

1986 September 29

[PIKIS, J.]

ANDREAS SAVVA KITALLAS,

Plaintiff,

v.

FRANGOUDIS AND STEPHANOOU LTD.,

Defendants.

(Admiralty Action No. 76/85).

Admiralty—Practice—Writ of summons—What facts should be disclosed therein—No obligation to disclose therein facts establishing the Admiralty Jurisdiction of the Court—The Cyprus Admiralty Jurisdiction Order, 1893, Rules 5-14, 38, 82 and Specimen B of Schedule 1.

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The issue for determination is whether the proceedings in the above action are abortive for failure of the plaintiff to disclose in the writ of summons facts making his dispute with the defendants amenable to the admiralty jurisdiction of the Court.

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Held, dismissing the motion: (1) The relevant rules, that is, rules 5-14 of the Cyprus Admiralty Jurisdiction Order, 1893, do not impose any obligation on the plaintiff to state in the writ of summons the facts making the dispute amenable to the Admiralty Jurisdiction of this Court. The facts that ought to be stated, in accordance with rule 8 and Specimen "B" of Schedule 1 of the rules are those indicating the nature of the claim, the reliefs and remedies sought, the identity of the parties and the date of appearance.

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(2) The plaintiff's obligation to disclose the facts, on which his case is founded, including those establishing the jurisdiction of the Court, comes at a later stage, when the parties appear before the Court as rule 38 provides. If directions are given for the exchange of pleadings under

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rule 82, all facts material to a party's case must be included therein.

Application dismissed with costs.

Cases referred to:

Michael v. United Sea Transport (1982) 1 C.L.R. 401. 5

Application.

Application by plaintiff to rescind third party notice on the ground that it is bad for failure to disclose in the writ itself facts making the dispute amenable to the Admiralty Jurisdiction of the Supreme Court. 10

St. Mc Bride, for the applicants-third parties.

A. Drakos, for the respondents-defendants.

Cur. adv. vult.

PIKIS J. read the following judgment. In issue is the validity of the writ of summons having been raised by the third parties who contend it is bad for failure to disclose in the writ itself facts making the dispute between plaintiff and defendants amenable to Admiralty Jurisdiction of the Supreme Court under sections 19(a) and 29(2) (b) of the Courts of Justice Law—14/60. The irregularity in the writ, allegedly fundamental, going to the jurisdiction of the Court renders, in the submission of Mr. Mc Bride, the proceedings null and voids steps taken thereunder including the third party notice. Apart from this defect, fundamental though it may be, no other objection is taken to the validity of third party proceedings or the facts supporting it. The defendants adopted a neutral stand respecting the validity of the writ of summons taking pains to stress, through Mr. Drakos, that the third party proceedings in themselves are free of defect. Plaintiffs, though notified of the present motion and notwithstanding their opposition to it voiced orally before the Court, failed to articulate it in a written opposition or appear before the Court on the date of hearing of the motion. 15
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The single issue to be decided is whether the proceedings are abortive for failure on the part of the plaintiff to dis- 35

close in the writ of summons facts making his dispute with the defendants amenable to the admiralty jurisdiction of the Court. Counsel for the third parties submitted that the decision of Mr. Justice A. Loizou in *Michael v. United*
5 *Sea Transport* (1) is relevant to the matter at hand and supports the propositions put forward, on the part of the third parties, before the Court. I cannot agree. In *Michael* (supra) the Court was concerned to decide a wholly different issue, namely, amenity to amend the petition in
10 order to remedy a failure to disclose facts making the dispute amenable to the admiralty jurisdiction of the Supreme Court. The Court allowed the amendment in the special circumstances of that case, especially the fact that the writ of summons had been issued within the limitation period.
15 If at all relevant to the facts of the present case, the decision in *Michael* (supra) suggests that failure to disclose the facts founding the jurisdiction of the Court in the writ of summons does not void the proceedings.

On the other hand, the relevant Rules of Court, that is,
20 rules 5-14 of the Cyprus Admiralty Jurisdiction Rules, impose no obligation on the plaintiff to state or make reference in the writ of summons to the facts making the dispute amenable to the Admiralty Jurisdiction of the Supreme Court. Rule 8 in particular that specifies the
25 facts that must be adumbrated in the writ, makes no reference whatever to the facts establishing the jurisdiction of the Court. The facts that ought to be stated, in accordance with rule 8 and the specimen form of a writ of summons furnished in Schedule 1 of the Admiralty Rules
30 (Specimen "B") are those indicating (a) the nature of the claim, and (b) the reliefs and remedies sought, as well as facts relevant to the identity of the parties and the date of appearance before the Court.

The plaintiff comes under an obligation to disclose the
35 facts on which his case is founded, including facts establishing the jurisdiction of the Court, at a later stage when the parties appear before the Court as rule 38 provides. Of course, if directions are given for the ex-

(1) (1982) 1 C.L.R. 401.

change of written pleadings under rule 82, all facts material to a party's case must be included therein.

For the above reasons the motion appears to me to be ill-founded and for that reason it is dismissed with costs in favour of the defendants.

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*Application dismissed with costs
in favour of defendants.*