All England Official Transcripts (1997-2008)

Domansa and others v Derin Shipping and Trading Co Inc

Conflict of laws - Jurisdiction - Challenge to jurisdiction - Defendant vessel total loss with death of seamen - Seamen's widows bringing claim in tort and contract - Jurisdiction clause referring to Cyprus - Whether defendant having place of business in England - Whether tort claims covered by jurisdiction clause - Whether England more appropriate forum.

(Transcript)

QUEEN'S BENCH DIVISION (COMMERCIAL COURT)

DAVID MACKIE QC (SITTING AS A DEPUTY JUDGE OF THE QUEEN'S BENCH DIVISION)

2 NOVEMBER 2000

2 NOVEMBER 2000

R Lord for the Claimants

J Gruder QC and C Smith for the Defendant

Clyde & Co; Bentleys, Stokes & Lowless

DAVID MACKIE QC

[1] By this application the Defendant Derin Shipping and Trading Company Incorporated ("Derin") seeks to set aside service of the claim form alternatively a stay of this action on the grounds that:-

(a) Derin is neither domiciled in England nor has it a place of business here;

(b) the Claimants' claims are in whole or in part subject to the exclusive jurisdiction of the Cyprus courts; and

(c) England is not an appropriate or convenient forum and Cyprus would be clearly more appropriate.

[2] The action is brought by the widows and other dependants of three Polish seamen killed in January 2000, while serving on Derin's ship "Sletreal" ("the vessel") at that time in Cuban waters. The vessel, an oil tanker flying the Liberian flag, was a total loss. The action was brought on 18 February and on that day Rix J granted a freezing order in the sum of US $1,142,750.50 securing, in effect, the hull insurance proceeds. I first summarise the more significant facts as most of the issues turn on these but my decision is based on all the witness statements and their exhibits.

The Facts

[3] Derin was incorporated in Liberia in order to purchase the vessel which had previously belonged to another company owned by a Senator Ladoja. Earlier management by a Nigerian company Kalander and through Nigeria had proved unsatisfactory. The work of incorporation was conducted through English solicitors.

[4] On 11 September 1998 Derin appointed Ship Management and Transport Limited of Limassol ("SMT") as ship manager on the BIMCO form as varied by "additional clauses to the management agreement" contained in a side letter. This required chartering to be done in close consultation and agreement with Derin and their brokers, for there to be consultation with the owner before the manager spent more than US $15,000 on expenses and major repair work, and for the manager to provide a quarterly report of the vessel's performance and any other reports the owner might reasonably require. The form identifies Derin as the owner at its address in Monrovia and provides for notices to be given to "c/o Broad Ventures Limited, 235-237 Finchley Road, London, NW3 6HB" (with London telephone and fax numbers). This part of the form also referred back to the additional clauses which indicate that notices were also to be sent to Kalander Nigeria Limited at an address in Lagos. The vessel's insurance was arranged in London but by Derin's managers SMT in Cyprus.

[5] The three Polish seamen, upon whom the Claimants depended, lost their lives while serving under contracts of employment ("the Contracts of Employment") with SMT as agents of Derin. The printed standard forms of employment contracts were for five months, to be extended or reduced, for monthly salary a small proportion of which was payable on board and on other usual terms. Two particularly important provisions are Clauses 12 and a Cyprus law and jurisdiction clause 26, which I will set out in full later.

[6] The address of Derin is given in Lloyd's List of ship owners as 235-237 Finchley Road with the same telephone and fax numbers but with no mention of Broad Ventures. Derin has headed notepaper giving the London address but with the prefix "c/o" (and without mention of Broad Ventures). Derin has used the services of Broad Ventures Limited an English company which carries on business at 235-237 Finchley Road. Both companies have as a director and ultimate beneficial owner Senator Ladoja and his interests. Senator Ladoja has a property in London which he gives as his address in Broad Ventures documents registered at Companies House. He visits London about ten times a year for periods ranging from a day or two to a fortnight.

[7] Derin has three bank accounts, all in London. A few details of the operation of these accounts emerged in the application to Rix J.

[8] The picture is filled out a little by the work of the Claimants' solicitors. When one of the solicitors telephoned the Finchley Road number in February the telephone was answered in one name, not Derin. When enquiry was made it was confirmed that this was the office of Derin. The solicitors have also established that the source of the entry in Lloyd's Register was a letter written by Derin in October 1998 on its notepaper and signed by Senator Ladoja himself. It is surprising that Derin did not at first produce a copy of this letter rather than believe itself unable to assist on the issue. The Claimants' evidence, through Mr Chaimovic their solicitor, reports on their investigations but obviously can tell us little about Derin's activities.

