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Grandest Shipping Company Limited v The Ship Marvin Independence
Supreme Court of Cyprus (Admiralty Jurisdiction)
Case Number 9/21, Decision of 9.11.21



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In this case the Cypriot Courts extensively examined and applied¹, ECJ case law relating to the application of EU Regulation 1215/2012, (The Brussels I restated Regulation – “The Regulation”) in proceedings in aid of proceedings in other Member States with particular application to Shipping and Admiralty Actions.

A Tanker /Chemical Carrier the “Marvin Independence” (“the vessel”), arrived in the port of Larnaca, Cyprus having sailed from Elefsina, Greece where it continues to be the subject matter of a Greek Action in the Piraeus Admiralty court which had released it from arrest and were the Plaintiffs (Grandest Shipping Company Limited – “Grandest”) asserted ownership of the vessel, that it had fraudulently been transferred to a third company and subsequently auctioned off to the current alleged owners Rexel Corp (“Rexel”) who also proceeded to change its name to Ayios Nicolaos.

Factual background

Rexel staunchly claimed in Greece and in Cyprus that they were bona fide purchasers for value having acquired the vessel via a public auction in Greece. Grandest who are also the Plaintiffs in the Greek action sought to restrain the vessel from sailing. However, their initial arrest in the Greek Courts was set aside allowing the vessel to come to Cyprus. In Cyprus, the vessel was arrested by the Cypriot Admiralty Court on the back of an action in rem against the vessel and on an ex parte application filed by Grandest in which the order for arrest was issued. The parties to both actions are the same, Grandest and Rexel. The Cypriot action was based on the Regulation and was filed in aid of the Greek Proceedings.

Rexel subsequently filed an application to release the vessel claiming that the Cypriot Courts have no jurisdiction and that exclusive international jurisdiction lay with the Greek Courts. They also claimed that in any event the Regulation did not apply to Admiralty actions in Cyprus citing Cypriot case law² where proceedings in aid of other foreign proceedings in the Admiralty Courts had not been allowed.

The Judgment

The judge, Ms Psara J, dismissed the application finding that the Regulation applied and the proceedings in the Cyprus Admiralty Courts in aid of proceedings in other Member States were indeed possible and in this case the circumstances justified the arrest. The vessel remains under arrest pending appeal.

Legal issues

The Court found that article 35 of the Regulation allows for the international jurisdiction in a dispute to be in one member state in this case Greece, and for interim or temporary relief to be granted by the Court of another member state, in this case Cyprus.

¹ This was the first detailed judgement on the issues discussed above but the same matter was dealt with in “**The Tour 2**” Admiralty Case Number 2/18 dated 25.5.18 where we also acted for the arresting party.

² Nationwide Shipping v The Ship Athena (2012) 1C CLR 2343.

The Court in this instance found this case not applicable as the Regulation was not in any way invoked or cited.



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Arrests prerequisite and Cypriot Court Jurisdiction

The Court accepted that this action certainly gave rise to serious legal issues many of which were a matter of Greek law and was before the Cypriot Court as a matter of evidence and was to be dealt with at a later stage. At this stage it was only important in showing that there was a serious matter to be tried.

It also found that the vessel being in Cypriot territorial waters was in and of itself enough to give the Cypriot Courts jurisdiction to arrest it. In any event, the arrest was in aid of the Greek proceedings and therefore article 35 of the Regulation applied overriding the other provisions of the Regulation.

The judge also found that the sequence of events and actions by Grandest in perusing the vessel was not an abuse of process³. In any event, despite the arrest order issued by the Greek Courts and then set aside, this was not in any way a bar to a second arrest order being issued in Cyprus where regardless of a previous arrest, a second arrest of the same vessel could have been issued.⁴

The judgment further concludes that under the Cypriot Admiralty Rules of Procedure the only way an arrest order could be secured is on the back of an action in rem against the vessel.

