

## Shipping & Transport - Cyprus

### Are you really interested? Court considers limits to registered shipowners' rights

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#### Introduction

In a recent case<sup>(1)</sup> the Supreme Court in its admiralty jurisdiction considered an application under Section 30 of the Merchant Shipping (Registration, Sales and Mortgages of Ships) Law 1963 for an order prohibiting the respondents from dealing with the two vessels registered in their name and ownership. Section 30 empowers the Supreme Court, on the application of any interested person, to make an order prohibiting any dealing with a ship or any share in a ship, and requires the registrar of Cyprus ships to comply with any such order.

#### Facts

The applicants based their application on a loan agreement entered into in 2008 between the applicants as lenders and the respondents as borrowers. The original agreement was subsequently amended with the signing of three addendums. No mention was made in the original loan agreement of the scope or the purpose of the loan and all three addendums were principally concerned with the extension of the repayment period.

However, the preamble to the third addendum contained a recital that the loan was granted for the purpose of repairing the vessels that the respondents owned. Furthermore, Clauses 3 and 4 of the addendum stipulated that the borrowers' obligations under the loan were to be considered as marine debts and that the borrowers<sup>(2)</sup> had every right to protect their interests under the loan agreement in case of a claim being filed or arrest proceedings being initiated against the vessels.

On this basis, the applicants considered that they qualified as an 'interested person' for the purposes of Section 30 of the law, and applied for an order prohibiting the owners from selling, transferring, assigning, mortgaging or in any way alienating or encumbering the vessels or any part of them.

No provision in any of the loan documents referred to security being provided for the loan; nor was there any encumbrance or mortgage registered on the vessels.

#### Section 30

Section 30 of the law reads as follows:

*"30. The Supreme Court may, if it thinks fit (without prejudice to the exercise of any other power of the Court), on the application of any interested person make an order prohibiting for a time specified any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions it may think just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires; and the Registrar, without being made a party of the proceedings, shall on being served with an official copy thereof obey the same."*

#### Interpretation of 'interested person'

In order to have the right to apply under Section 30 of the law, the applicant must be an 'interested person'. The term is not defined in the law and it falls to the courts to interpret what constitutes an 'interested person'.

#### Previous case law

Two leading cases in the appellate jurisdiction of the Admiralty Court deal with the interpretation of Section 30, and the definition of 'interested person' in particular.

The first case, *Pastella Marine Co Ltd v National Iranian Tanker Co Ltd*,<sup>(3)</sup> concerned the sale of a vessel. The sale agreement required the buyer to deposit 10% of the purchase price with the seller's solicitors. Having paid the deposit, the buyer subsequently sought to withdraw from the contract for alleged failure on the part of the seller to implement two of the contractual terms, and demanded the return of the deposit. The buyer also filed court proceedings for an order under Section 30 of the law.

On appeal, the Admiralty Court held that for the purposes of Section 30, the expression 'interested person' is not synonymous with 'plaintiff', 'petitioner' or 'litigant'; if the intention was to extend the remedy conferred by Section 30 to every creditor of the ship's owner, the legislature would have adopted a term other than 'interested person'. The court further stated that it is necessary for a person seeking an order under Section 30 to have an interest in the ship; the status of creditor or claimant of damages is not sufficient.

The second case, *Constantinos Athanasiou Gerasakis v Waft Shipping Co Ltd*,<sup>(4)</sup> concerned the ownership of a vessel. The applicant claimed that he was the beneficial owner of the shares in the company that owned the vessel. The court again concluded that an 'interested person', within the meaning of Section 30 of the law means a person that has an interest in the ship, not merely a creditor or a person with a claim for damages. Since, on the facts of the case, it was obvious that the dispute between the parties was a monetary dispute, the court decided that the applicant was not an interested person and rejected the appeal on that basis.

These cases confirm the decision reached at first instance in several other cases, of which the following are particularly relevant.

In *Ocean Corporation Ltd v Novorossiyskrybprom Co Ltd (No 1)*,<sup>(5)</sup> the claimant's claim was for damages for breach of charter agreement and for committing an offence. The court held that only a person with a direct interest in the ship itself or in a share in the ship is eligible to apply for a prohibitory order under Section 30 of the law. A mere creditor, whose interest concerns only the security of a claim through the ship, may not apply.

In *Camrex (Realisations) Ltd v Freewind Shipping Co Ltd*,<sup>(6)</sup> the applicants had a claim for unpaid value of paints sold and delivered on various occasions to the ship owned by the defendants. The court held that a person that has a money claim against a ship is not an interested person.

These decisions are generally consistent with the use of the term 'interested person' elsewhere in the law, which often suggests an ownership or mortgage interest.

### Decision

Given that the application was based on a monetary claim that the applicants allegedly had against the respondents on the basis of the loan agreement, as amended by the addendums, the court decided that the applicants were merely creditors of the company that owned the vessels and did not meet the requirements for being treated as interested persons. Unless the applicants could demonstrate a direct interest in the vessels themselves, being mere creditors of the owning company did not qualify them as interested persons for the purpose of Section 30 of the law. The court therefore rejected the application.

### Comment

An order under Section 30 of the law is a far-reaching measure which severely limits the registered owner's ability to deal with a vessel that is subject to the order. Unsurprisingly, the court has limited its availability to the small number of persons that have an actual interest in the vessel. Otherwise, it would be possible for anyone to step in and interfere with the vessel and its operations.

If a creditor, particularly a lender, wishes to secure the debt owed to it for money or services provided for or in connection with a vessel, security must be negotiated and agreed in advance, and in any case no later than the provision of the services or the lending of the money. If a creditor fails to take the necessary steps, the court will not make good the omission by issuing a Section 30 order.

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### Endnotes

- (1) Civil Application 168/2013, judgment issued on December 5 2013.
- (2) While this appears to be illogical, it is what the addendum stated.
- (3) (1987) 1 CLR 583.
- (4) (1989) 1E AAD 393.
- (5) (1996) 1B AAD 1184.
- (6) (1986) 1 CLR 420.

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