[9] Derin's evidence is set out mainly in the witness statements of Mr Sewell, a partner in its solicitors, who provides information supplied to him by Senator Ladoja. He explains how Derin came to enter into the agreement with SMT and emphasises SMT's broad management functions and how SMT dealt without reference to England. He says that the managers would contact Derin only in the case of a major executive decision. According to what Senator Ladoja has told Mr Sewell, SMT in practice contacted Senator Ladoja in Nigeria or wherever else he happened to be at the time. Senator Ladoja and a Mrs Boyd of Broad Ventures have informed Mr Sewell that the Finchley Road office is occupied by Broad Ventures under a five year lease, Broad Ventures is a service company, one of whose clients is Derin. It is said that Derin has used

Broad Ventures as a correspondence address because of the extreme difficulty in maintaining efficient communications with Lagos. The occasional use of the London address is said to be left over from the days of management from Nigeria, the current use of the London address for correspondence being minimal. It is said that in many months no correspondence was received in London at all and what there is is limited to newsletters from the vessels P&I club, monthly statements from SMT and occasional correspondence about incorporation passed on by English solicitors. Apparently telephone calls for Derin are very rare. It is said that the only time there is any management of the Defendant from the UK is when Senator Ladoja happens to be visiting. The bank accounts, since the vessel became managed under SMT agreement, are dormant but not entirely so "since Senator Ladoja was anxious that the Defendant should maintain some banking facilities and has therefore used these accounts for his own purpose - paying his own monies into the account (effectively by way of loan to the Defendant) and thereafter paying personal expenses from the accounts (effectively in discharge of the loan) and vice versa". This is said to explain movements on the bank account although the Senator's evidence when producing the accounts in March said nothing about this.

[10] This application was made in April and, following an application to the court, Derin had until 19 September to complete service of this evidence. Derin has able and experienced solicitors and counsel. Yet no correspondence, accounts, bank statements or other documents have been produced by Derin on the issue of where that company does its business. I appreciate that this business would not have generated rooms full of paper but there would have been some, at the very least that dealing with the activities and correspondence described in the evidence. None of the material disclosed shows Derin at work other than from England or under the SMT Agreement. Finally it is stressed that Derin's agreement with SMT is subject to English law with London arbitration but it seems to me that nothing turns on that.

The Claims

[11] The brief details of claim endorsed on the Claim Form seek for each Claimant US $60,000 under clause 12 of the Contract of Employment and damages of between US $174,000 and $232,000 for negligence and/or for breaches of the contracts of employment in failing to take reasonable care for the safety of the employee. These are brought for the Estate under the 1934 Act and for the dependants under the Fatal Accidents Act "or any other applicable legislation". The Particulars of Claim (para 4 and the Prayer) appear to rely on negligence but in tort alone and in addition seek US $60,000 under Clause 12.

[12] I now turn to each legal issue taking the first two together. Counsel confirmed when I asked them that I should approach the construction and effect of the Contract of Employment on the assumption that Cyprus law was the same as in English law. It is still unclear what law will govern the tort claims. Mr Gruder has suggested what other laws may govern but Derin's researches have not yet indicated what if any effect this might have on the shape of the claims. I therefore have to proceed on the assumption that the tort claims will take much the same form as the claims in the pleadings.

Does the Claimant have a place of business in England within s. 691 to 695 Companies Act 1985 and is the Defendant domiciled in this country for the purposes of s. 42 of the 1982 Act?

[13] The question whether an overseas company has a place of business which is established in Great Britain is one of fact. Mr Gruder QC for the Defendant submits, as I accept, that the burden is on the Claimants. He says that they must show that part of the Defendants' business is being carried on within England. In this case he says that the Defendant had neither a fixed place of business of its own from which it carried on business nor did any of its agents, most obviously Broad Ventures in Finchley, have power to commit it by contract. He says that the Defendants' business was carried out in Cyprus or Nigeria.

[14] Derin relies on *Adams v Cape Industries plc and another* [1990] Ch 433, [1991] 1 All ER 929, and at pp

524-531 of the former report, where the Court of Appeal, in the context of examining the meaning of presence within a foreign jurisdiction analysed, as had Scott J at first instance, the many authorities dealing with the presence of an overseas corporation in England. The Court of Appeal derived general principles which are summarised in an observation at page 529 to which Mr Gruder attaches emphasis.

