

1986 October 27

[DEMETRIADES, J.]

CAMREX (REALISATIONS) LTD.,

Plaintiffs,

v.

FREEWIND SHIPPING COMPANY LTD.,

Defendants-Applicants.

(Admiralty Action No. 310/86).

Admiralty action—Provisional orders—The Courts of Justice Law, 14/1960, section 32—The Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 45/63, section 30—Principles relating to the ambit of section 32 of Law 14/60—Attachment of assets out of the Jurisdiction —Outside the purpose of what is known as mareva injunction—Ambit of section 30 of Law 45/63—“Interested persons”—Persons having money claims against a ship—Such persons are not “interested persons” and, therefore, an interlocutory injunction prohibiting dealings with the ship or the shares therein would not be granted on the basis of said section in their favour. 5 10

Companies—Company Law—Veil of Incorporation—The rule in Salomon v. Salomon—Exceptions to the rule.

The plaintiffs, who by their writ of summons claim 15
the agreed and/or reasonable unpaid value of paints sold
and delivered on various occasions in 1985 to the ship of
the defendants PROTOMACHOS at Spain and Canada,
applied by an ex parte application based on section 9
of Cap. 6, section 32 of Law 14/60 and section 30 of 20
Law 45/63*, for a provisional order prohibiting any
change in the legal status of the said ship, including her
transfer to third persons.

* These sections are quoted at pp. 424-425 post.

The ex parte application was granted, but the defendants moved the Court for the discharge of the provisional order. The motion was opposed by the plaintiffs.

5 The facts are shortly as follows, namely the defendants are a limited company registered in Cyprus on the 12.10.1985. Its shareholders are Messrs. Protomachos Shipping Corporation of Liberia, holding 999 shares and Mr. I. Lambrinouidakis, of Greece, holding 1 share. On the 10 3.10.86, i.e. well after the alleged supply of the paints to the ship, the defendants purchased from Messrs. Protomachos Shipping Corporation the said ship. On the same day the ship was provisionally registered as a Cyprus ship.

15 *Held, granting the motion of the defendants and discharging the provisional order:* (1) The application of section 32 of Law 14/1960 was discussed in a number of admiralty cases. In the light of such authorities and as the effect of the interlocutory injunction would afford the plaintiffs security for their claims by attaching assets that 20 are out of the Jurisdiction of this Court—a situation which is outside the intents and purposes of what is known as a mareva injunction—the provisional order should not be granted under the said section.

25 (2) The power of the Court under section 30 of Law 45/63 to prohibit dealings with a ship or shares therein applies only to applications made by “interested persons”. A person that has a money claim against a ship is not an “interested person” in the sense of the said section.

30 *Defendants’ motion upheld.
Costs against plaintiff.*

Cases referred to:

London and Overseas (Sugar) Co. v. Tempest Bay Shipping Co. Ltd. (1978) 1 C.L.R. 367;

35 *Consolidated Glass Works Ltd. v. Friendly Pale Shipping Co. Ltd.* (1977) 1 C.L.R. 44;

Essex Overseas Trade Services Ltd. v. The Legent Shipping Co. Ltd. (1981) 1 C.L.R. 263;

Salomon v. Salomon [1897] A.C. 22.

Application.

Application by defendants for an order discharging the provisional order made on the 8th October, 1986 against the defendants prohibiting any change in the legal status of the ship "Protomachos" until final determination of the Admiralty Action filed against the above ship. 5

St. Mc Bride, for the applicants-defendants. 10

A. Theophilou, for respondents-plaintiffs.

Cur. adv. vult.

DEMETRIADES J. read the following ruling. By their writ of summons, which was filed on the 8th October, 1986, the plaintiffs claim against the defendants - 15

"(A) 5904.60 Dutch Guilders and \$3,487.87 U.S.A. dollars, or its equivalent in Cyprus pounds, being the agreed and/or reasonable unpa'd value of paints sold and delivered to the defendant's ship 'PROTO-MACHOS' at Spain and Canada on 3 occasions in 1985. 20

(B) Interest.

(C) Costs."

