

CYPRIAN SEAWAYS AGENCIES LTD.,

Plaintiffs,

v.

CHALDEOS SHIPPING CO. LTD. AND ANOTHER,

Defendants.

CYPRIAN  
SEAWAYS  
AGENCIES  
LTD.

v.

CHALDEOS  
SHIPPING  
CO. LTD.  
AND ANOTHER

(Admiralty Action No. 105/76).

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—Claim against owners of the*  
*ship for damages for breach of a charter party and/or for*  
*conversion of goods—Has nothing to do with any claim in*  
*the ship herself—Said section does not apply to mere creditors*  
*or claimants of damages against the ship owners and that “in-*  
*terested person” therein means a person who is interested in*  
*the ship herself—Order made thereunder discharged—Tokio*  
10 *Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.*  
*(1976) 1 C.L.R. 333 followed—There being nothing in the*  
*body of the application for the order indicating that it was*  
*based on section 32 of the Courts of Justice Law, 1960 (Law*  
15 *14/60) it could not, at this stage, be considered as based, also,*  
*on this section.*

20 *Practice—Injunction—Interlocutory injunction—Section 32 of the*  
*Courts of Justice Law, 1960—Application for order prohibit-*  
*ing dealing with ship—Under section 30 of the Merchant Ship-*  
*ping (Registration of Ships, Sales and Mortgages) Law, 1963*  
*(Law 45/63)—Nothing in the body of the application indicat-*  
*ing that it was based on said section 32—Application could*  
*not, at the stage when order was made returnable, be consi-*  
*dered as based, also, on this section.*

25 Upon filing an action against the defendants for damages  
for breach of a charter party and/or for conversion of goods  
the plaintiffs filed, also, an *ex parte* application, based solely  
on section 30\* of the Merchant Shipping (Registration of  
Ships, Sales and Mortgages) Law, 1963 (Law 45/63) and ob-

\* Quoted at p. 168 *post*.

1977  
Mar. 19

—  
CYPRIAN  
SEAWAYS  
AGENCIES  
LTD.  
v.  
CHALDEOS  
SHIPPING  
CO. LTD.  
AND ANOTHER

tained an order restraining the defendants from transferring, mortgaging, alienating or charging their ship "Ardenal" or any shares therein.

The defendants opposed the said order and contended that the said section 30 was not intended to be used by creditors or mere claimants against ship owning companies; and that interested person within the meaning of this section is a person who is interested in the ship herself.

On the other hand counsel for the applicants submitted that the application should be considered as based not only on section 30 but, also, on section 32\* of the Courts of Justice Law, 1960 (Law 14/60).

*Held*, (1) that section 30 does not apply to mere creditors or claimants of damages against ship owners and that "interested person" in this section means a person who is interested in the ship herself (see *Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.* (1976) 1 C.L.R. 333).

(2) That since there was nothing in the body of the application indicating that it was based also on section 32 of Law 14/60, it could not at such a late stage be considered under that section; and that as in the present case the claim of the plaintiffs against the defendants, owners of the said ship, is for damages for breach of a charter party and/or for conversion of goods and has nothing to do with the ship herself, the order made under section 30 will be cancelled. (*Dicta* in *Consolidated Glass Works Ltd. v. Friendly Pale Shipping Co. Ltd., and Another* (reported in this Part at p. 44 *ante*) regarding the application of section 32 of Law 14/60 repeated).

*Order under section 30 of Law 45/63 cancelled.*

Cases referred to:

*Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.* (1976) 1 C.L.R. 333;

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

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

\* Quoted at p. 169 *post*.

CYPRIAN  
SEAWAYS  
AGENCIES  
LTD.

v.  
CHALDEOS  
SHIPPING  
CO. LTD.

AND ANOTHER

**Application.**

5 Application by plaintiffs under s. 30 of the Merchant  
Shipping (Registration of Ships, Sales and Mortgages)  
Law, 1963 (Law 45/63) for an order restraining the de-  
fendant from transferring, mortgaging, alienating or charg-  
ing their ship "ARDENAL" or any shares therein.