> "It is a striking fact that with one possible exception . . . in none of the many reported English decisions cited to us has it been held that a corporation has been resident in this country unless either (a) it has a fixed place of business of its own in the country from which it has carried on business with servants or agents or (b) has had a representative here who has the power to bind it by contract and has carried on business at or from a fixed place of business in this country."

In *Cape* it was also assumed that the corporation's fixed place of business would be generally evidenced by ownership lease or (at 524) licence of the premises.

[15] Mr Lord for the Claimants relies upon the summary in *Halsbury's Statutes*, the test being if:

> "it carries on part of its business activities within the jurisdiction it is not necessary for those activities to be either a substantial part of or more than incidental to the main object of the company."

This summary is taken almost verbatim from *South India Shipping Corp Ltd v Export-Import Bank of Korea* [1985] 2 All ER 219, [1985] 1 WLR 585, at p 586 and 589-591 of the latter report, a case considered in *Cape* from which it is clear that the "business" need not be the main trading activity of the company, the issue being the broader one whether the company is "here" at a defined place.

[16] The issue remains however one of fact as many of the cases emphasise. Each case is likely to involve "a nice examination of all the facts and inferences must be drawn from a number of facts suggested together and contrasted": *La Bourgoyne* [1899] p 1, 18 (as reported in *Cape*). Both counsel point to cases where the facts or some of them may have similarities to this case. These are of limited help because the facts are generally distinguishable, (see for example *The "Theodohos"* [1977] 2 Lloyds Rep 428, at 431 on the significance of "care of"). The cases need to be looked at in the modern commercial context where for example the constant physical presence of a "servant" is not an essential requirement for the conduct of a business, and in the light of the way in which nowadays a company in a particular business sector may be expected to operate. A one ship company may in 2000 conduct a business which has few if any employees. That business may be limited in extent and involve only occasional rather than constant activity. Evaluation of what that company does in a particular jurisdiction and the significance of its activity must reflect this.

[17] I bear in mind that Derin has no leasehold or freehold premises in England and that it has no employees here. There is no evidence of either Broad Ventures or any other agent in England contracting on Derin's behalf so I am not concerned with the extent of a representative's authority an issue to which the cases devote attention. Yet the company's only notepaper, and only disclosed letter, show London as its address. Derin has caused Lloyd's Register to give a London address. It is true that Derin has only unintentionally supplied an address without the prefix "c/o". But this expression, unless used by reference to another company, seems to have no meaning beyond perhaps seeking to suggest a merely transitory presence at its address. Yet Derin does not suggest it uses any other address. The SMT agreement requires notice to be given to London albeit c/o Broad Ventures. An employee confirms on the telephone that this is the office of Derin. These all suggest a fixed place to me and the formality of a lease is, in the real world, no requirement when Derin's ultimate owner allows it to use the address of one of his other wholly owned companies. The company operates bank accounts but only in this country and many of the details are not disclosed. Even if one accepts that the company's bank accounts have been used not to operate the vessel but for the purpose of receiving loans from Senator Ladoja and repaying them by meeting his personal expenses this is

business, even if not trading, activity. The fact that Derin has delegated management of the vessel to SMT in Cyprus is not as I see it an indication that it has no place of business here. The Agreement appears to have been entered into from London, some powers, perhaps more than usual, are retained by the owners and of course what is done in Cyprus is the delegated management of the vessel, not the operation of the company. There is no sign of what I described at the hearing as any external manifestation of the company doing any business other than from London. The overall picture I have is of Derin being run from London, on the instructions of the Senator when in London or from wherever he happens to be. The reasons of convenience said to account for London being used as a postal address, particularly the difficulty of communicating with Nigeria, are also powerful reasons why Derin would establish a business here. The business is on a small scale and needs no more attention than any one ship company with a management agreement in place. But that attention is given from London. If the undisclosed material available to Derin suggested otherwise it would have been disclosed. I accordingly find that Derin did have a place of business in the jurisdiction.

Domicile

[18] Section 42(3) of the 1982 Act provides:

> "a corporation or association has its seat in the United Kingdom if and only if
>
> (a) it was incorporated or formed under the law of a part of the United Kingdom and has its registered office or some other official address in the United Kingdom; or
>
> (b) its central management and control is exercised in the United Kingdom."

