

1980 October 29

[A. LOIZOU, J.]

MICHAEL GEORGHIOU,

Plaintiff,

v.

SHOHAM (CYPRUS) LTD., OF LARNACA,

Defendants.

AND AS AMENDED BY ORDER OF THE COURT DATED
13.2.1978:

MICHAEL GEORGHIOU,

Plaintiff,

v.

1. SHOHAM (CYPRUS) LTD., OF LARNACA
 2. THE CAPTAIN AND OWNERS OF THE SHIP
"PITRIA SPIRIT",
 3. PITRIA SHIPPING ENTERPRISES INC., OF ATHENS,
- Defendants.*

(Admiralty Action No. 57/76).

Admiralty—Practice—Parties—Addition—Regulated by rules 30 and 32 of the Cyprus Admiralty Jurisdiction Order, 1893—Whether amendments to writ have to be effected within specified time—English Order 15 r. 8 not applicable—Cf. Order 9 rule 10 of the Civil Procedure Rules.

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On February 13, 1978, the Court, on the application of the original defendants ("defendants 1") in the action, made by consent an order adding two new defendants ("defendants 2 and 3"). The amended writ of summons was filed on May 31, 1978 and served, with the leave of the Court, on defendants 2 and 3 out of the jurisdiction. Leave was granted to defendants 2 and 3, upon their application, to enter conditional appearance which was to stand as "unconditional unless they applied to the Court within 15 days to set aside the writ or service thereof or the order granting leave to seal and serve the notice of the writ or the service thereof and obtain an order to that effect". Thereupon defendants 2 and 3, by separate applications prayed for the following identical remedies:

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- (a) An order setting aside the writ;
- (b) an order setting aside the service of the notice of the writ;
- (c) an order setting aside the order of the Court dated 13.2.1978 to join/add the defendants 3 as parties in the action; and
- (d) an order setting aside the order of the Court dated 10.4.1978 granting leave to seal and serve notice of the writ out of the jurisdiction.

Counsel for the applicants (defendants 2 and 3) contended that, under Order 15 rule 8 of the new English Rules of the Supreme Court, which was applicable by virtue of r. 237 of the Cyprus Admiralty Jurisdiction Order, 1893, the order giving leave to seal and serve notice of the writ of summons out of the jurisdiction ought not to have been granted because the amendment to the writ, granted on 13.2.1978, was not effected within 14 days from such order as provided by the said rule 8, and so the amended writ which was filed on 31.5.1978 was ipso facto void.

Eventually defendants 1 consented to an order under paragraphs (b) and (d) above with regard to the prayers claimed in the application of defendants 2, as the action against them was one in rem and a writ in such an action could only be effected within the jurisdiction.

Held, that the English Rules are, by virtue of rule 237 of the Cyprus Admiralty Jurisdiction Order, 1893, applicable only in cases where there is no provision in our Rules regulating the matters in issue; that the said English Rules are not applicable as the position is covered by rules 30* and 32* of our Rules; that neither of these two rules specifies any time within which an order made under rule 30 has to be done within a prescribed time if no period is otherwise specified; that the rules applicable, that is rules 30 and 32, make ample provision and empower a Judge to make an order upon what terms a person shall be joined as a party and what notices and documents, if any, shall be given to and served upon him; and that, therefore, both applications must fail with the exception of reliefs (b) and (d) in the application of defendants 2 in respect of which an order is

* Quoted at pp. 508-9 *post*.

made accordingly. (Cf. rule 10 of Order 9 of the Civil Procedure Rules).

Applications partly granted.

Cases referred to:

Trade Development Bank of Geneva v. Promachos Shipping Co. Ltd. & Others (1979) 1 C.L.R. 566. 5

Applications.

Applications by defendants 2 and 3 for (a) setting aside the writ (b) setting aside the service of the notice of the writ (c) setting aside the order of the Court dated 13.2.1978 to join/add defendants 3 as parties in the action and (d) setting aside the order of the Court dated 10.4.1978 granting leave to seal and serve notice of the writ out of the jurisdiction. 10

St. Mc Bride, for applicants.

D. Hadjihambis with *P. Panayi (Miss)*, for the respondents. 15
Cur. adv. vult.

A. LOZOU J. read the following decision. The plaintiff filed his action in the Admiralty Jurisdiction of this Court for special and general damages for injuries, loss and damages sustained by him on or about the 26th January, 1976, during the process of unloading m. v. "PITRIA SPIRIT" against the defendant Company which entered an appearance on the 29th May, 1976, and upon directions as to pleadings made on that date, the petition was filed on the 15th November, 1976. On the 8th October, 1977, the said defendant Company filed an application praying for an order of the Court that the following persons be added as co-defendants in the action, namely, (i) The Master and owners of m. v. "PITRIA SPIRIT", of 44 Amalias Street, Athens, Greece, and (ii) Pitria Shipping Enterprises Inc., of 44 Amalias Street, Athens, Greece. Though this application which was based on the Cyprus Admiralty Jurisdiction Order 1893, rules 29-34, was originally opposed by the plaintiff, same was eventually granted by consent on the 13th February, 1978. The order of the Court was as follows: "By consent application granted. Necessary amendments and service on the new defendants to be effected in the prescribed manner as per the Rules of Court". 20
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Upon an application by the original defendants, who may now be described for convenience defendants 1, for leave to serve out of the jurisdiction and upon such leave being granted on the 10th April, 1978, the amended writ showing defendants 40

2 and 3 was filed on the 31st May, 1978. Service of the notice of this writ of summons was duly effected and upon the application of these new defendants, leave was granted to them to enter a conditional appearance which was to stand as "unconditional unless they applied to the Court within 15 days to set aside the writ or service thereof or the order granting leave to seal and serve the notice of the writ or the service thereof and obtain an order to that effect". Within the specified time the two defendants filed separate applications on the 28th September, 1979, which were opposed by defendants 1, whereas the plaintiff, though duly served, did not appear and took no part in any subsequent proceedings.

