg, which arrived at Aalborg on the 14th August, 1972, and for delivery thereof to the consignees due to negligence and/or otherwise; and/or

1976  
Nov. 16  
—  
GERLING  
KONZERN  
ALLGEMEINE  
VERSICHERUNGS  
A.G. (No. 1)  
v.  
SHIP  
"DIMITRAKIS"  
AND ANOTHER

- (b) The same amount being the value of the said cargo or goods as was destroyed and/or damaged by the fault and/or neglect of the Defendant, their servants and/or agents or otherwise and/or
- (c) The same amount by way of damages due to the Defendants' failure to properly and carefully load and/or handle and/or keep and/or carry and/or care for and/or discharge the said cargo and/or deliver the same to Plaintiffs in as good condition as they received the same and/or for the Defendants' failure to exercise due diligence before and at the beginning of the voyage to make the said ship, seaworthy and/or to properly man, supply and equip the same and/or to make her holds and all her other parts fit and safe for their reception, carriage preservation and/or otherwise; and/or
- (d) The same amount as damages for breach of contract and/or breach of duty and/or negligence of the Defendants, their servants and/or agents for damage to the said goods to the amount of £53,173.886 and/or otherwise; and
- (e) Legal interest and costs.

On the 14th December, 1973, a conditional appearance was entered on behalf of the defendants who were given six weeks time to apply to have the issue and service of the writ set aside, otherwise the conditional appearance to stand as unconditional. Since then, no step was taken in this action by either party till the 18th September, 1975 when on an *ex parte* application accompanied by affidavit, the plaintiff company obtained an Order under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, Law 45/63, prohibiting

GERLING  
KONZERN  
ALLGEMEINE  
VERSICHERUNGS  
A.G. (No. 1)  
v.  
SHIP  
"DIMITRAKIS"  
AND ANOTHER

any dealing with the said ship or any shares therein. This section is as follows:

"30. The High 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".

On the 4th October, 1975, when the Order was made returnable for the defendants to show cause why the said Order should not remain in force, counsel appearing for the defendants stated that the application was opposed and was given time to file an opposition. The opposition accompanied by affidavit was subsequently filed and this application finally came on for hearing on the 26th day of April, 1976.

The facts that gave rise to the present dispute appear in the affidavit sworn on behalf of the plaintiffs in support of the application and are as follows:

By two Bills of Lading, i.e. Nos. 1 and 2, signed by and/or on behalf of defendants 2, they, defendants 2, contracted to carry on board their vessel "DIMITRAKIS" a Cyprus Ship, 2000 tons of sunflower-seed expellers in bulk and/or bags duly delivered to them in good order and condition at Tekirdag, and to be carried from Tekirdag to Lorient and Aalborg, Denmark, and there to deliver the same in like good order and condition and/or in accordance with the terms of the said bills of lading. In breach of the said contracts and/or their duty and/or due to their negligence and/or that of their servants and/or agents, defendants 2 and/or their servants and/or their agents short delivered the said goods and/or did not deliver the said goods to the consignees in good order and condition but delivered part thereof and/or all damaged by fire and/or from measures taken to extinguish the fire and/or otherwise whereby the consignees suffered loss and damage and as a result the present action was instituted.

The said vessel was at the material time according to the

Cyprus Register of Ships owned by "Stella Shipping Company Limited", defendants 2, whose registered office is at No. 9, Arch. Kyprianos Street, Limassol.

1976  
Nov. 16

—  
GERLING  
KONZERN  
ALLGEMEINE  
VERSICHERUNGS  
A.G. (No. 1)  
v.  
SHIP  
"DIMITRAKIS"  
AND ANOTHER

5 The plaintiffs are the underwriters of the said cargo and have paid to the consignees of the said goods the damage they have suffered as aforesaid pursuant to claim made by them under the relevant insurance policies.

10 By proper and valid instrument and/or instruments of assignment the consignees assigned their rights to the plaintiffs including their right to claim damages for the damage sustained as aforesaid.

15 Counsel for the respondents-defendants submitted that the power of the Court in making an Order under section 30 of Law 45/63 is a discretionary power. However, such discretion should be exercised in very rare cases and where the person applying for such an order has an interest in the ship herself. The words "interested person" appearing in section 30 of the Law should be given this meaning. She further argued that the action is bad in law as it is brought in the name of the plaintiffs as the cargo underwriters and allegedly assignees of the consignees' rights. Even if there has been a valid assignment as alleged, which is in any case denied, our law does not recognise such assignment and the assignee cannot sue in his own name. Furthermore, no application for adding the assignors as parties in the action could be successful as the claim in the present action has become statute barred a long time ago.

20 In the case of the *Beneficial Finance Corporation Ltd. v. Price*, an Australian case of the Supreme Court of New South Wales, reported in [1965] 1 Lloyd's Rep. 556. Mr: Justice Moffitt analyses and deals extensively with the history and application of section 30 of the English Merchant Shipping Act 1894, which is identical to section 30 of our Law. In that case it was held that the application of section 30 should not be limited to sales under the Court's supervision of ships or interests therein passing by transmission to persons not entitled to own a British ship.

35 The application of section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, was first considered by this Court in the case of *Eastern Mediterranean Maritime Ltd. v. Nava Shipping Co. Ltd.* (1975) 5 J.S.C.

1976  
Nov. 16

GERLING  
KONZERN  
ALLGEMEINE  
VERSICHERUNGS  
A.G. (NO. 1)  
v.  
SHIP  
"DIMITRAKIS",  
AND ANOTHER

666, where it was decided that the application of section 30 should not be limited to cases where the applicant has a proprietary or beneficial interest in a ship but it should be given liberal interpretation so as to cover cases where a person is generally interested. In the subsequent case of *Verolme Dock and Shipbuilding Company Ltd. v. Lamant Shipping Co. Ltd.* (1975) 11 J.S.C. 1618 it was again decided by this Court that the application of section 30 covers cases of mere creditors of the owners of a ship. 5

However, in the recent case of the *Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.*, Admiralty Action No. 14/75, in delivering my judgment\* on 25th October, 1976, I reconsidered my previous decisions in the *Nava* and *Lamant* cases, *supra*, and I came to the conclusion that section 30 does not apply to mere creditors or claims of damages against the owners of the ship and that "interested person" in this section means a person who is interested in the ship herself. He may be a legatee or heir or a creditor. Whether he is an interested person within the meaning of the said section is a question depending on the facts of the particular case. 10 15 20

In the present case even if we assume that the present plaintiffs were entitled to bring this action in their own name being the assignees of the consignees of the cargo, a question which I leave entirely open to be decided at the hearing of the case on its merits, it is clear that they have no interest in the ship herself and they are not interested persons within the meaning of the section. Their claim is for damages against the owners of the ship and has nothing to do with the ship herself. 25

Therefore, the Order of this Court made on the 18th September, 1975, against the respondents prohibiting any dealing with the ship "DIMITRAKIS" until further Order of the Court is hereby discharged. 30

As regards the costs of this application, the respondents are entitled to their costs to be assessed at the end of the proceedings. 35

*Order accordingly.*

\* Reported in this Part at p. 333 *ante*.