

1978 November 22

[SAVVIDES, J.]

KUEHLSCHIFFFAHRTS-KOMMANDITGESELLSCHAFT
ORCHIDES SCHIFFEHRTSGESELLSCHAFT M.B.H. & CO.
AND OTHERS,

Applicants,

v.

PHOKIS MARITIME COMPANY LIMITED AND OTHERS,

*Respondents.**(Civil Applications Nos. 9/78, 10/78, 11/78 and 12/78).*

Admiralty—Practice—Pleadings—Reply—Grant of interim order on ex parte application supported by affidavit—Leave to file affidavit in reply to respondents' affidavit in support of opposition, not necessary—Rule 83 of the Cyprus Admiralty Jurisdiction Order, 1893 and Order 21, rule 14(1) of the Civil Procedure Rules.

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On September 12, 1978, upon an *ex parte* application of the applicants supported by affidavit the Court made an order under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63), prohibiting any dealing with the vessel "Primrose" or any share therein. On the date when this order was returnable the respondents appeared and objected both to the jurisdiction of the Court and to the issue of the above order by filing an opposition and an affidavit in support. Counsel for the applicants made an oral application asking for leave to file a supplementary affidavit in reply to the facts set out in the affidavit of the respondents. Counsel for the respondents objected to such application and argued mainly that such leave could not be granted because the said order was made on the strength of the affidavit filed in support of the application and in consequence the very nature of the proceedings instituted by an *ex parte* application prevented the other party from asking leave to advance further evidence by virtue of a supplementary affidavit.

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On the question whether the applicants were entitled to file a

supplementary affidavit in reply to the affidavit of the respondents:

5 *Held*, that no leave to file a reply is necessary under the Admiralty Rules or the Civil Procedure Rules (see rule 83 of the Cyprus Admiralty Jurisdiction Order, 1893 and Order 21, rule 14(1) of the Civil Procedure Rules); and that, accordingly, the objection raised by the respondents is unfounded and the oral application for leave to file a reply was superfluous.

Order accordingly.

Application.

10 Application by the applicants for leave to file a supplementary affidavit in reply to the affidavit filed by the respondents in support of their opposition.

L. Papaphilippou, for the applicants.

A. Anastasiades, for the respondents.

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Cur. adv. vult.

SAVVIDES J. read the following ruling. In the course of these consolidated proceedings counsel for the applicant made an oral application for leave to file a supplementary affidavit in reply to the affidavit filed by the respondents in support of their opposition. Counsel for the respondents objected to such application, on the ground that it could not be made orally.

20 The main issue in these proceedings is an order granted by the Court prohibiting the sale, further mortgaging and dealing with the vessel "Primrose", or any share therein. The order was granted by the Court on the 12th September, 1978 and was made returnable on the 20th September, 1978 with direction that it was to remain in force till the 8th of November, unless the respondents appeared before the Court on the 20th September, 1978 and objected to the issue of such order.

25 Counsel for the respondents appeared before the Court on the 20th September, 1978 and objected both to the jurisdiction of the Court and the issue of the interim order. Respondents filed their opposition on the 19.10.1978 setting forth in an accompanying affidavit the facts relied upon in opposition. Such affidavit is a long one, consisting of 23 paragraphs embodied in a nine-paged document. Counsel for the applicants made an oral application asking for leave to file a supplementary affidavit in reply to the facts set out in the affidavit of the respondents. Counsel for respondents objected such application

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and argued before the Court that such leave could not be granted on the ground that the injunction was made on the strength of the affidavit filed in support of the application and in consequence the very nature of proceedings instituted by an *ex-parte* application prevented the other party from asking leave to advance further evidence by virtue of a supplementary affidavit. 5

He went on to argue that the injunction granted on the strength of the affidavits filed should stand or fall with the facts disclosed in the affidavits in support of the applications and any omission to do so was fatal. Everything had to be put forward when the injunction was asked for and nothing withheld, and applicants should not have omitted to place before the Court all the material and relevant facts which should justify the granting of an injunction. The respondents were called to appear and show cause why the injunctions should not remain in force and the applicants had no right to call for supplementary affidavits, the burden not being upon them to disprove the facts alleged by them and on which they obtained the injunctions. 10
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It was submitted that the applicants by their conduct and omissions are misusing or abusing the process of the Court to prolong the effect of the injunctions and thus achieve their aim and not a genuine intention of clarifying any matter in their affidavit. 25

Counsel for applicants repudiated the allegations of the respondents concerning any insinuation that the applicants' intention is to misuse or abuse the process of the Court and submitted that any delay was not due to any fault of the applicants, but, on the contrary, due to the delay of the respondents to file their opposition in time and their objection to his application for leave to file a supplementary affidavit in reply. He submitted that rules 114 and 116 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction under the Cyprus Admiralty Jurisdiction Order 1893, made ample provision that evidence may be given by affidavit or by oral examination or partly in one mode and partly in another, as the Court may direct. Furthermore, under rule 203, his application for leave to file a supplementary affidavit could be made orally unless otherwise directed by the Court. 30
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Quite a lot of the argument advanced before the Court was touching matters connected with the main issue in these proceedings, that is, whether the interlocutory injunction could be, or were properly granted and as this is not the issue at the present stage, I am not going to deal with such argument.

