

1986 October 29

[Pikis, J.]

PETA COMPANY LIMITED,

*Plaintiffs,*

v.

BEAULIEU SHIPPING COMPANY LIMITED OF LONDON  
THROUGH THEIR AGENTS IN CYPRUS  
CHRISTODOULOS G. MAVROUDIS LIMITED OF NICOSIA  
AS OWNERS AND/OR CHARTERERS OF SHIP "KATIE",

*Defendants.*

(Admiralty Action No. 372/84.)

*Carriage of goods by sea—Short-landing of goods—Defendants not the carriers, but forwarding agents—Not answerable to plaintiffs either in contract or in tort.*

*Subrogation action—Insurers instituting action in the name of the plaintiffs—Fact of subrogation does not confer on the insurers any rights other than those vested in the insured.*

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*Admiralty action—Time bar—Article III(6) of the Rules Relating to Bills of Lading made Law by the Carriage of Goods by Sea Law, Cap. 263.*

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This is a subrogation action of the insurers raised in the name of the insured—the plaintiffs—for the recovery of the amount paid to the plaintiffs by the insurers for loss suffered from the short-landing of cargo loaded at the port of London on board M/V "KATIE" for carriage and delivery to the port of Limassol. The basis of the action is breach of the contract of carriage of the goods and negligence stemming from breach of the duty of care of the carriers to the insured.

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*Held, dismissing the action:* (1) The fact that the action is raised by the insurers under a right of subrogation does not confer upon them any rights other than those vested on the insured.

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(2) The evidence showed that the defendants were not the carriers, that they never represented themselves to the plaintiffs to act in that capacity and that they were acting as forwarding agents of the goods. It follows that they are not liable either in contract or in tort for the short-landing of the goods.

(3) In any event the action is time barred for failure to raise it within the period of Article III(6) of Cap. 263. The insurers knew that the claim would be unenforceable after August, 1984. Nothing said or done by the defendants and no representations made by them estops them from setting up the statutory time-bar as a defence to the action.

*Action dismissed with costs.*

15 **Cases referred to:**

*Buckland v. Palmer* [1984] 3 All E.R. 554.

**Admiralty Action.**

Admiralty action for the sum of £584.- paid by the insurers to the plaintiffs for loss suffered from the short landing of cargo loaded at the port of London on board M/V "Katie" for carriage and delivery to the port of Limassol.

*P. Angelides*, for the plaintiffs.

*N. Zomenis*, for the defendants.

25 *Cur. adv. vult.*

PIKIS J. read the following judgment. This is a subrogation action of the insurers, A. Hadjiandreou Limited, raised in the name of the insured—the plaintiffs—for the recovery of an amount of £584.- (Five Hundred and Eighty Four Pounds only) paid to the plaintiffs by the insurers for loss suffered from the short-landing of cargo loaded at the port of London on board M/V "KATIE" for carriage and delivery to the port of Limassol. The sum of £584.- represents the value of part of the cargo, that is, five cartons of paint rollers that was shipped at the port of loading but not delivered at the port of destination. Stepping

into the shoes of the plaintiffs the insurers seek to recover the aforesaid amount from the defendants for breach of the contract of carriage of the goods evidenced by a bill of lading (exhibit 1) and, for liability in negligence stemming from breach of the duty of care of the carriers to the insured. 5

Though the defendants admit that plaintiffs suffered the damage claimed on account of short-landing of the goods shipped on board M/V "KATIE", they deny liability. Firstly, they refute the suggestion that they were the carriers, maintaining that their involvement in the transportation of the goods was that of an agent acting all along to the knowledge of the plaintiffs as forwarding agents. They neither own nor operate vessels. They merely provide services as a go between shippers and carriers. Furthermore, they dispute the actionability of the claim on account of— 10 15

- (a) the provisions of Article III(6) of the Rules Relating to Bills of Lading made law by the Carriage of Goods by Sea Law—Cap. 263, rendering the claim time-barred as it was raised after the effluxion of one year from the date of short delivery of the goods and ascertainment of the loss; and 20
- (b) failure to give the notice prescribed by the bill of lading (exhibit 1) and raise an action within six months, as provided therein. 25

