

1987 November 7

STYLIANIDES J.

SUNOIL BUNKERING LIMITED.

*Plaintiffs.*

v

- 1 JAOUHAR MARITIME TRANSPORT COMPANY LIMITED  
OWNERS OF THE VESSEL «JAOUHAR».
- 2 THE SHIP «JAOUHAR».

*Defendants*

*(Admiralty Action No 207/87)*

*Injunctions Interlocutory injunctions The Court of Justice Law 1960 (Law 14/60), section 2 The prerequisites thereunder for the issue of an interlocutory injunction*

- 5 *Injunctions – Interlocutory injunctions – Mareva injunction – Review of case-law – Assets out of the Jurisdiction – Cannot be made the subject of a Mareva injunction – Shares in a company limited by shares – Cannot be made the subject of such an injunction*

10 The plaintiffs are a registered company. The defendants are a non-resident shipping company registered in Cyprus and functioning from here with the authority of the Central Bank. The defendant 2 is a ship owned by defendants 1.

15 The plaintiffs by this action claim US\$23 721 50, amount due and owing for necessaries or fuel and/or material supplied and rendered to the defendant ship for her operation or functioning at the port of Cartagena and at the port of Bordeaux at the request of the defendants.

20 The plaintiffs on the date that the writ of summons was issued filed ex parte application, whereby they pray for an interim injunction «restraining the defendants from selling, mortgaging or in any way disposing or transferring the shares therein or mortgaging, alienating or otherwise dealing with the vessel 'JAOUHAR' until the hearing of the present Action or until further order of the Court».

The application is based on s 32 of the Courts of Justice Law 1960 (No 14/60), the Cyprus Admiralty Jurisdiction Order 1893, Rules 51-56, 203, 204, 205, 237 and the Civil Procedure Rules.

25 Held, *dismissing the application* (1) The ambit of a Mareva Injunction has not been extended to anything outside the Jurisdiction. Its object is to

**Sunoil Bunkering v. Jaouhar Maritime (1987)**

preserve assets including ship within the jurisdiction to enable the plaintiff to proceed to execution when the judgment of the Court is given in his favour. It cannot be issued against a ship which is outside the jurisdiction. This is a discretionary order. The Court's discretion should not be exercised in vain and should not be extended to assets outside jurisdiction as such an order would be at least difficult to enforce. 5

(2) The ship «JAOUHAR» is outside the jurisdiction at unknown place in the world. It may naturally be sailing from port to port. In view of the foregoing the said ship is not within the assets for which a Mareva Injunction may be issued.

(3) The shares are again beyond the ambit of the object of Mareva Injunction. The shares cannot be charged. This is a lacuna in our Law relating to execution of a judgment or order directing payment of money. The sale of shares of a company in execution of such a judgment is indeed almost impossible under the relevant legislation. 10

Application dismissed 15  
No order as to costs

*Cases referred to*

*Polish Ocean Lines and Others v Spyropoulos and Others* XX (Part II)  
C L R p 73

*M & M Transport Co Ltd v Fiena Astikon Leotonon Lemessou Ltd* 20  
(1981) 1 C I R 605

*Nippon Yusen Kaisha v Karageorghis* (1975) 3 All E R 282

*Mareva Compania Naviera S A v International Bulkcarriers S A* (1975) 2  
Lloyd's Rep 509

*Allen and Others v Jambo Holdings Ltd and Others* (1980) 2 All E R 502 25

*Nemitsas Industries Ltd v S & S Maritime Lines Ltd and Others* (1976)  
1 C I R 302

*Grade One Shipping Co Ltd (No 1) v The Cargo on Board the Ship  
«Cnos II»* (1976) 1 C L R 323

*Consolidated Glass Works Ltd v French Pole Shipping Co Ltd and  
Another* (1977) 1 C I R 44 30

*Iranian Seaways Agencies Ltd v British Shipping Co Ltd and  
Another* (1977) 1 C L R 165

**1 C.L.R. Sunoil Bunkering v. Jaouhar Maritime**

*London and Overseas (Sugar) Co and Another v Tempest Bay Shipping Co Ltd and Others* (1978) 1 C L R 367

*Constantinides v Makryioirghou and Another* (1978) 1 C L R 585

5 *Essex Overseas Trade Services Ltd v The Legent Shipping Co Ltd and Another* (1981) 1 C L R 263.