[19] Mr Lord's initial reliance on "or some other official address" was abandoned because these words only apply to companies incorporated in the United Kingdom. A company may have more than one seat for this purpose. His case rests on showing that Derin's central management and control is exercised in the United Kingdom. Mr Gruder submits that the central management and control will be exercised where the company's real business is carried out. He adopts, and I find helpful, the test in *DeBeers Consolidated Mines Ltd v Howe* [1906] AC 455. The court needs to consider where the Defendant "keeps house and does its real business".

[20] The business of this company is in owning and operating a vessel. I have found that that business was established in England after looking at what it does here. Apart from the suggestion that the domicile of the company should move to Cyprus because management of the ship is conducted from there by SMT, the only other country put forward is Nigeria. No one suggests that Derin's central management and control is exercised in Monrovia. There is no evidence, beyond unsupported assertion that decisions are taken in Nigeria or where the Senator happens to be, that Derin does its real business other than in London. Cyprus is where the vessel, not the company is managed. Having regard to the facts I have already considered I find that Derin has a domicile in London.

Do the claims in this action fall within clause 26 of the Contracts of Employment?

[21] The contractual claims for $60,000 are made under Clause 12. As this provision is not a clear one I set it out in full. Clause 12 "Insurance against accident at work."

> "12. The Employer has arranged insurance to cover his liabilities that may arise from the Seaman's contract due to death, missing at sea or permanent disability caused by accident at work during the period of employment.
>
> Employer shall not be liable to pay any damages, including sick leave and disability compensation, if the Seaman was

> under influence of alcohol or drugs when accident took place.
>
> The liability of the Employer is limited to the amounts insured as hereafter.
>
> The insurance from first paragraph of this Item shall be valid as from the date of commencement of this Contract until the date of signing off, or in case of direct repatriation until arrival at domicile if the repatriation has followed immediately after the termination of employment.
>
> The amount of insurance shall be
>
> a. in the case of death or missing at sea: US$60,000 excluding death caused by illnesses which were pre-existing the contract of employment (see also 9d); also excluding benefit for death and/or permanent disability caused by wilful misconduct of the Seaman and/or self-inflicted causes ie suicide.
>
> b. in the case of 100% permanent disability, US$80,000 for officers and US$60,000 for ratings.
>
> The degree of permanent disability as established by the company's doctor defines the pro rata amount paid out in accordance with the scales of the company.
>
> 13. All claims against the Employer and/or insurance company as per Item 12 must be governed by the conditions of the insurance policy and made in writing to the Employer in English."

[22] Clause 26 "Final Provisions" contains the proper law and jurisdiction provisions:

> "Any disputes whatever nature that may arise in relation to terms of Employment and the Employment Contract shall be resolved between the Seaman and the Employer directly. Should the parties not reach an agreement, Cyprus should apply as place of jurisdiction and the case should be brought before the competent law court in Cyprus under Cypriot Law."

[23] Mr Lord contends that the claims for damages arising from death are not within Clause 26 which covers, he contends, only matters capable of being resolved "between the Seaman and the Employer directly". So he submits that even the Clause 12, relating to something incapable of being resolved by seaman with employer, is outside Clause 26. He also says that, if that be wrong, the claims in tort are not covered by the words "arise in relation to the employment contract" as opposed to the wider clauses found in three cases cited by Mr Gruder.

[24] Mr Gruder contends that the Claimant should be held to the Claim Form, rather than the Particulars of Claim (not a submission that appeals to me) but whether that be done or not he submits that the claims in tort could equally be framed as claims for breach of implied terms of the contracts of employment. Further the contract claim (even if limited to Clause 12) cannot sensibly be segregated from those in tort. As a result they fall within Clause 26 as a matter of construction consistent with the strong bias in favour of one stop adjudication to be found in the *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA (The "Playa Larga" and "Marble Islands")* [1983] 2 Lloyds Rep 171, 182-184, *Continental Bank NA v Aeakos Compania Naviera SA and others* [1994] 2 All ER 540, [1994] 1 Lloyd's Rep 505 and *Aggeliki Charis Compania Maritima SA v Pagnan SpA (The "Angelic Grace")* [1995] 1 Lloyd's Rep 87.

