

1988 April 6

(A LOIZOU, P, LORIS AND STYLIANIDES, JJ)

HELI-AIR (EGYPT) J.S.C.,

Appellants-Plaintiffs,

v

REINHARD DRESCHER AND ANOTHER,

Respondents-Defendants,

and

DEUTSCHE BANK AG AND ANOTHER,

Respondents-Interveners

(Civil Appeal No 7368)

Civil Procedure — Intervention — Application by summons by a person not a party to the action for the discharge of an interim order issued in the action — The Courts of Justice Law, 14/60, Section 32 — A substantive, not a procedural provision — The Civil Procedure Rules 0 48, r 8(4) — Does not in general allow such an intervention — «Any person» in 0.48, r.8(4). 5

Words and phrases «Any person» in 0 48, r 8(4) of the Civil Procedure Rules

The plaintiffs in the action claim the ownership of a helicopter in the possession of the defendants. They sought and obtained an interim order restraining the defendants from removing from the jurisdiction or otherwise disposing the said helicopter 10

The respondents-interveners, who were not parties to the proceedings, applied by summons for the discharge of the interim order. The application relied upon 0 48, r 8(4) of the Civil Procedure Rules and on section 32 of the Courts of Justice Law, 1960 (14/60) 15

The trial Judge determined the preliminary point whether the respondents-interveners were entitled to apply as aforesaid. The trial Judge found that they could not intervene on the basis of 0 48, r 8(4), but that they could do so on the basis of section 32 20

Hence this appeal by the plaintiffs. The interveners cross-appealed on the ground that the intervention could be based on O.48, r.8(4) as well.

Held, allowing the appeal and dismissing the cross-appeal:

5 (1) Section 32 is a section of substantive law and does not prescribe any procedure.

(2) O.48, r. 8(4) does not in general give the right to a third person to apply by summons for the discharge or variation of an interim order issued in proceedings in which such a person is not a party. The words «any person» does not cover a person in the circumstances of this case where no application to be joined as a party was made and where the very ownership and right of possession of the subject property were in issue and were sought to be determined by the Court in the course of determining an application for the discharge or variation of an interim order.

*Appeal allowed. Cross-appeal dismissed.
Costs against respondents-interveners.*

Appeal.

20 Appeal and cross-appeal against the ruling of the District Court of Lamaca (Constantinides, S.D.J.) dated the 11th April, 1987 (Action No. 195/87) whereby the interveners were allowed to intervene on the basis of section 32 of the Courts of Justice Law, 1960 (Law 14/60) in the above action.

A. Triantafyllides, for the appellants-plaintiffs.

25 Chr. Triantafyllides, for the respondents-defendants.

K. Chrysostomides, for respondents-interveners No 1.

P. Polyviou, for respondents-interveners No 2.

Cur. adv. vult.

30 A. LOIZOU P.: The Judgment of the Court will be delivered by Stylianides, J.

STYLIANIDES, J.: The facts relevant to this appeal appear sufficiently in the ruling of the learned trial Judge and they may be summed up as follows:-

35 The plaintiffs by the action claim the ownership of a helicopter in the possession of the defendants and an order for the return of same to the plaintiffs. Such helicopter was within the jurisdiction of

the District Court and had landed actually at Lamaca airport. On an ex-parte application by the plaintiffs the learned trial Judge issued an interim order restraining the defendants from removing from the jurisdiction or otherwise disposing the said helicopter and forbidding the departure or removal of same from the jurisdiction without plaintiffs' consent in writing. The defendants in these proceedings appeared and ultimately consented to its being made absolute. 5

In the meantime the companies Deutsche Bank AG and KG Heli-Air Hubschrauber GmbH & Co., without being parties to the proceedings in which the interlocutory order was issued, applied to the Court by summons and sought the discharge or amendment of the interlocutory order or alternatively the increase of the amount of the security which had been fixed by the learned trial Judge as a condition to the issue of the said order. They relied in that respect on Order 48, rule 8(4) as providing the legal basis for their application. 10 15

The summons was contested; the learned trial Judge decided to determine, preliminarily to the hearing of the application on the merits, the point whether the applicants had a right to take part in the said interlocutory proceedings. 20

The arguments advanced before the learned trial Judge are twofold:-

(a) That the applicants had a right to intervene on the basis of section 32 of the Courts of Justice Law, 1960 (Law No. 14/60); and 25

(b) That they could do so on the basis of Order 48, rule 8(4).

The learned trial Judge found that the said rule does not give such a right, but proceeded to allow the intervener to intervene on the basis of section 32 of Law 14/60 which was never argued at all before the Court. 30

As against this ruling the plaintiffs filed this appeal and the grounds of their appeal are the following:-

The Court erred in relying on section 32 of Law 14/60, which was never relied upon and not argued at all before the Court; and that section 32 does not give to the interveners the right to intervene in the way the applicants in the said application did, by 35

simply filing an application to vary or discharge the interim order without either being parties or obtaining the leave of the Court.

5 The respondents-interveners cross-appealed and contended that the Honourable Court erred in holding that a third person, affected by an interim order issued ex-parte, may not apply for its discharge and/or variation on the basis of Order 48, rule 8(4) and that this rule provides the legal basis for their applications.

10 Before proceeding any further we may say that though section 32 does not appear to have been the subject of argument by counsel, the applications are based upon it. The trial Court did invoke its provision and relied on it in reaching his decision, as same is referred to and relied upon in the application of the applicant.

15 We have considered the able arguments advanced on both sides and gone through the authorities referred to by them.

20 We have come to the conclusion that section 32 is a section of substantive law and does not prescribe any procedure. The procedure to be followed in invoking its provisions has to be sought in the Civil Procedure Law and the rules made thereunder or any other law or rules prescribing procedures covering such instances.

25 We agree with the learned trial Judge that paragraph 4 of rule 8 of Order 48 does not in general give the right to a third person to apply by summons for the discharge or variation of an interim order issued in proceedings in which such a person is not a party. We do not accept the argument that a reference to «any person» covers a person in the circumstances of this case where no application to be joined as a party was made and where the very ownership and right of possession of the subject property were in
30 issue and were sought to be determined by the Court in the course of determining an application for the discharge or variation of an interim order.

35 Having said this and having come to the conclusion that section 32 does not lay any procedure regarding the right of a person not a party to proceedings to apply for a discharge or variation of a provisional order, we allow the appeal on this preliminary point and we dismiss the cross-appeal for the same reasons given above.

Consequently the applications of the respondents-interveners are hereby dismissed.

Respondents-interveners to pay the costs of the appellants.

*Appeal allowed. Cross-
appeal dismissed.*

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