1986 October 30

[A. LOIZOU, PIKIS, KOURRIS, JJ.]

JOANNOU & PARASKEVAIDES LIMITED

Appellants-Plaintiffs,

v.

S. CH. JEROPOULOS & CO. LTD. AND OTHERS,

Respondents-Defendants.

(Civil Appeal No. 6680).

Jurisdiction—Admiralty Jurisdiction—Carriage of goods—Contract providing for the carriage of goods by sea and land—Claim for damage to the goods during the transportation by land—Transportation by land the most important part of journey—Whether claim amenable to the exclusive admiralty jurisdiction of the Supreme Court—Test applicable—The Courts of Justice Law 14/60, sections 19(a) and 29(2)(a)—The English Administration of Justice Act, 1956, s. 1(1)(h)—Approach to its interpretation—In the circumstances said claim not within the admiralty jurisdiction.

The trial Court dismissed the appellants' action for damages, allegedly suffered by reason of a breach of contract or negligence during the transportation of their goods from Turkey to Iraq by the defendants in accordance with an agreement for the transportation of the said goods by sea from Limassol to Mersina and therefrom by land to Bagdad, on the ground that, as the claim arose out of an agreement relating to the carriage of goods in a ship and as the agreement was indivisible, the claim was amenable to the exclusive Jurisdiction of the Supreme Court in accordance with section 19(a) of the Courts of Justice Law 14/60.

The law defining and regulating the Admiralty Jurisdiction of the Supreme Court is s. 29(2)(a) of the said Law, making applicable the English Administration of

Justice Act, 1956, which by s. 1(1)(h) confers Jusidiction to the Supreme Court in respect of "any claim arising out of an agreement relating to the carriage of goods in a ship or to the use or hire of a ship".

It should be noted that the second leg of the journey, i.e. Mersina to Bagdad, was by far the lengthiest and can appropriately be described as the major part of the journey.

Held, allowing the appeal: (1) This Court agrees with the approach, as regards the interpretation of section 1(1)(h) of the said English Act, adopted in THE SANDRINA [1985] 1 Ll. Rep. 181, emphasizing the need for a reasonably direct connection between the claim and the agreement relating to the carriage of goods in a ship.

(2) The pertinent question in this case is not whether the agreement was indivisible or not—one can validly supposed that in this respect the trial Judge applied the test applicable in cases of agreements tainted with illegality in order to determine whether the illegal part can be severed—but whether the agreement provided for the carriage of the goods by two or more means of transportation. If the land transportation is solely incidental to the carriage of the goods in a ship, then every facet of the agreement relates to the carriage in a ship. Such conclusion is not warranted in a case where the agreement provides for two means of transportation at different stages of the journey.

(3) The practical test to be applied in order to determine the said question is the one suggested in THE TESABA [1982] 1 Ll. Rep. 397, namely contemplation of what the reaction of an ordinary businessman would have been to the question "Is that an agreement relating to the carriage of goods in THE TESABA?"

(4) Putting the same question in this case the answer is that the claim is connected with an agreement relating to the carriage of goods by land.

Appeal allowed with costs.

Cases referred to:

The Sonia S. [1983] 2 Ll. Rep. 63;

The Sandrina [1985] 1 Ll. Rep. 181

Mayhe Foods Ltd. v. *Overseas Containers Ltd.* [1984] 1 Ll. Rep. 317;

The Tesaba [1982] 1 Ll. Rep. 397.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Limassol (Artemis, S.D.J.) dated the 24th January, 1984 (Action No. 3010/83) whereby their action against the defendants for the recovery of loss or damages suffered during the transportation of goods from Turkey to Iraq, was dismissed.

L. Papaphilippou, for the appellants.

St. Mc Bride, for the respondents.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: The appellants, the cargo owners of four containers containing parts of prefabricated buildings, raised the present action before the District Court of Limassol for the recovery of loss or damages suffered during the transportation of the goods from Turkey to Iraq. The cause upon which the plaintiffs fastened their claim was breach of contract and negligence. The agreement between the parties giving rise to the claim provided for the transportation of the goods by sea from Larnaca to Mersin, a relatively short distance and therefrom, by means of land transport, to Baghdad. The second leg of the journey was by far its lengthiest part and on that account could appropriately be described as the major part of the journey.

The case was founded on the allegation of the appellants that loss or damage was occasioned at that stage of the carriage of the goods. Nevertheless the learned trial Judge

found he lacked jurisdiction to try the case as the claim arose out of an agreement relating to the carriage of goods in a ship. Cases arising out of such agreements, it is common ground, are exclusively amenable to the admiralty jurisdiction of the Supreme Court, in accordance with s. 19(a) of the Courts of Justice Law—14/60. The law defining and regulating the Admiralty jurisdiction of the Supreme Court is s. 29(2) (a) of the aforesaid Law (14/60), making applicable the English Administration of Justice Act, 1956. The pertinent provision is s. 1(1) (h) conferring Admiralty jurisdiction on the Supreme Court to take cognizance of "any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship."