10 *P. Ioannides* with *E. Shellish* (Miss), for the appli-  
cants.

*Chr. Demetriades*, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:-

15 MALACHTOS, J.: On the 10th July, 1976 the plaintiffs,  
a shipping company of Limassol, instituted proceedings  
against the defendants as owners of the ship "ARDE-  
NAL" ex "ARSENAL" claiming:-

20 (a) Damages for breach by the defendants and/or  
their agents and/or their assignees of a charter  
party dated 27th January, 1976, signed in Li-  
massol between the litigants by which the plain-  
tiffs chartered from the defendants their ship  
25 "ARDENAL" ex "ARSENAL" for the carriage  
of about 6,000 metric tons of cement to La-  
gos—Apapa, Nigeria and/or for detention and/  
conversion thereof and/or otherwise;

(b) Any further or other remedy; and

(c) Interest and costs.

30 At the same time they filed an *ex parte* application  
based solely on section 30 of the Merchant Shipping (Re-  
gistration of Ships, Sales and Mortgages) Law, 1963.  
(Law 45/63), accompanied by affidavit and obtained on  
12.7.76, an Order restraining the defendants from trans-  
35 ferring, mortgaging, alienating or charging the said ship  
or any shares therein.

On 30.7.76 when this Order was made returnable the

1977  
Mar. 19

—  
CYPRIAN  
SEAWAYS  
AGENCIES  
LTD.  
v.  
CHALDEOS  
SHIPPING  
CO. LTD.  
AND ANOTHER

defendants appeared before the court and opposed it. The opposition accompanied by affidavit was filed on 27.8.76. Section 30 of the Law on which both the application and the opposition are based, reads as follows:

“30. The High Court may, if the Court thinks fit 5  
(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 10  
Court may make the order on any terms or condi-  
tions 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 Re- 15  
gistrar, without being made a party to the proceed-  
ings, shall on being served with an official copy there-  
of obey the same”.

At the hearing of the application counsel appearing for the respondents argued that section 30 of Law 45/63 was not intended to be used by simple creditors or mere claimants against ship owning companies, such as the applicants. Interested person within the meaning of this section is a person who is interested in the ship herself. 20

As to who is an interested person within the meaning of section 30 of Law 45/63, it has been decided by this court in the case of the *Tokio Marine and Fire Insurance Co. Ltd. v. Fame Shipping Co. Ltd.* (1976) 1 C.L.R. 333 where the *Eastern Mediterranean Maritime Ltd. v. Nava Shipping Co. Ltd.* (1975) 5 J.S.C. 666 and *Verolme Dock and Ship Building Co. Ltd. v. Lamant Shipping Co. Ltd.* (1975) 11 J.S.C. 1618, were reconsidered. In the said case it was held that section 30 does not apply to mere creditors or claimants of damages against ship owners and that “interested person” in this section means a person who is interested in the ship herself. 25 30 35

In the present case the claim of the plaintiffs against the defendants, owners of the ship “ARDENAL” is for damages for breach of a charter party and/or for conversion of goods and has nothing to do with any claim in the ship herself. 40

Counsel for the applicants submitted that the applica-

tion should be considered as based not only on section 30 of Law 45/63 but on section 32 of the Courts of Justice Law, 1960, Law 14/60. This section is as follows:-

1977  
Mar. 19  
—  
CYPRIAN  
SEAWAYS  
AGENCIES  
LTD.  
v.  
CHALDEOS  
SHIPPING  
CO. LTD.  
AND ANOTHER

5 “32.- (1) Subject to any Rules of Court every court  
in the exercise of its civil jurisdiction, may, by order,  
grant an injunction (interlocutory, perpetual or man-  
datory) or appoint a receiver in all cases in which it  
appears to the court just or convenient so to do, not-  
withstanding that no compensation or other relief is  
10 claimed or granted together therewith:

15 Provided that an interlocutory injunction shall not  
be granted unless the court is satisfied that there is a  
serious question to be tried at the hearing, that there  
is a probability that the plaintiff is entitled to relief  
and that unless an interlocutory injunction is granted  
it shall be difficult or impossible to do complete jus-  
tice at a later stage.

