

D. GILFOYLE SHIPPING SERVICES LIMITED v. BINOSI PTY LIMITED

A decision of Barker J. of the High Court of New Zealand, 19 December 1983. The judgment of Mr Justice Barker was given orally.

This action arose from the financial difficulties suffered by Binosi Pty Ltd in late 1983. The plaintiff was claiming the sum of NZD 83,942 for work as a ship's agent performed for the defendant company in respect of two vessels, namely the "Cape Superior" and the "Popi P". The plaintiff had obtained an *ex parte* injunction seizing the bunkers on board the latter vessel which was berthed at Timaru. The vessel was due to sail to three Australian ports for the defendant company which was the charterer of the two vessels.

It appears from the judgment of Barker J. that the vessel had on board 311 tonnes of heavy fuel oil and 43 tonnes of marine diesel oil, the current cost of which was said to be about NZD128,820. The plaintiff sought the removal of the bunkers from the vessel prior to its departure or alternatively security from the owner.

The plaintiff relied on the decision of the House of Lords in "*The Span Terza*"¹ which had overruled a decision of the English Court of Appeal. The House of Lords had held that under the terms of the charterparty in question the fuel oil in the chartered vessel belonged to the charterer after the charterparty had been cancelled by the charterers.

The owners were represented at the hearing and submitted that if the plaintiff was granted its Mareva injunction it would interfere with the rights of the owner and also the crew who would be forced to spend further time in Timaru. Reliance was placed on the English Court of Appeal decision in *Galaxia Maritime S.A. v. Mineralimport-export ("The Eleftherios")*.² The Court of Appeal declined to permit the injunction to continue on the basis that it would interfere substantially with the owner's freedom of action. Barker J. found the reasoning of the English Court of Appeal to be compelling and held that the granting of the Mareva injunction in this case would be an intolerable burden on the owners.

¹ A decision of the House of Lords of 8 December 1983 — the only report available to Barker J. being in the *Times* on 13 December 1983.

² [1982] 1 All E.R. 796.