[25] In the *Playa Larga* one of the questions was whether a claim in tort for conversion in respect of the Playa Laga cargo of sugar was within an arbitration clause covering "any controversy that might arise from this contract". The Court of Appeal approved the dictum of Mustill J addressed to the expression "dispute arising out of this contract". He said that the claimant must show either that the resolution of a contractual

issue is necessary for a decision on the tortious claim or that the contractual and tortious disputes are so closely knitted together on the facts that an agreement to arbitrate on one can properly be construed as covering the other. In *Continental Bank* the issue was whether a claim under the Greek Civil Code, characterised as brought in tort, fell with the contractual claims within a clause by which a borrower "hereby irrevocably submits to the jurisdiction of the English courts . . ." The Court of Appeal concluded that it did adopting the reasoning in The *Playa Laga*. In the *Angelic Grace* the Court of Appeal held that claims in tort arising from a collision could not be segregated from claims and cross claims under the charter-party and fell within a arbitration clause covering "all disputes from time to time arising out of this contract . . ." In the *Angelic Grace* it was clear that the tort claims were covered whether they were claims which overlapped with those in contract or were true alternatives, but presumably on the basis that all such claims were, as a matter of construction within the clause. All these well known cases emphasise that in construing these clauses the court bears in mind that a reasonable businessman versed in the business of shipping would be expected, particularly where words, such as "arise out of" have been chosen, to favour one forum of adjudication of all issues arising out of a particular dispute. These cases show that tort claims, as well as those in contract, may be covered by a reasonably broad arbitration clause. This does not however create a rule of law that because an arbitration clause covers contractual claims, it necessarily also embraces parallel claims that might be brought in tort. The dictum of Mustill J does not it seems to me apply until one has a clause potentially broad enough to cover tortious claims. The exercise remains one of construction.

[26] In my judgment the tort claims are not covered by this clause because:

(a) I do not read "any disputes whatever nature that may arise in relation to terms of employment and the employment contract" as covering claims to be brought in tort. I include within this some recognition of Mr Lord's submission that "arise in relation to" the contract or terms may be narrower than "arise out of", for example, employment generally. The clause addresses a wide range of disputes but limited to those "in relation to" contractual claims. Even if the phase "shall be resolved between the Seaman and the Employer directly" is not mandatory it suggests that the clause is concerned with disputes capable of discussion between the parties while the employment continues.

(b) The assumed factual matrix in which two businessmen experienced in shipping decide to contract does not necessarily carry over to an Employer and a Seaman particularly when we are looking at claims that might arise for the Seaman's family if he is killed in an accident.

(c) I would expect a submission to the exclusive jurisdiction of Cyprus law and the Cyprus court of all claims, contractual, tortious or otherwise, arising out of personal injury and death to be clearly spelled out, particularly in a printed standard form agreement.

(d) By far the largest claims in this action are those under the Fatal Accidents Act 1976. While these claims are made through the claimants they are not for the benefit of the Estate but for the Seamen's dependants. This cause of action goes beyond that which the deceased would have had if they had survived and is based on a different principle. The damages when recovered form no part of the deceased's Estate and are not measured by the loss his Estate has sustained by his death. While no authority was cited to me I doubt that this right of action is one a seaman could exclude or direct to Cyprus even if he wanted to. If he could direct all these claims to Cyprus I would again expect any clause to provide for this clearly if not explicitly.

[27] Despite the difficulty presented by the phrase requiring discussion between the parties I conclude, amidst conflicting indications, that the claims under Clause 12 are governed by Clause 26. If the parties had intended the surprising result that Clause 12 was to be subject to some law or jurisdiction different to that governing the other terms they would have said so. It is unclear what rights if any Clause 12 actually gives. Mr Lord sees it as a contractual right to an extra US $60,000 for each Claimant. Mr Gruder sees it as a clause that gives additional rights to the Claimants but only when liability is established. I agree that liability

seems a precondition for any benefit under the clause. My own first impression was that the clause merely declared the existence of insurance benefits if liability was established and purported to give the Seaman a right to claim them direct from insurers (clause 12-13) rather than create separate contractual rights. As both counsel are confident that my first impression was wrong, I say no more about that.

[28] I therefore conclude that claims in tort do not arise "in relation to the terms of employment and the employment contract" but that those brought under Clause 12 do.

Forum non-conveniens

[29] The court does of course have power to order a stay of proceedings on the basis that England is an inappropriate forum if the Defendant shows there to be another court with competent jurisdiction which is clearly and distinctly more appropriate than England for the trial of the action, and it is not unjust that the claimant be deprived of the right to trial in England.

[30] The competing considerations identified by the parties are as follows:

(a) Connection with the jurisdiction. The Claimants see England as Derin's domicile and contend that Derin has no connection with Cyprus apart from its English law contract with SMT and its very recently expressed willingness, for the purpose of this action, to submit to the jurisdiction of Cyprus courts. Derin points out that Cyprus law will determine the meaning and effect of the Contracts of Employment in particular Clause 12.