20 (2) Any interlocutory order made under subsec-  
tion (1) may be made under such terms and condi-  
tions as the court thinks just and the court may at  
any time, on reasonable cause shown, discharge or  
vary such order.

25 (3) If it appears to the court that any interlocu-  
tory order made under subsection (1) was applied for  
on insufficient grounds, or if the plaintiff's action  
fails, or judgment is given against him by default or  
otherwise, and it appears to the court that there was  
no probable ground for his bringing the action, the  
30 court may, if it thinks fit, on the application of the  
defendant, order the plaintiff to pay to the defendant  
such amount as appears to the court to be a reason-  
able compensation to the defendant for the expense  
and injury occasioned to him by the execution of the  
order.

35 Payment of compensation under this subsection.  
shall be a bar to any action for damages in respect  
of anything done in pursuance of the order; and any  
such action, if begun, shall be stayed by the court in  
40 such manner and on such terms as the court thinks  
just”.

1977  
Mar. 19  
—  
CYPRIAN  
SEAWAYS  
AGENCIES  
LTD.  
v.  
CHALDEOS  
SHIPPING  
CO. LTD.  
AND ANOTHER

The short answer to this submission of counsel for applicants is that since there is nothing in the body of the application indicating that it was based also on section 32 of Law 14/60, it could not at such a late stage be considered under that section. The *ex parte* application was based solely on section 30 of Law 45/63 and the order complained of was issued on the strength of that section only. So the question to be decided in these proceedings is whether this court, on the facts of the case, could make the order complained of under section 30 of Law 45/63.

Furthermore, I consider it necessary to repeat what I have said in my judgment on 29th January, 1977, in the case of *Consolidated Glass Works Ltd. v. Friendly Pale Shipping Co. Ltd. and Another* (reported in this Part at p. 44, *ante*).

“No doubt this section gives very wide powers to every court in the exercise of its civil jurisdiction, and this court in its admiralty jurisdiction is a civil court, to grant an injunction in all cases in which it appears just or convenient so to do.

However, the power of the court to grant an injunction under this section is not in issue in these proceedings. Neither is in issue the question whether this court on the facts of this particular case could make under this section the order prohibiting any dealing with the ship in question or any share therein.

In any event, and irrespective of what may be argued as regards the application of section 32 of Law 14/60, in view of the provisions of section 4(1) of the Civil Procedure Law, Cap. 6, even if I were to decide on the making of an Order under section 32 of Law 14/60 prohibiting any dealing with the ship in question, or any share therein, I would not have exercised my discretion in granting such an Order.

What was decided in the case of *Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd. and Others*, (1976) 1 C.L.R. 302, following *Nippon Yussen Kaisha v. Karageorghis and Another* [1975] 3 All E.R. 282 and *Mareva Compania Naviera S.A. v. Interna*

5 *tional Bulkcarriers S.A.* [1975] 2 Lloyd's Rep. 509, should be considered as so decided in the particular circumstances of that case and should not be readily extended so that to cover assets other than cash money and, especially, any dealing with a ship or any share therein".

10 In view of the fact that in a similar application in Admiralty Action No. 106/76 between the same plaintiffs and different defendants represented by the same advocates, the same question of law was involved, it has been agreed that the result of the present application would be followed in that case as well.

15 For the reasons stated above the Order of this court made on the 12th July, 1976 against the respondents in the present proceedings prohibiting any dealing with the ship "ARDENAL" until further order of the court, is hereby cancelled.

Also a similar order made in Admiralty Action No. 106/76 on the same day, is hereby cancelled as well.

20 On the question of costs, respondents defendants are entitled to their costs to be assessed at the end of the proceedings.

*Order accordingly.*

1977  
Mar. 19  
—  
CYPRIAN  
SEAWAYS  
AGENCIES  
LTD.

v.  
CHALDEOS  
SHIPPING  
CO. LTD.  
AND ANOTHER