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Court applies international collision regulations and considers subrogation

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The admiralty jurisdiction of the Supreme Court has delivered its judgment in *Galatis v Gypsy Queen*.**(1)**

Facts

A marine accident occurred between a speedboat and a sailing boat. The speedboat had a westerly direction and its engine was in the neutral position, while the persons on board were photographing a nearby oil platform. The sailing boat was sailing in a southern direction, with open sails and a speed of around 7 knots. It was highly disputed whether the sailing boat was simultaneously using its engine.

Decision

Based on the evidence presented, the court decided that the sailing boat was sailing with a speed of 7 knots and was using its engine. The collision occurred when the bow of the sailing boat rammed the starboard side (right-hand side) of the speedboat. In light of the finding that the sailing boat was using its engine at the relevant time, the accident was treated as an accident between powerboats.

In reaching its conclusion, the court considered the evidence and the Rules of the Convention on the International Regulations for Preventing Collisions at Sea 1972.

The court concluded that both the vessels were at fault. It held that the sailing boat failed to keep proper look-out in order to assess the dangers and the risks of a collision in an area where there were other vessels. The court held that the speedboat also failed to keep proper look-out while it was in a position that obstructed the sailing of the sailing boat without taking any measures to make its position known or to avoid the risk of collision. The court concluded that under the circumstances both vessels were to blame, and the main cause of

the accident was the lack of look-out and failure to consider the existence of other vessels. Accordingly, the court decided that each vessel bore 50% of the blame.

Subrogation of rights

The legal proceedings were initiated by both the owner of the speedboat and its insurers, hence the court deemed it appropriate to consider the law on subrogation.

It was further noted that Rules 30 and 31 of the Cyprus Admiralty Jurisdiction Order 1893 provide that:

> *30. The Court or Judge may at any stage of the proceedings and either with or without an application for that purpose being made by any party or person and upon such terms as shall seem just, order that the name or names of any party or parties be struck out or that the names of any person or persons who are interested in the action or who ought to have been joined either as Plaintiffs or Defendants or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the action be added.*
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> *31. For the purposes of the last preceding rule an underwriter or insurer shall be deemed to be a person interested in the action.*

In the case of *Chellaram & Sons (London) Ltd v Overtania Shipping Co Ltd*,**(2)** the judge concluded that:

> *If once the claim is paid, then, as a matter of equity, the rights to recover against third persons pass from the assured to the insurer, although the legal right to compensation remains in the assured, and although actions at law must be brought in the name of the assured and not of the insurer (see London Assurance Co. v. Sainsbury and King v. Victoria Insurance Co).*

Taking into consideration the abovementioned principles, the judge concluded on the matter of subrogation as follows:

> *It is observed that while initially there was correct guidance from English case law, at the end the principles as to who has the right to initiate the action was not applied and instead there was a generic approach that "the initial commencement of the action in the name of the insurer and the insured... is the correct procedure". Respectfully, I cannot agree with this approach... According to Rule 31 for the purposes of Rule 30 the insurer is deemed to be a person interested in the action. In my opinion, Rules 30 and 31 do not change in any event the correct procedure that was established for centuries by English case law and the legal profession and which was initially correctly explained in Cyprus case law (see Chellaram & Sons & another and Photo Photiades & Co).*
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> *In the present case as already mentioned, the action was also filed in the name of the insurance company (Plaintiff 2) which demands "on the basis of subrogation" the rights of Plaintiff 1. In my opinion, and for the reasons explained above, this is not correct. This could only occur if there was a valid assigning of the cause of action by Plaintiff 1.*

It should be noted that in the case of *PT Assuransi Navigation Ltd v Seascope Navigation*

Ltd,**(3)** Judge Chadjihambis held that: "The initial commencement of the action in the name of the insurer and the insured, as happened in the case of Jordan and the case of Standard Fruit, is in my opinion, the most correct procedure."

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Endnotes

(1) Admiralty Action 7/2016, dated 10 September 2018.

(2) (1982) 1 CLR 699, page 710.

(3) (1999) 1 CLR 1378.