*Rena K* (1979) 1 All E R 397

*Clipper Maritime Company of Monrovia v Mineral Import-export (The «Mane Leonhardt»* (1981) 2 Lloyd's Rep 458

*Botteghi v Bolt Head Navigation Company Ltd* (1985) 1 C L R 114.

10 *Compania Portuguesa De Transportos Maritime of Lisbon v. Sponsalia Shipping Co Ltd* (1987) 1 C L R 11.

*Pastella Manne Co Ltd v National Iranian Tanker Co. Ltd* (1987) 1 C L R 583

**Application.**

15 Application for an interim injunction restraining the defendants from selling, mortgaging or in any way disposing or transferring the shares in the ship Jaouhar. or mortgaging, alienating or otherwise dealing with the said vessel until the hearing of the present action.

*X Xenopoulos with L. Kalogerou*, for plaintiffs - applicants

*Cur. adv. vult.*

20 STYLIANIDES J. read the following decision. The Plaintiffs are a registered company. The defendants are a non-resident shipping company registered in Cyprus and functioning from here with the authority of the Central Bank. The defendant 2 is a ship, owned by defendants 1

25 The plaintiffs by this action claim US\$23,721.50. amount due and owing for necessaries or fuel and/or material supplied and rendered to the defendant ship for her operation or functioning at the port of Cart. ena and at the port of Bordeaux at the request of the defendants

30 The plaintiffs on the date that the writ of summons was issued filed ex parte application, whereby they pray for an interim injunction «restraining the defendants from selling, mortgaging or in any way disposing or transferring the shares therein, or mortgaging, alienating or otherwise dealing with the vessel

'JAOUHAR' until the hearing of the present Action or until further order of the Court »

The application is based on s 32 of the Courts of Justice Law 1960 (No 14/60) the Cyprus Admiralty Jurisdiction Order 1893 Rules 51-56, 203 204 205 237 and the Civil Procedure Rules 5

The facts relied upon as set out in the affidavit sworn by the manager of the plaintiff-applicant company are

On/or about 13/7/87 and 30/7/87 at the ports of Cartagena and Bordeaux the plaintiffs at the request of the defendants supplied them with fuel oil at the price of US\$23 721 50 The defendants failed to pay the aforesaid amount or any part thereof 10

The plaintiffs would have been entitled to a warrant of arrest of the ship, had the ship been within the jurisdiction but the ship is outside the jurisdiction The ship is registered in Cyprus The defendants 1 have within the jurisdiction only a share capital of C£100 - 15

The respondents are a non-resident Cyprus shipping company operating by virtue of permit issued to them by the Central Bank, all their dealings are allowed to be done in foreign currency

To the best of the knowledge and belief of the deponent, the respondents - defendants 1 are negotiating the sale of their said vessel to foreigners If such alienation takes place, all the money and the sale price may be paid abroad, and the plaintiffs will suffer irreparable loss and injustice will follow 20

The application is based on s 32 of the Courts of Justice Law This is in effect a replica of s 37 of the Courts of Justice Law, 1953 (No 40) of 1953, Cap 8 of the 1959 edition of the Laws of Cyprus 25

This statutory provision which empowers the Court to grant an interlocutory injunction was taken from s 45(1) of the Judicature Act of 1925, which virtually reproduced s 25(8) of the Judicature Act of 1873 30

The principles upon which the jurisdiction of the Court is exercised under s 32 of the Courts of Justice Law, 1960 (No 14/60) is the same as in England under s 45 of the Judicature Act of 1925 (*Polish Ocean Lines and Others v Spyropoulos and Others*, XX (Part II) C L R , p. 73) 35

In *M & M Transport Co Ltd v Etena Astikon I ofonon Lemesou Ltd*, (1981) 1 C L R 605, at p 606 it was said -

5 «The interlocutory injunction was granted under s 32 of the Courts of Justice Law, 1960 (Law No 14/60), the relevant part of which reads as follows -

