

1984 May 7

[PIKIS, J.]

COMPAGNIE GRAINIÈRE DE PARIS

*Applicants-Plaintiffs.*

v.

THE SHIP "SOFIA" NOW LYING AT THE PORT  
OF LIMASSOL

*Respondents-Defendants.*

*(Admiralty Action No. 31/83).*

---

*Admiralty—Practice—Costs—Security for costs—Foreign Counter-claimant—Principles applicable—Order for security for costs granted at the instance of plaintiffs for costs they were likely to incur in defending the counterclaim—Rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893.*

The plaintiffs sued the defendant ship raising a claim for U.S. \$15,000 plus interest allegedly due by a contractual undertaking that preceded the release of the ship at Bordeaux, France, then under arrest in the context of proceedings between the parties.

The defendants resisted the claim as founded upon an agreement liable to be set aside, on account of misrepresentations made on behalf of plaintiffs; and they joined a counterclaim asking not only for the discharge of the agreement founding plaintiffs' claim, but also for the return of an amount of U.S. \$25,000.—paid for the release of the boat at Bordeaux and, damages for its wrongful detention thereat estimated at U.S. \$50,000.

*Upon an application by the plaintiffs for security for the costs they were likely to incur in defending the counterclaim which legally was founded on rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893 and factually upon the fact that the counterclaimants were resident abroad:*

*Held*, that the power under rule 185 to order security for costs is not absolute but discretionary and the discretion is exercised

judicially; that having regard to the nature of the counterclaim and the issues raised therein the application for security for costs is properly founded; and that accordingly an order for security for costs must be made.

*Application granted.* . 5

Cases referred to:

*Esta Shipping Co. Ltd. v. Laskos* (1976) 1 C.L.R. 22;

*Neck v. Taylor* [1893] 1 Q.B.D. 560;

*Almana Engineering v. Glyfos Commercial* (1981) 1 C.L.R. 273;

*Breidi and Another v. Ship "Gloriana"* (1981) 1 C.L.R. 177. 10

### Application.

Application for an order directing the defendants to give security for the plaintiffs' costs in defending the counterclaim.

*M. Montanios with R. Jordanous (Miss)*, for the applicants.

*N. Kanas for C. Erotokritou*, for the respondents. 15

PIKIS J. gave the following judgment. The plaintiffs, a company with its seat at Paris, sued the Ship "Sofia", then lying at the port of Limassol, raising a claim for US \$15,000.-, plus interest, allegedly due by a contractual undertaking that preceded the release of the ship at Bordeaux, France, then under arrest in the context of proceedings between the parties. By virtue of an order of the Court dated 24.2.1983, made on the application of the plaintiffs, the boat was arrested as security for the satisfaction of plaintiffs' claim. A bank guarantee furnished by defendants substituted the security forfeited by the release of the boat. 20 25

The defendants resisted the claim as founded upon an agreement liable to be set aside, on account of misrepresentations made on behalf of plaintiffs. They joined a counterclaim asking not only for the discharge of the agreement founding plaintiffs' claim, but also for the return of an amount of US \$ 25,000.- paid for the release of the boat at Bordeaux and, damages for its wrongful detention thereat, estimated at US \$ 50,000.- 30

Presently, we are required to resolve an application made by the plaintiffs for security for the costs they are likely to incur in defending the counterclaim; legally, the application is founded on Ord. 185 of the Cyprus Admiralty Jurisdiction Order, 1893  
5 and, factually, upon the undisputed fact that counterclaimants are resident abroad. The defendants' opposition to the application primarily rests, as it may be gathered from the affidavit in support thereof, on the sufficiency of the security given to cover the costs of the defendants in the proceedings. Inasmuch  
10 as the claim of the plaintiffs on its face value is worth about C£8,300.-, that is, the equivalent of US \$15,000.-, the balance amounting to about C£1,700.- may legitimately be applied for the satisfaction of the claim of plaintiffs for costs in the proceedings, including costs incurred in defending their counter-  
15 claim. In argument, counsel submitted that the claim for security for costs should, in any event, be dismissed because of the association of the counterclaim with the defence and the improbability of plaintiffs incurring additional costs for the defence of the counterclaim. Counsel referred me to the deci-  
20 sion of the Court in *Esta Shipping Company Limited v. Nikiforos A. M. Laskos* (1976) 1 C.L.R. 22, deciding that the Court may withhold security whenever the counterclaim is but a reflection of another aspect of the defence. In so holding, Malachos, J. derived support from the English decision in *Neck v. Taylor*  
25 [1983] 1 Q.B.D. 560. This contention was disputed by the plaintiffs who pointed out with a degree of justification, it must be said, that on its face the counterclaim goes far beyond the range of the defence. It raises new substantial issues likely to result in plaintiffs incurring litigation costs, additional to  
30 those necessary for the proof of their case. By the express provisions of Ord. 185, the Court is empowered to make an order for security for costs at the instance of a plaintiff defending a counterclaim. In fact, it makes no distinction between a defendant defending an action and one defending a counter-  
35 claim. The power to order security is not absolute but discretionary. The discretion is exercised judicially. The principal object of the discretion is to empower the Court to protect a defendant from the risks inherent in defending an action by a foreign plaintiff, arising from apparent inability to  
40 enforce an order for costs. In *Almana Engineering v. Glyfos Commercial* (1981) 1 C.L.R. 273, Savvides, J. concluded, on a review of Cyprus and English caselaw, that the normal practice

is to make an order for security for costs whenever the plaintiff is a foreign resident. The rule is not inflexible and, like every case involving the exercise of discretionary powers, it must be fastened to the facts of the case. Thus, in *Esta Shipping Co. Ltd.*, supra, Malachos, J. declined correctly, if I can say so with respect, to order security at the instance of a plaintiff defending a counterclaim because the counterclaim was so interwoven with the defence as to make it unlikely for the plaintiff to incur, for the defence of the counterclaim, any expenses additional to those he would normally incur to prove his claim. 5 10

Another case, I must notice in determining this application, is that of *Briedl And Another v. Ship "Gloriana"* (1981) 1 C.L.R. 177 a decision of Demetriades, J., on the subject of security for costs. The essence of the decision, as I comprehend it, is that security given for the release of a boat cannot be applied for any purposes other than those for which it is expressly given, in this case for the claim of plaintiffs and costs for proving their claim. Thus, the submission that any part of the security may be applied towards the costs plaintiffs may bear in defending the counterclaim, cannot be sustained. 15 20

At this stage of the proceedings, I cannot pause to evaluate the merits of the counterclaim or the defence thereto, except perhaps in the most clear of cases. This question is canvassed at length in the decision of Savvides, J., in *Almana Engineering*, supra. Having due regard to the nature of the counterclaim and the issues raised therein, as well as the principles referred to above, I consider the application properly founded. An order for security for costs must be made. In adjudging the amount to be ordered, in the case of a counterclaim, it is proper to have regard to the nexus between defence and counterclaim in order to make a prima facie estimate of the costs plaintiffs will be likely to incur additionally to the costs necessary for the prosecution of their claim. 25 30

Having given the matter due consideration, including the allegations made in the affidavit sworn to in support of the application, I consider an amount of C£1,250.- as sufficient. Therefore, I make an order in the following terms: 35

Defendants are required to lodge in Court within forty days an amount of C£1,250.- as security for the costs of plaintiffs

in defending the counterclaim. Pending the lodgment of security, the counterclaim will be stayed. In case of failure to file security as directed, the counterclaim will stand dismissed

5 The costs of this application will be costs in cause but, in any event, not against the plaintiffs. Order accordingly.

*Order accordingly.*