By their application the applicants prayed for the following identical reliefs:

- (a) Setting aside the writ.
- (b) Setting aside the service of the notice of the writ.
- (c) Setting aside the order of the Court dated 13.2.1978 to join/add the defendants 3 as parties in the action.
- (d) For setting aside the order of the Court dated 10.4.1978 granting leave to seal and serve notice of the writ out of the jurisdiction.

Eventually respondents/defendants 1 consented to an order under paras. (b) and (d) hereinabove set out with regard to the prayers claimed in the application of defendants 2, as in fact the action against them was one in rem and a writ in such an action can only be effected within the jurisdiction and no question to serve same out of the jurisdiction could arise (see *The Trade Development Bank of Geneva v. Promachos Shipping Co. Ltd. & Others*, (1979) 1 C.L.R., p. 566). The issues, therefore, for determination were those arising in respect of prayers for relief (a) and (c) in the application of defendants 2 and all four prayers for relief in the application of defendants 3 who are issued in personam.

It is the case for the applicants that the order giving leave to seal and serve notice of the writ of summons out of the jurisdiction ought not to have been granted because the amendment to the writ granted on 13.2.1978 was not effected within 14 days from such order and so the amended writ when filed on 31.5.1978 was ipso facto void and therefore the Court had no authority to grant leave to seal and serve the so amended writ which was by then void. This, was argued, it was so, as the

amendment should have been “physically” effected on the writ within such period as might have been specified in the order or if no period was so specified, as in the present case, within 14 days after the making of the order. This was based on the provisions of Order 15, rule 8, of the new English Rules of the Supreme Court as set out in the Annual Practice for the year 1973 read in conjunction with Order 20, rule 9, of the same Rules. 5

In a comment to the former rule, at page 192 of the aforesaid Annual Practice, it is stated “Failure to amend within the proper time results in the order ceasing to have effect unless further extended”. And in a comment to Order 20, rule 9, at page 341, it is stated: “Its effect is that an order to amend lapses if it is not acted on within the time specified in the order or 14 days after the order is made, unless the time is extended by the Court”. It is not in dispute that no such extension of time has been obtained in the present case. 10 15

It is the case for the respondents/defendants 1 that the English Rules which are invoked by the applicants by virtue of the provisions of Rule 237 of the Cyprus Admiralty Jurisdiction Order 1893, are not applicable as the position is covered by our own rules 30 and 32 of the aforementioned Order and upon which the application for the addition of the co-defendants was based. Rule 30 reads as follows:- 20

“30. The Court or Judge may at any stage of the proceedings and either with or without an application for that purpose being made by any party or person and upon such terms as shall seem just, order that the name or names of any party or parties be struck out or that the names of any person or persons who are interested in the action or who ought to have been joined either as plaintiffs or defendants or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the action be added”. 25 30 35

This rule is in substance similar to the extent that it is to be found therein in Order 9, rule 10, of our Civil Procedure Rules, which is followed by rule 11, whereby it is provided that upon a defendant being added or substituted, “the writ of summons shall be amended accordingly and the plaintiff shall, unless otherwise ordered by a Court or a Judge, file a copy of the writ as amended and serve the new defendant with such amended 40

writ or notice in lieu of service thereof in the same manner as original defendants are served, and the proceedings shall be continued as if the new defendant had originally been made a defendant”.

5 The corresponding provision in the Admiralty Rules is rule 32 which provides as follows:-

“32. The Court or Judge may order upon what terms any person shall be joined as a party, and what notices and documents, if any, shall be given to and served upon him,
10 and may give such further directions in the matter as shall seem fit”.

As it appears from the aforesaid comparison, neither of the two rules specifies any time within which an order made under rule 30 of the Admiralty Jurisdiction Order or rule 10 of
15 Order 9 of the Civil Procedure Rules, has to be done within a prescribed time if no period is otherwise specified.

In the present case I am of the view that the rules applicable, that is rules 30 and 32, make ample provision and empower a Judge to make an order upon what terms a person shall be
20 joined as a party and what notices and documents, if any, shall be given to and served upon him. They do not prescribe a period as it is the case with the English Order 15, rule 8, and there is nothing to suggest that our rules should be supplemented by an express provision that it is to be found in the
25 said English Rules, as whenever it may deem to a Judge necessary, he may prescribe such period within the terms upon which he makes such an order. Rule 237 of the Admiralty Jurisdiction Order provides that the practice of the Admiralty Division of the High Court of Justice of England shall be followed so far
30 as the same shall appear to be applicable in all cases not provided by those rules, and in my view there exists a provision regulating the matters in issue and therefore the English Rules are inapplicable.

I have referred to our Civil Procedure Rules simply to show
35 that there exist procedural provisions without setting down time limits within which an ordered amendment should be effected.

For all the above reasons, both applications are dismissed with the exception of reliefs (b) and (d) in the application of the second defendant for which an order is made accordingly.
40 In the circumstances, there will be no order as to costs.

*Applications partly granted.
No order as to costs.*