

1982 December 8

[SAVVIDES, J.]

WILLIAMS AND GLYN'S BANK PLC. AND TEN OTHERS,  
*Plaintiffs.*

v.

THE SHIP "MARIA" NOW LYING AT THE PORT OF  
LIMASSOL.

*Defendant.*

(Admiralty Action No. 177/82).

*Practice—Admiralty action—Directions for pleadings to be filed within a fixed limited period and a short date of trial given due to urgency of disposing of the action—No answer to plaintiffs' petition—And application by plaintiffs for judgment by default—Defendants applying for adjournment, on date of hearing of plaintiffs' application, because they had filed an application for an order staying the proceedings and for an order extending the time within which to file their answer—Application for adjournment made very late in the day—Refused.* 5

*Admiralty—Practice—Pleadings—Default of defendants to file an answer—Plaintiffs entitled to apply for judgment by default of pleading—Rules 82, 84, 203, 212 and 237 of the Supreme Court of Cyprus in its Admiralty jurisdiction, Rules of the Supreme Court of England 1883 and the inherent jurisdiction of the Court.* 10

*Interest—Admiralty action—Judgment in respect of wages, leave wages and overtime to members of the crew—Interest may be awarded—Section 3(1) of the English Law Reform (Miscellaneous Provisions) Act, 1934 applicable by virtue of sections 19(a) and 29(2) of the Courts of Justice Law, 1960 (Law 14/60).* 15

This was one of a series of actions brought against the defendant ship by members of the crew in respect of wages, leave wages etc. Due to the urgency for disposing of the cases pending against the ship, in view of the heavy Marshal's expenses incurred for keeping her under arrest, directions were given by the Court 20

on the 21st October 1982 for pleading, to be filed within a fixed limited period and a short date of trial was given. Plaintiffs' petition was then filed within the time prescribed by these directions but no answer has been filed by defendants and no application for extension of the time for filing the answer was made by them. On November 24, 1982 the plaintiffs filed an application by summons for judgment by default of defence which was fixed for hearing on the 8th December, 1982 and to which no opposition was filed by the defendant. When both the action and the application came up for hearing before the Court counsel for the defendant applied for an adjournment on the ground that "this morning they filed an application for an order staying the proceedings pending the final determination of an application filed by the defendant Ship in Admiralty Action No. 59/82 and in the alternative, for an order extending the time within which the applicant was to file his defence until after the determination of three applications pending for determination in Admiralty Action No. 59/82". This application was strongly objected to by plaintiffs who persisted in obtaining judgment as per their application.

*Held*, (1) that the filing of the application by the defendant ship at this late stage if granted, will amount to granting an adjournment of the hearing of the action for an indefinite time; that such application has been made very late in the day and cannot be a ground for adjourning the hearing and granting the remedies prayed for by such application; that in the circumstances, the application for an adjournment should be dismissed and is hereby dismissed and the Court will proceed to consider the matters fixed for hearing before it to-day.

(2) That once there was default on the part of the defendant ship to file her answer, the plaintiffs were entitled to apply to the Court for judgment by default of pleadings and they rightly did so (see rules 84, 203-212 and 237 of the Supreme Court of Cyprus in its Admiralty Jurisdiction, the Rules of the Supreme Court of England 1883 and the inherent power and jurisdiction of the Court); that if the defendant shall make default in the filing of his answer within the prescribed period he shall not be at liberty, except by leave of the Court, to dispute any of the facts alleged by the plaintiff in his petition and the Court may, on the application of the plaintiff, give judgment

as the plaintiff may appear to be entitled to upon the facts alleged in his petition.

(3) That in the present case, once the case was fixed for hearing today and the defendant failed to comply with the directions of the Court as to the filing of pleadings, the plaintiffs were entitled to apply for judgment by default of pleadings and they are therefore entitled to judgment on the facts proved by them. 5

(4) That plaintiffs are entitled to interest on the amount recovered. (See section 3(1) of the Law Reform (Miscellaneous Provision) Act, 1934 applicable by virtue of sections 19(a) and 29(2) of the Courts of Justice Law, 1960 (Law 14 of 1960)). 10

*Judgment for plaintiffs as per claim.*

Cases referred to:

*Photiades v. Director of Ports* (1982) 1 C.L.R. 244 at pp. 254, 255. 15

**Admiralty action.**

Admiralty action for U.S. dollars 62,134.32 in respect of wages, leave wages, overtime and compensation and 336,639 Greek drachmas in respect of repatriation expenses due and payable by the defendant ship "Maria" to plaintiffs 2-11 and by subrogation to plaintiff 1. 20

*M. Montanios* with *E. Montanios*, for the plaintiffs.

*M. Eliades* with *A. Skordis*, for the defendant ship.