10 '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

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

20 The principles governing the grant of an interlocutory injunction, because of the wording of the proviso to s 32(1) follow closely those formulated in *Preston v Luck*, [1884] 27 Ch D 497, so a party asking for an interim injunction must show that there is a serious question to be tried at the hearing and that on the facts before the Court there is a probability that the plaintiff is entitled to relief in contrast to the principles  
25 adopted by the House of Lords in the *American Cyanamid Co v Ethicon Ltd*, [1975] 1 All E R 504, where they discouraged evaluation, at this stage, of the probabilities of success (*Acropol Shipping Co Ltd and Others v Petros I Rossis*, (1976) 1 C L R 38, *Nemitsas Industries Ltd v S & S Maritime Lines Ltd and Others*, (1976) 1 C L R 302 *Karydas Taxi Co Ltd v Andreas Komodikis*, (1975) 1 C L R 321 *Constantinides v Makryiorghou and Another*, (1978) 1 C L R 585) When the above requirements are satisfied, the Court must proceed to examine whether the balance of  
35 convenience favours the grant or refusal of the interlocutory relief sought In balancing matters relevant to convenience an important consideration centres round the need to preserve the status quo By the expression 'preservation of the status quo' we mean the position prevailing when the defendant  
40 embarked on the activity sought to be restrained (*The*

*Cyanamid case; Smith and Others v. Inner London Education Authority*, [1978] 1 All E.R. 411; *Bryanston Finance Ltd. v. de Vries (No. 2)*, [1976] 1 All E.R. 25).»

In *The Polish Ocean Lines* case (supra the Supreme Court relying on the English Case Law and a passage in Kerr on Injunctions, 4th Edition, page 2, decided that an interlocutory injunction is merely to preserve the property in dispute in statu quo until the hearing of further order; and that a defendant could not be restrained by interlocutory injunction from disposing of his property not the subject matter of the action before any judgment had been entered against him. This was the predominant judicial opinion in England until the *Nippon Yusen Kaisha v. Karageorghis* [1975] 3 All E.R., 282, in which it was held that an interlocutory injunction could be granted ex parte pending trial restraining the defendant from disposing of any assets within the jurisdiction. 5 10 15

In *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.* [1975] 2 Lloyd's Rep. 509, Lord Denning after commenting on a number of authorities, had this to say at page 510:-

«In my opinion that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that the debt is due and owing - and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment - the Court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets. It seems to me that this is a proper case for the exercise of this jurisdiction. There is money in a bank in London which stands in the name of these time charterers. The time charterers have control of it. They may at any time dispose of it or remove it out of this country. If they do so, the shipowners may never get their charter hire. The ship is now on the high seas. It has passed Cape Town on its way to India. It will complete the voyage and the cargo discharged. And the shipowners may not get their charter hire at all. In face of this danger, I think this Court ought to grant an injunction to restrain the defendants from disposing of these moneys now in the bank in London until the trial or judgment in this action.» 20 25 30 35

The last case gave its name to what has become known as Mareva Injunctions.

The English Case Law followed as correct the *Karageorghis* and the *Mareva Compania Naviera* decisions for the grant of interlocutory injunctions and extended it to cases where the object of the order sought was not limited to money (*Allen and Others v Jambo Holdings Ltd and Others* [1980] 2 All E R 502)

Our s 32 in regard to interlocutory injunctions came under judicial interpretation in a number of cases in *Nemitsas Industries Ltd v S & S Maritime Lines Ltd and Others* (1976) 1 C L R 302 restraining foreign defendants from withdrawing any money from their bank account within the jurisdiction (See, also, *Grade One Shipping Co Ltd. (No 1) v The Cargo on Board the Ship 'Cnos II'* (1976) 1 C L R 323, *Consolidated Glass Works Ltd v Friendly Pale Shipping Co Ltd., and Another* (1977) 1 C L R p 44, *Cyprian Seaways Agencies Ltd. v Chaldeos Shipping Co. Ltd and Another* (1977) 1 C L R 165, *London and Overseas (Sugar) Co and Another v Tempest Bay Shipping Co Ltd and Others* (1978) 1 C L R 367, where Malachos J. following the *Consolidated Glass Works Ltd.* (supra) held that «The application of s 32 should not be readily extended so that to cover assets other than cash money and especially any dealing with a ship or any share therein» *Loizos Constantinides v Gregorios Makryiorghou and Another* (1978) 1 C L R 585 where an appellate bench of this Court reviewed the authorities on the subject but not in relation to ships Reference may also be made to the case of *Essex Overseas Trade Services Ltd v The Legent Shipping Co Ltd and another* (1981) 1 C L R 263, in which case a Mareva Injunction was refused

