

1989 April 25

(SAVVIDES, J.).

UNIVERSAL EXPORT AND IMPORT S.A.,

Plaintiffs,

v.

- 1. M/V «MAVROTISSA» FLYING THE FLAG OF CYRPUS,
THEIR OWNERS AND/OR THEIR SHIPOWNERS,
- 2. MODEST MARITIME CO. LTD.,
- 3. ARGO-PACIFIC S.A., AS CHARTERERS,

Defendants.

(Admiralty Action No. 27/88).

Admiralty — Practice — Renewal of writ of summons — Application filed after expiration of the twelve months' period as from the filing of the writ — The Cyprus Admiralty Jurisdiction Order, Rule 237 — In virtue therefore, this case is governed by the old English Rules in force in 1960, O.8, rule 1 and O.64, rule 7 — Action in rem — Practice to renew writ, if ship has not called at a Cyprus port. -5

This is an action in rem against defendants 1 and an action in personam against defendants 3. The affidavits in support of the application state that defendant 1 ship has not yet called at any Cyprus port and is expected within the next six months when service will not be possible unless the writ of summons is renewed, and that concerning defendants 3 efforts were made for tracing their whereabouts whom the applicants originally thought to be in Cyprus to effect service on them and it was only recently that applicants came to know that they are in France. 10 15

The application was filed after the expiration of the writ. In the circumstances the Court granted the application.

Application granted.

Cases referred to:

Nigerian Produce v. Sonora Shipping (1979) 1 C.L.R. 395; 20

Churair & Sons v. Snatiren Shipping (1980) 1 C.L.R. 183;

«*Helen Roth*», New Law Journal of the 24th January, 1980, at p. 91;

Birkett v. James [1977] 3 W.L.R. 38;

Berny [1979] 1 Q.B. 80.

5 Application.

Application by the plaintiffs for the renewal of the writ of summons.

A. *Poetis*, for applicants.

SAVVIDES J. gave the following judgment. By this ex-parte
10 application applicants-plaintiffs apply for the renewal of the writ of
summons against defendants 1 and 3.

This is a mixed action in rem against defendant 1 ship and in
personam against defendants 2 and 3. Plaintiff's claim is for U.S.
\$700,000.- as damages for breach of contract for the transport of
15 goods by defendant 1 ship from Constanza to Puerto Quetzal,
Guatemala. The writ of summons was issued on the 15th March,
1988 and was not served on defendants 1 and 3 within the period
of twelve months provided by the rules of Court applicable in
Admiralty proceedings.

20 The present application was filed on the 30th March, 1989, i.e.
15 days after the expiration of the writ of summons. Previously to
this application counsel for applicants filed an application for
extension of time to effect service dated the 3rd March, 1989,
before the expiration of the writ of summons which was heard and
25 determined on 24th March, 1989, after the expiration of the writ of
summons. Such extension was refused on the ground that once
the writ had expired no extension could be granted for service
without an application for renewal of the writ of summons.

The application is based on r.237 of the Cyprus Admiralty
30 Jurisdiction Order, 1893 and 0.8, r.1 and 0.64, r.7 of the English
Rules (*the old Rules of the Supreme Court*).

0.237 of the Rules of the Supreme Court of Cyprus in its
Admiralty Jurisdiction on which the application is based reads as
follows:

35 «In all cases not provided by these Rules, the practice of the
Admiralty Division of the High Court of Justice of England, so

far as the same shall appear to be applicable, shall be followed».

In view of the fact that no provision is made in the Admiralty Rules as to the period that the writ of summons remains in force the English Rules and Practice become applicable by virtue of such Order. The rules applicable in this respect are the rules in force prior to the 15th August, 1960 in view of the provisions of s.19 and s.29(2)(a) of the Courts of Justice Law, 1960 (Law No. 14/60). See, in this respect, *Nigerian Produce v. Sonora Shipping* (1979) 1 C.L.R. 395. In that case in dealing with the question of renewal of the writ of summons in an action in rem, after its expiration, I had the opportunity of expanding on the principles which may guide the Court in exercising its discretion in granting such application. Therefore, I find it unnecessary to repeat in the present decision such principles which are adopted for the purposes of the present application.

