

1988 July 12

(PIKIS, J.)

TRADAX OCEAN TRANSPORTATION S.A.,

Plaintiffs,

v.

TERMINAL NAVIGATION CO. LTD.,

Defendants.

(Admiralty Action No. 197/87).

Admiralty — Writ of summons — Absence to name a date certain for appearance by defendant before the Court — Initiation of proceedings void — The Admiralty Jurisdiction Order, 1893, Rule 5.

Admiralty — Procedure — Failure to observe the rules — Distinction between void and irregular proceedings — Remedial power of Court under Ord. 70, Rule 1 of the Old English Rules confined to irregular proceedings. 5

The question set down by the Court for resolution in its judgment of 10th June, 1988*, is whether the present proceedings were validly initiated in view of the absence in the writ of summons of the invitation to the defendant, envisaged by R.5, to appear before the Court on a date certain and make answer to the claim. 10

Held: (1) Ord. 70, r.1 (old English Rules) is an omnibus provision intended to confer power on the Court to remedy failure or omission to observe the rules, but its application is confined to remedying irregular as opposed to void proceedings. 15

(2) Broadly there are two categories of void proceedings: Those instituted in breach of the prerequisites set down by the law for the valid commencement of proceedings and, secondly, those raised or pursued in breach of fundamental precepts of justice. 20

* See (1988) 1 C.L.R. 349.

(3) The present proceedings are void both for non observance of the conditions set down in the Rules for the valid initiation of an admiralty action as well as for breach of fundamental rules of natural justice.

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Order accordingly.

Cases referred to:

Solomonides and Another v. Cleareland Shipping Co. (1979) 1 C.L.R. 298;

Evans v. Bartlam [1937] A.C. 473;

10 *Craig v. Kanseen* [1943] 1 All E.R. 108;

Re Pritchard (deceased) [1963] 1 All E.R. 873;

Lysandrou v. Schiza and Another (1979) 1 C.L.R. 267;

HjiChambis v. Attorney-General (1986) 1 C.L.R. 386;

N. P. Lanitis v. Panayides (1986) 1 C.L.R. 490.

15 **Application.**

Application by defendants for the resolution of the question whether the present proceedings were validly initiated in view of the absence in the writ of summons of the invitation to them, envisaged by rule 5 of the Cyprus Admiralty Jurisdiction Order, 1893, to appear before the Court on a certain date and make answer to the claim.

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St. McBride, for the plaintiffs.

A. Haviaras, for the defendants.

PIKIS, J. gave the following judgment. The Admiralty Rules* regulate succinctly and exhaustively how an admiralty action can be instituted. R.5 provides: «Every action shall be commenced by a writ of summons calling upon the defendant to appear before the Court at a time to be named therein». Setting forth the claim in a writ of summons simpliciter does not automatically initiate an admiralty action. For the action to be instituted the writ must, in accordance with the plain provisions of R.5 contain an invitation to the defendant to appear before the Court at a time certain

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* *Cyprus Admiralty Jurisdiction Order 1893.*

indicated therein. There is discretion to entertain an admiralty action raised in any other manner.

The question set down by the Court for resolution in its judgment of 10th June, 1988, is whether the present proceedings were validly initiated in view of the absence in the writ of summons of the invitation to the defendant, envisaged by R.5, to appear before the Court on a date certain and make answer to the claim. Counsel for the plaintiff submitted that the omission did not invalidate the action, but merely rendered the writ irregular amenable to the remedial powers vested in the Court by R.13 of the Rules and Ord. 70, r.1 (Rules of the English Supreme Court applicable in 1960) made applicable by R.237. Mr. Haviaras was of the same view. In his submission the failure to summon the defendant to appear before the Court on a date certain made the proceedings voidable, apt to be validated by the waiver of any objection thereto by the defendant. And as they waived any objection to the irregularity, the proceedings should be allowed to be proceeded with subject to their completion by the inclusion of an appropriate invitation in the writ to the defendant to appear before the Court on a specified date. Counsel distinguished the case of *Solomonides & Another v. Cleareland Shipping Co.** as inextricably connected with the default in that case that rendered the proceedings a nullity. In that case Demetriades, J. ruled that the failure to heed the time provisions of R.11 laying down in terms mandatory the minimum notice for appearance before the Court vitiated the proceeding and rendered it null and void. The ratio of the above case is that mandatory conditions relevant to the initiation of the process must be observed as a condition for the validity of the proceedings. R.13 relied upon by counsel for the plaintiffs is inapplicable. It is confined to the amendment of a writ of summons. It confers no power to remedy any other default and far less power to save misinitiated proceedings.

Ord. 70, r.1 (old English Rules) is an omnibus provision intended to confer power on the Court to remedy failure or omission to observe the rules. Non-compliance may be rectified

* (1979) 1 C.L.R. 298.

on such terms as the Court may think fit. English cases* on the ambit and effect of Ord. 70, r.1, and Cyprus decisions** on the effect of the corresponding rule of the Civil Procedure Rules (Ord. 64), make it clear that the application of the aforementioned rule is confined to remedying irregular as opposed to void proceedings. No jurisdiction vests thereby to validate stillborn proceedings. English and Cyprus cases explore the distinction between void and merely irregular proceedings. Broadly there are two categories of void proceedings: Those instituted in breach of the prerequisites set down by the law for the valid commencement of proceedings and, secondly, those raised or pursued in breach of fundamental precepts of justice.

The present proceedings are void both for non observance of the conditions set down in the Rules for the valid initiation of an admiralty action as well as for breach of fundamental rules of natural justice. The writ did not meet the conditions of R.5 for the commencement of the action and failed to meet the requirements of natural justice to give notice to the adversary.

The fact that the writ was sealed by the Registrar does not alter the complexion of the issue. In fact, the Registrar sealed the writ contrary to the express provisions of R.9 that require that the date and hour when the defendant is required to appear before the Court, should be specified. Evidently the omission to name a date was not due to any inadvertence on the part of the plaintiff. Earlier counsel for the plaintiffs had claimed a right to take out what he called «an open writ» and seemingly on that account failed to furnish the Registrar with copy of the writ for service upon the defendants. Had the Registrar omitted or refused to name a date the plaintiffs would, no doubt, be at liberty to move the Court for directions to ensure observance of the provisions of R.5.

For the above reasons I hold that the action was never validly instituted and as such cannot be heeded by the Court.

After hearing counsel the Court directs that there should be no order as to costs.

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Application granted.

* *Evans v. Bartlam* [1937] A.C. 473, *Craig v. Kanseen* [1943] 1 All E.R. 108; *Re Pritchard (deceased)* [1963] 1 All E.R. 873.

** *Lysandrou v. Schiza & Another* (1979) 1 C.L.R. 267, *HjiChambis v. Attorney-General* (1986) 1 C.L.R. 386; *N.P. Lanitis v Panayides* (1986) 1 C.L.R. 490