

## Shipping & Transport - Cyprus

### Court rejects shipping agent's claim due to lack of jurisdiction

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#### Facts

An *ex parte* application<sup>(1)</sup> was made by Anyland Travel Agency for an arrest warrant against the ship Quant Cement IV. The application was in support of an action for a debt of €7,700 due from Naftotrade Shipping and Commercial SA "for provided services and/or goods and/or tickets provided to the crew and/or crew members" of the ship. Anyland, a Greek company, was engaged in:

- the agency and issuance of tickets for crew members of shipping companies;
- the arrangement of their visa requirements; and
- the coordination of their travel.

These services were allegedly provided to Naftotrade with regard to the ship in question. Invoices were issued and forwarded to Naftotrade for payment. There was an unpaid balance of €7,700 in respect of those services, which Anyland claimed under the main action. Anyland confirmed in a supplementary affidavit that it was the 'travel agent' of the ship, and that the tickets had been issued on its account.

Anyland sought to invoke the Supreme Court of Cyprus in its admiralty jurisdiction at first instance, based on Section 19 of the Courts of Justice Law 1960 and Section 1 of the English Administration of Justice Act 1956. Anyland claimed that since its application concerned an 'agency', it fell within the scope of Section 1(1)(p) of the act, which provides that the Supreme's Court admiralty jurisdiction may be invoked for "any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship".

#### Admiralty Court jurisdiction

Section 19(a) of the Courts of Justice Law provides that the admiralty jurisdiction of the Supreme Court is the equivalent of that provided to the English High Court by Section 1 of the 1956 act.<sup>(2)</sup> Section 29(2)(a) of the law provides that in its admiralty jurisdiction, the Supreme Court is to apply:

*"the Law which was applied by the High Court of Justice in England in the exercise of its Admiralty Jurisdiction on the day preceding Independence Day as may be modified by any Law of the Republic."*<sup>(3)</sup>

In addition, for the Supreme Court to be able to exercise its *in rem* jurisdiction, the conditions of Section 3 of the act must also be satisfied. Section 3 provides as follows:

*"3. Mode of exercise of Admiralty jurisdiction.*

- 1. Subject to the provisions of the next following section, the Admiralty jurisdiction of the High Court ... may in all cases be invoked by an action in personam.*
- 2. The Admiralty jurisdiction of the High Court may in the cases mentioned in paragraphs (a) to (c) and (s) of subsection (1) of section one of this act be invoked by an action in rem against the ship or property in question.*
- 3. In any case in which there is a maritime lien or other charge on any ship, aircraft or other property of the amount claimed, the Admiralty jurisdiction of the High Court ... may be invoked by an action in rem against that ship, aircraft or property.*
- 4. In the case of any such claim as is mentioned in paragraphs (d) to (r) of sub-section (1) of section one of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court.... may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by action in rem against –*
  - (a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person ; or*
  - (b) any other ship which, at the time when the action is brought is beneficially owned as aforesaid."*

#### Decision

The court asked Anyland to specify the provisions of Section 3 under which its claim would fall, only to receive in response an assertion that Anyland's status as the ship's agent was sufficient in itself to invoke the court's admiralty jurisdiction.

The court rejected this argument, finding that Section 3 provided no such basis for the claim, and that the wording of the section allowed for no such inference. The court also concluded that the claim did not fall within the scope of Section 3(2), 3(3) or 3(4). Neither of the affidavits placed before the court in support of the application claimed to have a maritime lien<sup>(4)</sup> or other charge against the ship, and Anyland failed to provide evidence as to the exact ownership of the ship. The case was therefore dismissed.

#### Comment

When filing an application or action that invokes the Supreme Court's admiralty jurisdiction, it is critically important that a comprehensive and careful assessment is made as to whether the claim would actually fall under the court's jurisdiction. Even where the claim is within the scope of Section 1 of the act, the applicant must not fall short in respect of the provisions and requirements of Section 3, which must be carefully addressed and satisfied.

In this case it seems that Anyland failed on both tests. Even though the court concentrated its decision on Anyland's failure properly to address the ownership status of the ship (and satisfy Section 3), it is likely that Anyland would also fail in respect of Section 1(1)(p). The judge referred to the English case of *Bain Clarkson Ltd v The Owners of the Ship 'Sea Friends'*, where the Court of Appeal confirmed the decision of the judge at first instance that expenses that may be recovered under Section 1(1)(p) are limited to those for the 'operation' of the ship.<sup>(5)</sup> This would most likely not extend to ancillary services, such as crew tickets.

For further information on this topic please contact **Vassilis Psyrras** at **Andreas Neocleous & Co LLC** by telephone (+357 25 110 000), fax (+357 25 110 001) or email ([vassilis.psyrras@neocleous.com](mailto:vassilis.psyrras@neocleous.com)).

#### Endnotes

<sup>(1)</sup> *Limited Liability Company with trade name 'Anyland Travel Agency, Travel and Tourism' v Naftotrade Shipping and Commercial SA*, Admiralty Action 24/2012, judgment (*ex tempore*) dated October 23 2012.

<sup>(2)</sup> *Bagdik Gogoshian v Aircraft DC 6 N 19CA now lying at Larnaca Airport* ([1981] 1 CLR 73); *Kolokoudias v Varnavidou* ([1988] 1 CLR 566); *Coli Maritime Agencies Company Limited v the Ship "EL SEXTO" Now Lying at the Port of Limassol* ([1989] 1 CLR 76); *Κωνσταντίνος Αθανασίου Γερασάκης v Waft Shipping Company Ltd* (1989) 1E CLR 10; *Χρυσόστομος Βουράς v m/v Mercandia Trader II* (1991) 1 CLR 894.

<sup>(3)</sup> *Caspi Shipping Limited v του Προϊόντος Πώλησης του Πλοίου «SAPPHIRE SEAS»* ([1998] 1B CLR 1015); *Hassanein v 'Hellenic Island' and/or 'Island' και Άλλου* (Αρ2), ([1994] 1 CLR 578).

<sup>(4)</sup> The main categories of claims in respect of which Cyprus law recognises and upholds maritime liens are bottomry, salvage, wages, master's wages, disbursements and liabilities and damage done by a ship.

<sup>(5)</sup> LR [1991] Vol 2, at page 322.

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