Applying the provisions of the aforesaid enactment, holding that the contract of carriage was indivisible and guided by the decision of Sheen, J. in *THE SONIA S.*[1], the Judge found that he lacked jurisdiction to take cognizance of the case and for that reason dismissed it. In *THE SONIA S.*, Sheen, J. inclined to the view that an agreement concluded for the avowed purpose of facilitating the transportation of goods by sea, necessarily related to the carriage of goods in a ship; consequently, any claim arising therefrom was amenable to the admiralty jurisdiction of the Court. And so he decided that a claim for breach of an agreement for the lease of containers hired for the purpose of storage and transportation of goods by sea, was a claim relating to the carriage of goods by ship.

In arguing his appeal Mr. Papaphilippou referred us to a subsequent decision of English Courts, namely *THE SANDRINA*[2], a decision of the House of Lords, disapproving the decision in *THE SONIA S.*, reported subsequently to the decision of the trial Court, particularly the approach of the Court in relation to the interpretation of s. 1(1) (h) of the Administration of Justice Act 1956. In the Court's opinion in *THE SANDRINA*, s. 1(1) (h) does not encompass any agreement, however, remotely connected with the carriage of goods in a ship. In order

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1 [1983] Lloyd's Rep., Vol. 2, p. 63.
2 [1985] 1 Lloyd's Rep. p. 181.

for a claim to come within its provisions the claim must have a reasonably direct connection with the carriage of goods in a ship. The following passage of the judgment in *THE SANDRINA* reflects the aproach of the House of Lords in the matter:

> "It would, on the other hand, be unreasonable to infer from the expression actually used 'in relation' that it is intended to be sufficient that the agreement in issue should be in some way connected, however remotely, with the carriage of goods in a ship. And I think there is much force in the view expressed by Lord Wylie in *The Aifanourios* (1980) S.C. 346. As to the inference to be drawn from the presence of certain other paragraphs in s. 47(2) there must, in my opinion, be some reasonably direct connection with such activities. An agreement for the cancellation of a contract for the carriage of goods in a ship or for the use or hire of a ship would, I think, show a sufficiently direct connection....".

We are, with respect, in agreement with the above approach to the interpretation of the relevant provisions of the 1956 Act emphasizing the need for a reasonably direct connection between the claim and the agreement relating to the carriage of goods in a ship.

It must be added that s. 1(1)(h) of the 1956 Act embraces claims sounding in contract as well as in tort, so long as they arise out of an agreement relating to the carriage of goods in a ship.

The fact that the claim of the parties respecting the carriage of the goods in this case was evidenced by a through Bill of Lading, did not signify that the agreement related in its entirety to the carriage of goods in a ship. From the viewpoint of importance the carriage of goods by land was a much more significant aspect of the agreement than carriage of the same goods by sea. The trial Judge was influenced in his decision by what he described as the indivisibility of the agreement. Why this was a necessary test is not stated in the judgment of the Court. Nevertheless we may validly suppose he invoked the test ordinarily applied to determine whether an agreement

tainted with illegality can be severed, a question dependent on the divisibility of its unobjectionable provisions from the illicit ones and efficacy thereafter as a self-existent agreement. The analogy was with respect false. For a wholly different question posed for resolution in this case, namely, whether the agreement in question provided for the carriage of the goods by two or more means of transportation—by sea and land transport. And whereas it is perfectly clear that if land transportation is solely incidental to the carriage of goods in a ship, as it is often the case where goods are transhipped[1], every facet of the agreement relates to the carriage of goods in a ship, the same conclusion is not warranted when the agreement provides for the carriage of the goods by different means of transport at different stages of the journey, as indeed was the present case. In such a situation it is wholly unrealistic to hold that a claim arising out of the part of the agreement relating to the carriage of goods by land transport, is a claim arising out of an agreement relating to the carriage of goods in a ship. A practical test to apply in order to discern the nature of the agreement providing for the carriage of goods is that suggested in *THE TESABA*[2], referred to with approval in the Sandrina, requiring the Court to contemplate the reactions of an ordinary businessman to the question.

> "Is that an agreement relating to the carriage of goods in *THE TESABA?*".

Putting the same question in this case our answer is that the claim was connected with an agreement relating to the carriage of goods by land. Therefore, the claim in this case was amenable to the jurisdiction of the District Court of Limassol. And for that reason the appeal succeeds.

In the result, the appeal is allowed with costs.

Appeal allowed with costs.

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[1] (See, inter alia, Mayhew Foods Ltd. v. Overseas Containers Ltd. [1984] 1 Lloyd's Rep., p. 317).

[2] [1982] 1 Lloyd's Rep., pp. 397, 401.