The question was further dealt with by me in *Churair & Sons v. Snatiren Shipping* (1980) 1 C.L.R. 183, in which reference was made to the *Bemy* [1979] 1 Q.B. 80, which dealt with the renewal of a writ in an action in rem. In the *Bemy* case, Brandon, J. in granting an order for the renewal of the writ of summons in an action in rem had this to observe at p.103:

«In my opinion, when the ground for renewal is, broadly, that it has not been possible to effect service, a plaintiff must, in order to show good and sufficient cause for renewal, establish one or other of three matters as follows: (1) that none of the ships proceeded against in respect of the same claim, whether in one action or more than one action, have been, or will be, present at a place within the jurisdiction during the currency of the writ; alternatively (2) that, if any of the ships have been, or will be, present at a place within the jurisdiction during the currency of the writ, the length or other circumstances of her visit to or stay at such place were not, or will not be, such as to afford reasonable opportunity for effecting service on her and arresting her; alternatively (3) that, if any of the ships have been, or will be, present at a place within the jurisdiction during the currency of the writ, the value of such ship was not or will not be, great enough to provide adequate security for the claim, whereas the value of all or some or one of the other ships proceeded against would be sufficient, or anyhow more nearly sufficient, to do so».

The principles laid down therein were followed in the «Helen Roth», New Law Journal of the 24th January, 1980, at p.91, in which an application to set aside the renewal of the writ of summons and service of it and the unconditional release of the
5 arrested ship was refused.

The facts relied upon in support of the application as emanating from the various affidavits before me are that in respect of defendant 1 ship, such ship has not yet called at any Cyprus port and is expected within the next six months when service will not be
10 possible unless the writ of summons is renewed.

Concerning defendant 3 it is the contention of the applicants contained in the affidavits and in the statements made before me that efforts were made for tracing the whereabouts of such defendants whom they originally thought to be in Cyprus but in
15 fact they did not have a registered office in Cyprus to effect service on them and it was only recently that they came to know that they are in France.

The application was based both on the English R.S.C. 0.8, r.1 and R.S.C. 0.64, r.7 applicable before 1960, because once the
20 application is made after the expiration of the twelve months period during which the writ is valid, recourse could be made to 0.64, r.7 which empowers the Court to enlarge the time applied for renewal of the writ of summons. As already mentioned
25 extensive reference of the principles which may guide the Court in the exercise of its discretion appear in the *Nigerian Produce* case (supra) in which a review of the relevant English Case Law is made.

It has been the practice of this Court in actions in rem where service cannot be effected once a ship has not called at any port
30 within the jurisdiction of the Court so that service could be effected as provided by 0.16 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction, for the Court to exercise its discretion in renewing the writ of summons bearing in mind the practice concerning service in an action in rem. Reference may be made in
35 this respect to the *Berny* (supra) and the British Shipping Laws, Vol. 1, Admiralty Practice, p. 28.

The recent Case Law in England and our Case Law following in that respect the English Case Law show a more liberal climate in which renewal of a writ may be more easy to obtain. One,

however, should not ignore what was said in the House of Lords in *Birkett v. James* [1977] 3 W.L.R. 38 at p.50 that where a limitation period is expounded to the full the plaintiff must then proceed expeditiously.

On the facts before me I find that in the present case good cause has been shown for granting the application. This, however, does not in any way preclude defendants 1 and 3, after service is effected, to apply to the Court to have the order renewing the writ and service thereof set aside on good cause shown. 5

In the result I grant the application and I make an Order renewing the writ of summons for a further period of six months from today. 10

Application granted.