Also liability under the contract of carriage evidenced by the bill of lading (exhibit 1) is denied for lack of privity in that plaintiffs were not contracting parties thereto. The shippers named in the Bill of Lading are Becchwood Brushes Limited, the plaintiffs being merely the consignees of the cargo. 30

At the trial it transpired the defendants were not the carriers of the goods. The goods were loaded on M/V "KATIE", a ship belonging to a German company represented in the United Kingdom by Contimar Liner Agencies (UK) Limited. 35

Nevertheless plaintiffs alleged in the petition the carriers were unknown to them and looked to the defendants as

carriers, being in effect in the position of agents acting for undisclosed principals. This allegation is contradicted by the house Bill of Lading issued by the defendants wherein it was unequivocally stated that defendants acted only as shipping and forwarding agents and that another bill of lading, to which reference is made in exhibit 1, evidenced the contract for the carriage of the goods. The defendants made available at the trial a photocopy of this Bill of Lading but its production was objected to by counsel for the plaintiffs in the absence of the original (it was marked "A" merely for purposes of identification). Not an iota of evidence was adduced to indicate that plaintiffs failed to appreciate the content of exhibit 1 or that for any justifiable reason they misconstrued or misconceived its effect. Neither the managing director, any other official or servant of the plaintiffs, supported the averment made in the petition to the aforementioned effect. The only evidence we have on the matter is that of Mr. Mavroudis, the managing director of Chr. Mavroudis Limited, the agents of the defendants in Cyprus, who testified that he intimated to the plaintiffs that defendants acted solely as freight forwarders—a fact well known to the plaintiffs throughout their long business co-operation. In fact, he furnished them with a leaflet identical to exhibit 6, outlining the services rendered by the defendants.

The fact that the action is raised by the insurers under a right of subrogation does not confer upon them any rights other than those vested on the insured. It is worth reminding of the observations of *Griffiths, L. J.*, in *Buckland v. Palmer*<sup>1</sup>:

"An insurer who pays his insured under a comprehensive policy and then seeks under his right of subrogation to recover the sum in the name of his insured can have no greater rights against the tortfeasor than those of the insured."

And the same applies, it may be added, in relation to an action for breach of contract.

The only evidence given in support of the claim of the plaintiffs comes from Mr. Hadjiandreou, the managing

<sup>1</sup> [1984] 3 All ER 554, 569 — Letter I

director of the insurance company that recompensed the plaintiffs. His evidence was primarily directed towards establishing that defendants through their agents in Cyprus led them to believe or understand that they held themselves liable as carriers and answerable for the loss. The allegation was denied by Mr. Mavroudis who testified that they made it clear to the plaintiffs that they were not responsible for the loss, not being the carriers of the goods, confining their involvement to rendering to the plaintiffs such assistance as they could in making their claim to the carriers. Correspondence on the subject, particularly exhibits 2a, 2b, and exhibit 3, corroborates the version of Mr. Mavroudis, whereas a letter of the insurers, addressed to "HAMLON", the German shipowners, on 24.5.84, betrays some knowledge on their part of the identity of the carriers.

Having duly reflected on the evidence before me, I find that defendants were not the carriers and further find they never represented themselves to the plaintiffs to act in that capacity. They acted throughout as agents to the knowledge of the plaintiffs. Therefore, they are not answerable to the plaintiffs, in contract or in tort, for the short-landing of their goods.

Irrespective of the above the action of the plaintiffs is unsustainable for failure to raise it within the period laid down in Article III(6) of Cap. 263. That the claim of the plaintiffs would be unenforceable after August, 1984, was also within the knowledge of the insurers, as may be gathered from the content of exhibit 4. Nothing said or done by the defendants, and no representation made by themselves, or their agents, estops them from setting up the statutory time-bar as a defence to the action of the plaintiffs.

Having concluded that the action is liable to be dismissed for the aforesaid reasons, it becomes unnecessary to examine the remaining contentions of the defendants allegedly also making the action unsustainable.

In the result the action is dismissed with costs. Order accordingly.

*Action dismissed.*