Additionally, the judge also ruled that at the time an order for arrest is to be considered, who the beneficial owners of a company are not an issue which forms part of the required prerequisites for issuing an arrest order.

Comment & Take Away

This is a first instance decision, and it is already subject to an appeal. However, even though the Court's findings summarised above are significant, it is perhaps of significant importance that the Court has confirmed the effect of EU Regulation 1215/ 2012 and in particular article 35 which allows for concurrent proceedings to take place where one court of a member state becomes involved in proceedings in aid of proceedings filed in another member state.

This is the second time that the Supreme Court have accepted that the Cypriot Admiralty Court applies the Regulation which gives jurisdiction to arrest a vessel in aid of proceedings in other member state.

Despite arguments by counsel for the Vessel that The Tour 2 decision was wrong and that previous case law of the Supreme Court acting on appeal from the Admiralty Court denying the right to arrest a vessel in aid of proceedings in another jurisdiction was correct, it has confirmed that Cyprus Courts can assist proceedings in other member states by arresting a vessel in Cyprus for that purpose.

The court also clarified that under our procedure rules the only method of securing an order of this type is by filing an in rem action against a vessel allowing for the arrest order to be issued.

Following the logic of The Tour 2, this decision confirms that the presence of a vessel within the jurisdiction of the Cypriot Admiralty Court is enough for it to assume jurisdiction and act where appropriate, in aid of the proceedings in on another Member State ceasing international jurisdiction.

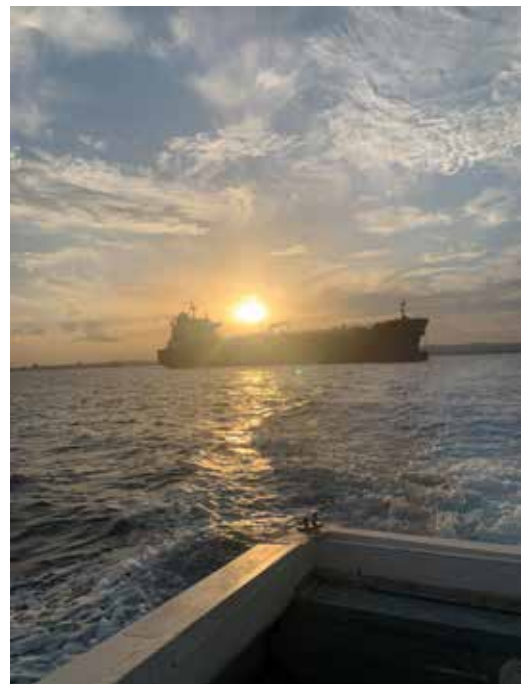
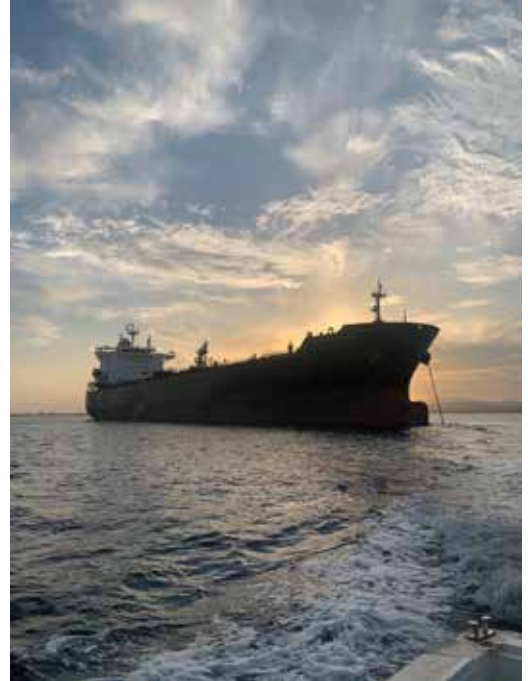
³ C-391/95 Van Uden (1998) E.C.R. I-7091 sited

⁴ C-581/20 Skarb v Toto 6.10.21 sited

⁵ See 1 ante



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