Simultaneously with the writ of summons the plaintiffs filed an ex parte application based on section 9 of the Civil Procedure Law, Cap. 6, section 32 of the Courts of Justice Law, 1960 (Law 14/60), and section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63), by which they pray for an order of the Court prohibiting, till judgment is delivered in this action, any change in the legal status of the ship "PROTOMACHOS" flying the Cyprus flag, the property of the defendants, specifically including her transfer to third persons. 25 30

This application was accompanied by an affidavit dated the 7th October, 1986, sworn by Mrs. Dora Socratous, a lawyer in the office of counsel for the plaintiffs. In her said affidavit Mrs. Socratous, inter alia, alleged that -

- 5 (a) The defendants became the owners of the ship on or about the 4th April, 1986, by transfer from Protomachos Shipping Corporation of Liberia, who are in fact at present the beneficial owners of the ship.
- 10 (b) The transfer was merely effected for the purpose of the defendants acquiring the right to carry the Cyprus flag and to record change of ownership.
- 15 (c) The agreement of sale of the ship was reached and executed in Greece and that because of this the proper law governing the agreement of sale should be Greek Law, and
- (d) The defendants are negotiating the sale of the ship.

20 As it appears from three invoices attached to the affidavit of Mrs. Socratous, the alleged supply of paints was made to the ship on the 7th May, 1985, on the 20th June, 1985 and on the 4th July, 1985.

As a result of the application of the plaintiffs and the facts relied upon in support of it, I proceeded to make a provisional order which I made returnable on the 17th October, 1986.

25 On the 17th October, 1986, when the application came before me and after counsel for the defendants satisfied me of the urgency of the matter, I fixed it, with the consent of counsel who appeared for the plaintiffs, for hearing on the following day, that is on the 18th October, 1986.

30 As on the 18th October, 1986, counsel for the defendants filed a motion praying for the discharge of the provisional order, the hearing of the application was by consent of counsel adjourned to the 20th October, 1986.

35 The motion of the defendants for the discharge of the provisional order was opposed by the plaintiffs by notice filed on the 20th October, 1986, but as both counsel were ready to argue their case, I proceeded to hear them on that day.

The relevant legislative provisions on which the plaintiffs have based their application, namely, section 9 of Cap. 6, section 32 of Law 14/60 and section 30 of Law 45/63, read as follows:

“9. (1) Any order which the Court has power to make may, upon proof of urgency or other peculiar circumstances, be made on the application of any party to the action without notice to the other party. 5

(2) Before making any such order without notice the Court shall require the person applying for it to enter into a recognizance, with or without a surety or sureties as the Court thinks fit, as security for his being answerable in damages to the person against whom order is sought. 10

(3) No such order made without notice shall remain in force for a longer period than is necessary for service of notice of it on all persons affected by it and enabling them to appear before the Court and object to it; and every such order shall at the end of that period cease to be in force, unless the Court, upon hearing the parties or any of them, shall otherwise direct; and every such order shall be dealt with in the action as the Court thinks just. 15 20

(4) Nothing in this section shall be construed to affect or apply to the powers of the Court to issue writs of execution.” 25

“32.- (1) Subject to any Rules of Court every court, in the exercise of its civil jurisdiction, may, by order, grant an injunction (interlocutory, perpetual or mandatory) or appoint a receiver in all cases in which it appears to the Court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith: 30

Provided that an interlocutory injunction shall not be granted unless the Court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted 35

it shall be difficult or impossible to do complete justice at a later stage.

5 (2) Any interlocutory order made under subsection (1) may be made under such terms and conditions as the Court thinks just, and the Court may at any time, on reasonable cause shown, discharge or vary any such order.

10 (3) If it appears to the Court that any interlocutory order made under subsection (1) was applied for on insufficient grounds, or if the plaintiff's action fails, or judgment is given against him by default or otherwise, and it appears to the Court that there was no probable ground for his bringing the action, the Court may, if it thinks fit, on the application of the
15 defendant, order the plaintiff to pay to the defendant such amount as appears to the Court to be a reasonable compensation to the defendant for the expense and injury occasioned to him by the execution of the order.

20 Payment of compensation under this subsection shall be a bar to any action for damages in respect of anything done in pursuance of the order; and any such action, if begun, shall be stayed by the Court in such manner and on such terms as the Court thinks
25 just."

30 "30. The Hight Court may, if the Court thinks fit (without prejudice to the exercise of any other power of the Court), on the application of any interested person make an order prohibiting for a time specified any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions the Court may think just, or may refuse to make the order, or may discharge the order when
35 made, with or without costs, and generally may act in the case as the justice of the case requires; and the Registrar, without being made a party to the proceedings, shall on being served with an official copy thereof obey the same."