SAVVIDES J. gave the following judgment: The present action is one of a series of actions brought against the ship "MARIA" now lying at the port of Limassol and being under arrest by virtue of a warrant issued in another action. Due to the urgency for disposing of the case pending against the said ship, in view of the heavy Marshal's expenses incurred and being incurred daily for keeping the said ship under arrest, when this case came up before the Court on the 21st October, 1982, directions were given for pleadings to be filed within a fixed limited period and a short date of trial was given. According to such directions, the petition had to be filed within seven days, the answer within fifteen days and any reply, within four days and the hearing was fixed for today. 25 30 35

Plaintiff's petition was filed in compliance with the directions given but no answer has been filed till today and no application was made before the date of hearing for extension of time for filing the answer. In view of the failure  
5 by the defendant ship to file the answer to the petition, counsel for plaintiff on 24th November, 1982, filed an application by summons for judgment by default of defence to be entered on the day when the action was to be heard. Copy of such application was, according to a statement made by counsel  
10 for the defendant ship, duly received by them.

Plaintiffs 2 to 11 were members of the crew of the defendant ship who, after her arrest, became supernumerous and had to be dismissed and repatriated and their claim for wages be settled. By an order of the Court dated 10th March, 1982 in  
15 Action No. 59/82 which was an action brought by plaintiff 1 in this action against the defendant ship and in which the warrant of arrest of the ship was issued, plaintiff 1 was authorised to pay and discharge the claims of the ten members of the crew (plaintiffs 2 to 11 in this action) and their expenses for repatriation and be subrogated to all their rights and remedies in respect  
20 of their wages and repatriation expenses. Plaintiff 1 who is a public limited company operating as Bankers, in compliance with the said order, paid off the claims of the said members of the crew and their repatriation expenses and together with  
25 such persons filed the present action on the 31st August, 1982.

Under paragraph 10 of their petition dated 29th October, 1982 plaintiffs 2 to 11 and by subrogation plaintiff 1, claim:

(1) U.S. dollars 62,134.32 in respect of wages, leave wages, overtime and compensation due and payable by the defendant  
30 ship to plaintiffs 2 to 11 and by subrogation to plaintiff 1 who paid same.

(2) Greek Drachmas 336,639 in respect of repatriation expenses of plaintiffs 2 to 11 payable to plaintiffs by the defendant ship and by subrogation payable to plaintiff 1 who incurred same.

(3) Interest on the above as from 12.3.1982 until final payment at the rate of 15 per cent per annum.

(4) The costs of this action.

Under paragraphs (4), (5), (6), (7) and (8) of the petition the facts which gave cause of action in these proceedings are set out as follows:

"

4. Plaintiffs (2) to (11) (inclusive) were until 12.3.1982 5  
members of the crew of the Defendant ship. Until  
then, they had not been for several months paid for their  
wages and other benefits by the Owners and/or Managers  
and/or the Master of the Defendant ship.

5. On or about 9.3.1982, in an effort to minimize the 10  
Defendant ship's overhead expenses, Plaintiff (1), through  
its Assistant General Manager Mr. Rex Harrington,  
orally agreed with the Master of the Defendant ship,  
acting on behalf of the Defendant, and with the Owners,  
Operators and/or Managers of the Defendant ship that 15  
about 10 members of the crew should be paid off and be  
repatriated by Plaintiff (1) who should then step into their  
shoes through subrogation of their rights against the  
Defendant ship.

6. On 12.3.1982, the Owners, Operators and Managers 20  
of the Defendant ship agreed in writing with Plaintiff (1)  
that the latter should pay off and repatriate the Master,  
Officers and the whole crew of the Defendant ship and be  
subrogated to their priority rights against it.

7. Pursuant to the agreement referred to in paragraph 25  
(5) hereinabove, Plaintiff (1) applied to the above named  
Court in the said Admiralty Action No. 59/82, for, and  
obtained on 10.3.1982, an Order authorizing it to negotiate  
and agree the settlement of the claims for wages of about  
10 crew members of the Defendant ship, to pay them and 30  
to dismiss and repatriate such crew members. Under  
this Order, Plaintiff (1) would stand in the shoes of the  
said crew members and would be subrogated to their  
rights and remedies against the Defendant ship, in respect  
of their wages and repatriation expenses to be paid by it. 35

8. Pursuant to the Court Order referred to in the pre-  
ceding paragraph, Plaintiffs (1) negotiated and paid on  
12.3.1982 to Plaintiffs (2) to (11) (inclusive) their claims

for wages and other benefits arising from their employment and service on the Defendant ship and further dismissed and repatriated them, with the privity, consent and agreement of the Master, the Owners and Managers  
5 of the Defendant ship, as follows"

and then particulars are set out in respect of the wages paid to each one of Plaintiffs (2) to (11) and their repatriation expenses.

The application for judgment by default of defence to be  
10 entered in favour of plaintiff 1 and which is before the Court today is supported by an affidavit sworn by Persefoni Panayi, an advocate in the office of Messrs. Montanios and Montanios, who appear for the plaintiffs, whereby a number of documents supporting plaintiffs' claims are attached. Such documents  
15 include, inter alia, a written consent and authorisation by the owners of the defendant ship to the plaintiffs, duly attested by a Notary Public in London, to pay the Master, officers and crew of the defendant ship, all their dues and be subrogated in respect of what they would pay (exhibit 'A' to the affidavit).  
20 They also include receipts of the amounts paid by plaintiff 1 to plaintiffs 2 to 11 in respect of their dues and receipts as to their expatriation expenses by plaintiff 1.