The main proceedings are based on section 30 of Law 45/63 which reads as follows:

10 “Τὸ Ἀνώτατον Δικαστήριον δύναται κατὰ τὸ δοκοῦν (μὴ ἐπηρεαζομένης τῆς ἐνασκήσεως οἰασδήποτε ἑτέρας ἐξουσίας αὐτοῦ) κατόπιν αἰτήσεως παντὸς ἐνδιαφερομένου προσώπου, νὰ ἐκδώσῃ διάταγμα ἀπαγορευῶν διὰ καθωρισμένον τινὰ χρόνον πᾶσαν δικαιοπραξίαν ἀφορῶσαν εἰς πλοῖον ἢ μερίδιον πλοίου, δύναται δὲ νὰ ἐκδώσῃ τὸ διάταγμα ὑπὸ ὄρους οὗς τὸ Δικαστήριον ἤθελε κρίνει δίκαιον νὰ ἐπιβάλλῃ, ἢ νὰ ἀρνηθῇ
15 τὴν ἐκδοσὶν τοῦ διατάγματος, ἢ νὰ ἀκυρώσῃ τὸ διάταγμα ἐὰν τοῦτο ἐξεδόθη, μετὰ ἢ ἀνευ ἐξόδων, καὶ γενικώτερον νὰ ἐνεργήσῃ ὡς τὸ δίκαιον τῆς ὑποθέσεως ἤθελεν ἀπαιτήσῃ, ἢ δὲ Νηολογοῦσα Ἀρχὴ καίτοι δὲν εἶναι διάδικος, ὀφείλει νὰ συμμορφοῦται πρὸς αὐτὸ εὐθύς ὡς ἐπιδιοθῇ αὐτῇ κεκυρωμένον
20 ἀντίγραφον τοῦ διατάγματος τούτου.”

25 (“ 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,
30 without being made a party to the proceedings, shall on being served with an official copy thereof obey the same.”)

I am not invited, at this stage, to decide whether such proceedings were properly instituted by an *ex parte* application or whether they should have been commenced by writ of summons
35 under rule 5 of the Admiralty Rules or by originating application, in which an interlocutory injunction might be applied for. What I have to decide, is whether the applicants are entitled to file a supplementary affidavit in reply to the affidavit of the respondents.

The application was filed and brought before the Court in the exercise of its admiralty jurisdiction. Rule 83 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction, regulates any matters concerning pleadings. The second paragraph of rule 83, reads as follows:

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The plaintiff shall within one week of the filing of the answer, file his reply, if any, and serve a copy thereof on the defendant; and there shall be no pleading beyond the reply, except by permission of the Court or Judge.”

The provision in this rule is similar to the provisions in the Civil Procedure Rules and in particular Order 21, rule 14(1) which reads as follows:

“ Where the plaintiff desires to deliver a reply, he shall file and deliver it within seven days from the delivery of the defence.”

No leave to file a reply is necessary under the Admiralty Rules or the Civil Procedure Rules; afortiori, such right is given under both the said rules. It is only under the Rules of the Supreme Court in England in Admiralty Proceedings that there is such provision and that only in respect of certain types of pleadings and in particular in matters concerning collisions and similar matters, where the leave of the Court is required for filing a reply. The scope of such rule was to narrow the provisions of the old Order 23, rule 3, which provided that, “No reply shall be delivered in any admiralty action without the leave of the Court or a Judge, whether there is a counterclaim or not”. (Vide, the Supreme Court Practice, 1976—Order 75, rule 20 of the Rules of the Supreme Court, Admiralty Proceedings).

In the light of the above, I find that the objection raised by the respondents is unfounded. Such reply could be filed without any leave of the Court, subject to the rules of pleadings governing the contents and object of a reply, and, subject to the right of the other side to apply for striking out any new facts which may be introduced by the reply.

In view of my finding that there is a right of reply without any leave of the Court, the oral application for leave to file a reply, was superfluous. Taking, however, into consideration

the fact that by now the period for filing a reply has expired, I extend the time for filing a reply to seven days from to-day, and I make an order accordingly.

5 As to costs, I find that in the circumstances, it is fair and equitable that there should be no order for costs.

The whole matter, however, is rather of academic interest, in view of the fact that the interlocutory injunctions already granted, expired on the 8th November, 1978 and are not in force any longer.

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Order accordingly.