Having regard to the contents of the affidavits filed in support of (a) the application for the issue of the provisional order, (b) the motion filed by the defendants for the discharge of the said order, (c) the opposition to the said motion and (d) the statements made by counsel during the hearing, the facts relating to the present application are, in short, the following: 5

The defendants are a limited company which was registered in Cyprus on the 12th October, 1985, in accordance with the provisions of the Companies Law, Cap. 113. Its shareholders are Messrs. Protomachos Shipping Corporation of Monrovia, Liberia, who hold 999 of its shares and Mr. Ioannis Lambrinouidakis, of Piraeus, Greece, who holds 1 share. 10

On the 3rd April, 1986, that is after they were registered in Cyprus as a limited company, the defendants, by Bill of Sale of even date, purchased from Protomachos Shipping Corporation the ship. On the same day the ship was provisionally registered as a Cyprus ship. The Bill of Sale and the Provisional Certificate of Cyprus Registry are appended to the affidavit of Mr. Stuart George McBride, which was filed in support of the motion, as exhibits "C" and "B". Both were executed in London. 15 20

During the hearing of the motion counsel for the plaintiffs conceded that the plaintiffs are not persons that have an interest in the ship; that their alleged claim is for what it may be described as one for necessaries that were supplied to her in foreign countries; and that the said "necessaries" were supplied to the ship before the defendants came into existence and long before they purchased the ship. 25 30

What I have to decide in these proceedings is whether section 30 of Law 45/63 and, in the alternative, whether section 32 of Law 14/60, permit me, in the circumstances of this case, to make the provisional order of the 8th October, 1986, final, pending the determination of the action. 35

Section 32 of Law 14/60 is a provision that gives power

to a Court to grant an injunction of a temporary nature, perpetual or mandatory in proper cases.

5 The plaintiffs, by their relevant application which is relied upon section 32 of Law 14/60 and section 30 of Law 45/63, seek an interlocutory order for the preservation of the status quo in relation to the ship "PROTO-MACHOS", the property of the defendants.

10 The Courts in their admiralty jurisdiction have repeatedly faced and tried applications that were relied upon both those sections.

As regards the issue of the application of section 32 of Law 14/60, it was raised in a number of admiralty actions (see, inter alia, *London and Overseas (Sugar) Co. v. Tempest Bay Shipping Co. Ltd.*, (1978) 1 C.L.R. 367. 15 *Consolidated Glass Works Ltd., v. Friendly Pale Shipping Co. Ltd.*, (1977) 1 C.L.R. 44 and *Essex Overseas Trade Services Ltd., v. The Legent Shipping Co. Ltd.*, (1981) 1 C.L.R. 263).

20 In the light of the above authorities and the facts of the present case I am not prepared to grant an interlocutory injunction under this section because I feel that if I did so I would be affording the plaintiffs security for their claims by attaching assets that are out of the jurisdiction of the Courts of the Republic and this is outside the intents and 25 purposes of what is known as a mareva injunction.

Regarding next section 30 of Law 45/63, which I have already quoted, it appears from its wording that the power of the Court to prohibit dealings with a ship or any shares therein applies only to applications made by "interested 30 persons".

At the beginning of his address, counsel for the respondents made the following statement which, to my mind, answers this issue against the plaintiffs:

35 "I, also, accept that yes, we have no interest in the ship herself, for the sake of the arguments as regards the application of section 30 of Law 45/63. I do rely on that section; I do not allege that I am inte-

rested in the ship herself and/or the shares of the ship.”

In my view an interested party in the ship or any shares therein cannot be a person that has a money claim against the ship but one that claims that he is the owner, a person having an interest in her by way of being an heir of the owner, a mortgagor, one that in general has an interest in the ship herself. 5

In the result, the application of the plaintiffs relied on section 30 of Law 45/63 fails. 10

Having reached my above conclusion I find it unnecessary to deal with the point raised by counsel for the plaintiffs that in deciding their application I had the right to go behind the corporate veil of the defendants and question the actual or beneficial ownership of the ship. 15

In any event, assuming that I had to deal with this point my short answer to it is that what has been laid down in *Salomon v. Salomon*, [1897] A.C. 22, as required for a Court to go behind the corporate veil of a company, namely that the new corporate personality has been used for fraud or improper conduct, has not been alleged in the affidavits filed in support of the application for the interlocutory order or the opposition to the motion. 20

In the result, the motion of the defendants succeeds and the provisional order granted on the 8th October, 1986, is discharged. 25

The plaintiff to pay the costs of these proceedings. The costs to be assessed by the Registrar of the Court and approved by the Court.

Provisional order discharged with costs against plaintiff. 30