In England in the *Rena K* [1979] 1 All E R 397, Brandon J at page 417 summed up the position as follows -

«The power of the High Court to grant Mareva injunctions under s 45 of the Supreme Court of Judicature (Consolidation) Act 1925 has been established by a series of recent decisions of the Court of Appeal culminating in *Rasu Mantima S A v Perusahaan Pertambangan Minyak Dan Gas Bumi Nagara (Pertamina)* [1977] 3 All E R 324 Further the House of Lords, while reserving the question of the correctness of those decisions, was prepared to assume the existence of the power, in principle, for the purpose of its decision in *The Siskina* [1977] 3 All E R 803

A Mareva Injunction is granted in a case where a plaintiff has brought an action here against a foreign defendant, and the latter has money or chattels within the jurisdiction which, if he were not prevented from doing so, he would be free to remove out of the jurisdiction before the plaintiff could bring the action to trial, and, if successful, obtain and enforce a judgment against him. » 5

A Mareva Injunction was granted in *Clipper Maritime Company of Monrovia v. Mineral Import - export (The 'Marie Leonhardt')* [1981] 2 Lloyd's Law Reports page 458 for the defendants assets including a ship which were within the jurisdiction. 10

Mareva Injunction under s. 32 is limited to assets within the jurisdiction.

In *Botteghi v. Bolt Head Navigation Company Ltd.*, (1985) 1 C.L.R. 114, the jurisdiction of this Court to grant a Mareva Injunction for a ship not within the jurisdiction, but flying the Cyprus flag and owned by the company registered within the jurisdiction was considered. The ambit of Mareva Injunction was not extended to anything outside the jurisdiction. A. Loizou, J. had this to say at page 124:- 15 20

«I have not, however, been able to trace any authority to the effect that a ship not within the jurisdiction but registered and owned by a company registered within the jurisdiction can be the subject of a Mareva Injunction, under a provision corresponding to section 32 of our Courts of Justice Law 1960. By their very nature ships sailing from port to port naturally incur liabilities that may render them the subject of arrest, appraisalment and sale and other encumbrances in other jurisdiction. In such circumstances an injunction may not be of any effect vis a vis such claimants with different priorities. Bearing in mind that the jurisdiction of a Court in granting such remedies should not be exercised in vain, I have come to the conclusion that even if the registration and ownership of a ship could be the subject of an injunction under section 32 of the Law, I would not be prepared to exercise my discretion if I had one, in granting same. I would therefore refuse the present application to the extent that is based on the said section. » 25 30 35



**1 C.L.R. Sunoil Bunkering v. Jaouhar Maritime Stylianides J.**

The object of the Mareva Injunction is to preserve assets including ship within the jurisdiction to enable the plaintiff to proceed to execution when the judgment of the Court is given in his favour. It cannot be issued against a ship which is outside the jurisdiction. This is a discretionary order. The Court's discretion should not be exercised in vain and should not be extended to assets outside jurisdiction as such an order would be, at least difficult to enforce. (See, also, *Compania Portuguesa de Transportes Maritime of Lisbon v Sponsalia Shipping Company Limited* (1987) 1 C L R 11 *Pastella Marne Co Ltd. v National Iranian Tanker Co Ltd* Civil Appeal 7380 not yet reported)\*

The ship «JAOUHAR» is outside the jurisdiction at unknown place in the world. It may naturally be sailing from port to port. In view of the foregoing the said ship is not within the assets for which a Mareva Injunction may be issued.

The applicants pray for restraining the defendants from alienating mortgaging etc., of 100 shares. This asset is again beyond the ambit of the object of Mareva Injunction. The shares cannot be charged. This is a lacuna in our Law relating to execution of a judgment or order directing payment of money. The sale of shares of a company in execution of such a judgment is indeed almost impossible under the relevant legislation.

For all the afore reasons this application is dismissed  
No order as to costs

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*Application dismissed  
with no order as to costs*

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\* Reported in (1987) 1 C L R 583