

1979 January 30

[SAVVIDES, J.]

LINMARE SHIPPING COMPANY LTD.,

Plaintiffs,

v.

MOUNIR ROUSTANI,

Defendant.

(Admiralty Action No. 18/79).

Injunction—Interlocutory injunction—Discretion of the Court—An interlocutory injunction, granted on an ex parte application, is of a temporary nature—Claim for demurrages—Grounds justifying the making of an order restraining defendant from withdrawing money standing to his credit at Bank—Order a provisional one—To remain in force until date when same will be returnable—Section 32 of the Courts of Justice Law, 1960 (Law 14/60) and section 9(3) of the Civil Procedure Law, Cap. 6.

This was an *ex-parte* application for an interlocutory injunction “restraining the defendant from removing or disposing of any assets from within the jurisdiction and particularly from withdrawing any moneys standing to his credit with the Chartered Bank of Limassol up to a sum of U.S. dollars 28,429.70 or its equivalent in Cyprus Pounds until 14 days after the final determination of the action or until further order of the Court”. The application was based on section 32* of the Courts of Justice Law, 1960 (Law 14/60) and on the Cyprus Admiralty Jurisdiction Order, 1893, rules 205, 206, 212 and 237. The claim in the action has arisen as a result of demurrages due by the defendant to the plaintiffs under a charterparty.

Held, granting the application, (1) that the power of the Court to make such orders both under Law No. 14/1960 and under the Civil Procedure Law, Cap. 6, is a discretionary one, provided certain conditions are satisfied, as set out in the proviso to section 32(1) of Law No. 14/1960; that an order granted on an

* Quoted at p. 39 *post*.

ex-parte application is of a temporary nature and can only remain in force till the party affected by it has notice of it and appears before the Court to dispute same (see s. 9(3)* of Cap. 6).

(2) That having heard what was argued by counsel for the applicants and having perused the contents of the affidavit, this Court is satisfied, at this stage, that there are grounds justifying the granting of the order applied for and exercising its discretion in the matter it grants this application on condition that the applicants will file a security bond in the sum of £1000.-; that such order is a provisional one and is made returnable on February 9, 1979 (see s. 9(3) of Cap. 6).

Application granted.

Application.

Ex parte application for an interlocutory injunction restraining the defendant from removing or disposing of any assets and particularly from withdrawing any moneys standing to his credit with the Chartered Bank of Limassol up to a sum of U.S. dollars 28,429.70 until 14 days after the final determination of the action.

G. Michaelides with *S. Panayi (Miss)* for E. Montanios, for the applicants.

Cur. adv. vult.

SAVVIDES J. gave the following ruling. This is an *ex-parte* application for an interlocutory injunction restraining the defendant from removing or disposing of any assets from within the jurisdiction and particularly from withdrawing any moneys standing to his credit with the Chartered Bank of Limassol up to a sum of U.S. dollars 28,429.70 or its equivalent in Cyprus Pounds until 14 days after the final determination of the action or until further order of the Court.

The claim in the action is alleged to have arisen as a result of demurrages and/or otherwise due by the defendant to the plaintiffs under a Charterparty and/or by virtue of an agreement and/or undertaking by the defendant for the payment of such demurrages.

The application is based on section 32 of the Courts of Justice Law, 1960 (Law No. 14/60) and on the Cyprus Admiralty

* Quoted at pp. 39-40 *post*.

Jurisdiction Order 1893, rules 205, 206, 212 and 237 and on the inherent jurisdiction of the Court.

5 The facts relied upon in support of the application were set out in an accompanying affidavit of Helen Georghiades, an advocate's clerk, employed by the advocates for the plaintiffs, who was authorised to make the said affidavit on behalf of the applicants.

10 In view of the nature of the case and the remedy prayed for by this application, counsel for the applicants was invited to address the Court in support of this application.

The Courts of Justice Law, 1960, (Law No. 14/60), section 32(1) on which the application is based, reads as follows:-

15 "Subject to any Rules of Court every Court, in the exercise of its civil jurisdiction, may, by order, grant an injunction (interlocutory or perpetual or mandatory) or appoint a receiver in all cases in which it appears to the Court just or convenient so to do notwithstanding that a compensation or other relief is claimed or granted together therewith:

20 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
25 impossible to do complete justice at a later stage."

There is further provision in the Civil Procedure Law, Cap. 6, concerning the granting of interlocutory injunctions. Under section 9(1) of Cap. 6, it is provided that:-

30 "Any order which the Court has power to make may, upon proof of urgency or other peculiar circumstances, be made on the application of any party to the action without notice to the other party."

And under sub-section (3):-

35 "No such order made without notice shall remain in force for a longer period than is necessary for service of notice of it on all persons affected by it and enabling them to

appear before the Court and object to it; and every such order shall at the end of that period cease to be in force, unless the Court, upon hearing the parties or any of them, shall otherwise direct; and every such order shall be dealt with in the action as the Court thinks just.”

5

The power of the Court to make such orders both under Law No. 14/60 and under the Civil Procedure Law, Cap. 6, is a discretionary one, provided certain conditions are satisfied, as set out in the proviso to section 32(1) of Law No. 14/60. As to the nature of an order granted on an *ex-parte* application, it is clear from section 9(3) of Cap. 6, that same is of a temporary nature and can only remain in force till the party affected by it has notice of it and appears before the Court to dispute same.

10

Having heard what was argued by counsel for the applicants and having perused the contents of the affidavit, I am satisfied, at this stage, that there are grounds justifying the granting of this order and exercising my discretion in the matter, I grant this application on condition that the applicants will file a security bond in the sum of £1,000.- to the satisfaction of the Registrar of this Court. Such order is a provisional one, as contemplated by section 9(3) of Cap. 6, and will remain in force till the date when same will be returnable and defendant will have a chance to appear before the Court and oppose it.

15

20

The order is made returnable on the 9th February, 1979 at 9.30 a.m. before this Court sitting in the District Court of Limassol.

25

Application granted.