

Litigation - Cyprus

Court considers application for third-party intervention in admiralty action

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A recent judgment⁽¹⁾ arising from one of a series of claims being dealt with by the Admiralty Court against the ship AVANTIS II gives further insight into the principles that the court will apply when considering applications for intervention by a third party in admiralty actions.

Facts

The applicant, Delaford Trading Limited, was engaged in a separate action (20/12) in the Admiralty Court against the same ship for the provision of bunkers and lubricants. On September 6 2012 it filed an application seeking leave of the court to be added as a defendant (or alternatively to be allowed to intervene) in an action (8/2012) that had been instituted against the ship by the Cooperative Bank of Evoias, in order to dispute the bank's claim against the ship, deriving from loans that the bank claimed to have provided to the ship.

This application was based on Rules 30, 35, 203 to 212 and 237 of the Admiralty Jurisdiction Order 1893. The applicant claimed that its intervention was justified because the claim in its action (20/12) was an *in rem* claim, and therefore it had an interest in the asset that constituted the substance of the bank's claim (ie, the proceeds from the sale of the ship).

The bank filed an objection to the application.

Applicable rules

Rule 30 of the order reads as follows:

"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."

Rule 35 of the order states:

"The parties named in the writ of summons, and every person interested in the property sought to be affected by the action who desires to dispute the Plaintiff's claim shall appear before the Court or Judge either personally or by advocate at the time named in that behalf in the writ of summons."

Having recently considered the same matter in *Kalia*,⁽²⁾ the Admiralty Court observed that in order for a party to be added as a defendant or to be allowed to intervene in an admiralty action, the applicant must fulfil the three conditions set out in Rule 30:

- The party concerned must have an interest;
- It should have been added as a party since the action was first filed by the claimant; and
- Its existence as a party should be necessary in order to finally and completely dispose of the matter.

Decision

The court noted that the matter of granting leave to an interested party to intervene is governed by Rules 30 and 35.

Following the reasoning adopted in *Kalia*, Justice Erotokritou first examined whether the applicant satisfied the first condition (ie, having an interest). In order to persuade the court that an interest exists, the applicant must first prove that the interest is affected directly, either by operation of law or procedurally.⁽³⁾ A remote or indirect effect will not suffice.

Having read the applicant's affidavit, the court concluded that the allegations were not sufficiently clear or precise to establish a *prima facie* interest. To prove an interest (as in any other allegation submitted to the court), clear evidence must be produced in the form of an affidavit that establishes such interest.⁽⁴⁾

Based on the evidence produced by the applicant, the court found that there was insufficient proof to support or establish the existence of an interest. The application was therefore rejected.

Referring to the other two conditions set out in Rule 30, the court noted that:

- the second condition is directly relevant to the facts of each case and consequently can be considered only on a case-by-case basis; and
- with regard to the third condition, Rule 30 links the necessity of the interested party to be added or to be allowed to intervene with the necessity for the full and final trial of the matters in dispute. The court will not allow the addition of, or intervention by, a new party where the applicant raises a new cause of action or where the addition of a new party is unnecessary for the proper resolution of the dispute, and indeed might complicate matters.

Comment

In an application for intervention under Rule 30, it is of utmost importance to identify the applicant's interest and provide clear evidence of its existence.

Simply identifying the legal basis of the application will allow a case to proceed as far as the courtroom, but no farther. In order to succeed, the application must be supported by evidence that will persuade the court that there is substance to the application, creating a *prima facie* interest and therefore a reason for it to be heard.

Furthermore, the court will not consider allegations that are either too general or too vague. Simply denying the existence of a claim in the proceedings or the validity or existence of the evidence produced in support of such a claim is not enough to persuade the court to consider such an application. Equally, the loss of priority in the distribution of proceeds from the sale of a vessel is not a valid reason to intervene. Referring to this particular matter, the judge stated that:

"The fact that in case where the Respondents succeed in their claim against the Ship, then the Applicants, based on the priority of the Respondents will not be able to satisfy their claim, is not enough on its own to render their presence in the proceedings necessary."

Under the principle of intervention, the intervener will act to defend its own interests, but this must always occur within the context of the existing action and such defence must be relevant to the action. Where the defendant has no such defence available, the intervener cannot raise that defence either.⁽⁵⁾

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Endnotes

(1) *Cooperative Bank of Evoias v The Ship 'AVANTIS II' (IMO 7432305) under the Greek flag*, Admiralty Action 8/2012; application dated September 6 2012, interim judgment dated February 25 2013.

(2) *The Royal Bank of Scotland NV v The Ship 'Kalia'*, Admiralty Action 14/2011, interim judgment dated July 20 2012.

(3) The court referred to the English case of *Gunter v Circuit* (1968) 1 All ER 328.

(4) See *Fayza Shipping Co Ltd v Ship M/V 'Haj Anies' ex 'Anne'* (1994) 1 CLR 188, at 190. However, leave is not required where such interest is undisputed, such as in the case of a judgment creditor, in which case the right to intervene is exercised *ipso jure* (ie, by the law itself).

(5) *Anatoly v The Ship 'Ekaterinburg'* (2000) 1(A) AAD 516, where the court adopted the principle laid down in *The Byzantion* [1992] LT 756.

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