When both the action and the application, to which no opposition was filed, came up for hearing before this Court today,  
25 counsel for applicant applied for an adjournment on the ground that this morning they filed an application for an order staying the proceedings pending the final determination of an application filed by the defendant ship in Admiralty Action No. 59/82  
30 and in the alternative, for an order enlarging the time within which the applicant was to file his defence until after the determination of three applications pending for determination in Admiralty Action No. 59/82. Counsel for plaintiffs strongly objected to any adjournment and persisted in obtaining  
35 judgment as per their application.

As I have already mentioned, earlier in this judgment, due to the urgency of having any claims against the defendant ship disposed of as expeditiously as possible, in view of the enormous expenses which are being incurred due to the arrest of the

defendant ship and for maintaining same under arrest and also the risks which the ship is undergoing due to the approaching winter and the rough sea, as she is anchored outside the Limassol port, directions were made for expediting the trial of this action by the speedy exchange of pleadings and for an early date of trial. There was no compliance by the defendant ship with such directions. Not even after the filing of the application on behalf of the plaintiffs to obtain judgment by default, which was an indication that the plaintiffs persisted to have their claims dealt with as early as possible. The filing of an application by the defendant ship at this late stage, if granted, will amount to granting an adjournment of the hearing of the action for an indefinite time. I find that such application has been made very late in the day and cannot be a ground for adjourning the hearing and granting the remedies prayed for by such application. In the circumstances, I find that the application for an adjournment should be dismissed and is hereby dismissed and I shall proceed to consider the matters fixed for hearing before me today.

Once there was default on the part of the defendant ship to file her answer, the plaintiffs were entitled to apply to the Court for judgment by default of pleadings and they rightly did so. Their application is based on rules 84, 203-212 and 237 of the Supreme Court of Cyprus in its Admiralty Jurisdiction, on the Rules of the Supreme Court of England 1883 and on the inherent power and jurisdiction of the Court. Under rule 84 of our Admiralty Rules in case where the Court deems fit to require the parties to file written pleadings under rule 82, if the defendant shall make default in the filing of his answer within the prescribed period he shall not be at liberty, except by leave of the Court, to dispute any of the facts alleged by the plaintiff in his petition and the Court may on the application of the plaintiff, give judgment as the plaintiff may appear to be entitled to upon the facts alleged in his petition.

In the present case, once the case was fixed for hearing today and the defendant failed to comply with the directions of the Court as to the filing of pleadings, the plaintiffs were entitled to apply for judgment by default of pleadings and they are entitled to judgment on the facts proved by them. In the light

of the evidence contained in the affidavit of Persefoni Panayi and the documents annexed thereto which stand uncontradicted, I find that plaintiff 1 is entitled to judgment against the defendant as per paragraph 10(i) and (ii) of the claim.

5 As to the claim under paragraph 10(iii), I am coming to consider whether plaintiff 1 is entitled to interest on the amount recovered as from the date of payment, which, according to the affidavit before me was the 12th March, 1982, till the date of the judgment. Under the English Law Reform (Miscellaneous Provisions) Act, 1934, section 3(1) it is provided as follows:

15 " 3.-(1) In any proceedings tried in any Court of Record for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section—

- 20 (a) shall authorise the giving of interest upon interest; or  
 (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or  
 25 (c) shall affect the damages recoverable for the dishonour of a bill of exchange".

Under the provisions of section 19(1) and 29(2) of the Courts of Justice Law, 1960, (Law 14/1960), the Supreme Court in the exercise of its admiralty jurisdiction shall apply the law and practice applicable in the High Court of England in the exercise of its admiralty jurisdiction. By virtue of such provision the provisions under section 3(1) of the Law Reform (Miscellaneous Provisions) Act 1934 which is applicable in England in any proceedings tried in any Court of Record (which includes the Admiralty Court), is extended to Cyprus. Therefore, interest may be awarded on the amount claimed.

(See also *Photiades v. Director of Ports* (1982) 1 C.L.R. 244 at pp. 254, 255).



I, therefore find that plaintiff 1 is entitled to interest on the amounts awarded to him under paragraph 10(i) and (ii) as from 12.3.1982, the date of payment, till judgment. As to the rate of interest which is claimed by the plaintiffs, in the absence of any evidence to support same, I find it reasonable to award interest as from 12th March, 1982 at the rate of 7 per cent per annum. 5

As to the rate of interest after judgment, I award interest on the amounts awarded under paragraph 10(i) and (ii) of the Petition at the rate of 9 per cent per annum as from the date of judgment till final payment relying on the provisions of rule 170 of the Rules of the Supreme Court of Cyprus, in its admiralty jurisdiction, whereby the rate of interest after judgment is fixed at 9 per cent. Defendant also to pay the costs of this action, for one advocate. Such costs to be assessed by the Registrar. 10 15

*Judgment for plaintiff 1 as above.*