(b) Witnesses. The Claimants say these are likely to be the surviving crew, at sea and the Claimants. Derin suggests the vessel's managers in Cyprus and lists a number of individuals without indicating what useful evidence they might give. There may be evidence from the Claimants about title to sue and dependency coming from Poland although Derin has offered to dispense with some or all of this.

(c) Documents. Derin say the documentary evidence will be in Cyprus apart from that affecting title to sue, which they say is a non-issue. Documents within England seem unlikely to be relevant to the real issues.

(d) Language. Polish witnesses will need translators in England or Cyprus. Otherwise predominance of the Greek language and the need for translation of documents in the Cyprus courts will be a disadvantage but not a great one.

(e) The tort claims will not be governed by English law but, it is said Cuban, Liberian or perhaps Cypriot law. It is as yet not clear which.

(f) No limitation period has expired in Cyprus or in England.

[31] We are of course dealing with a tragic explosion on a vessel while in Cuban waters caused by factors of which the parties seem in broad terms to be aware. Whatever law applies to the tort claims the court will be travelling down what in this sort of case is likely to be a well travelled path. The contract claim is a minor part of the whole. The Claimants are from Poland and Derin's place of business has been discussed above. Factors of convenience and expense are more or less in balance. Trial of this case in England seems to me in the interests of all the parties and the ends of justice. None of the features which have been identified either individually or taken as a whole begin to convince me that Cyprus is clearly and distinctly more appropriate than England for the trial of the action. There seems to me no good reason to shift the case to

Cyprus.

[32] If I had taken another view I would then have had to consider whether or not it would be unjust for the Claimants to be deprived of the right to trial in England. At that point the central issue would have been the question of limitation. Derin make no secret of the fact that their reason for challenging the jurisdiction is, at the least, coloured by the different limitation regime in Cyprus - see para 3 of Mr Smith's Skeleton submitted to the court when Derin sought an extension of time. The evidence of Mr Chaimovic (3 at paras 12-15) is that the limitation regime in Cyprus is based on the 1894 English Merchant Shipping Act and unlike the vast majority of maritime trading nations Cyprus applies neither the 1957 not the 1976 Limitation Conventions. The result is, it seems, a relevant limitation fund for the vessel under Cyprus rules of £71,249.17 to be compared with £786,000 under the 1957 Convention and some £2.1 million under that of 1976. When considering whether or not the Claimants would be deprived of a legitimate juridical advantage if the case went to Cyprus the issue for the court to decide is not whether English law is better than that of Cyprus but whether substantial justice will be done in Cyprus (the *Herceg Novi (owners) v Ming Galaxy (owners)* [1998] 4 All ER 238, [1998] 2 Lloyd's Rep 454) - is the court satisfied that substantial justice will be done in the appropriate forum overseas. In the *Herceg Novi* the Court of Appeal concluded that it was impossible to say that substantial justice was not available in Singapore when it was applying a convention, that of 1957, for which there remains a significant body of agreement among nations. The conclusion of the Court of Appeal differs from views expressed in earlier cases by amongst others Clarke J and Rix J, as they then were, and Timothy Walker J. Mr Lord's argument as I understand it is that whatever view one might take of the contrast between the Conventions of 1957 and 1976 the Act of 1894 cannot be said to attract the support of any group of nations given the low limit and the fact that almost no other jurisdiction adheres to its provisions. That submission seemed to me to have force but it is not a question I pursue further because it is not necessary for my decision. Views from me would assist neither the parties nor the development of the law on the point.

[33] As part of the overall exercise there is the question of whether or not the court should grant a stay of the claims under Clause 12 of the Employment Agreement. The court has a discretion not to give effect to the clause. This discretion should only be exercised when in effect, the Claimants establish that there is a strong cause for doing so having regard to all the circumstances of the case (see *The Pioneer Container, KH Enterprise (cargo owners) v Pioneer Container (owners)* [1994] 2 AC 324, [1994] 2 All ER 250 and the factors listed in *Aratra Potato Co Ltd and another v Egyptian Navigation Co (The "El Amria")* [1981] 2 Lloyds Rep 119 at 123). This is a situation where, as I have found, the Claimants have jurisdiction over Derin, the great bulk of their claims are not within Clause 26 and there is in my judgment no reason to grant a stay in England so that those claims proceed in Cyprus. In view of this and in all the circumstances of the case, I conclude that there is a strong cause for allowing the Clause 12 claim to proceed in England along with the rest of the action.

[34] It follows that the application will be dismissed. I will deal with costs and case management directions.

Application dismissed.