

Shipping & Transport - Cyprus

Ruling offers guidance for third-party intervention in admiralty actions

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Facts

Decision

Comment

Two first instance judgments of the Admiralty Court issued in 2013 were addressed in previous updates (for further details see: "Court considers application for third-party intervention in admiralty action" and "Never too early to intervene: court revisits third-party intervention"). Both judgments related to the same action (8/2012). In each case the applicant filed for review by the full bench of the Supreme Court in its admiralty jurisdiction.

Facts

Delaforde Trading Limited was engaged in a separate action (20/2012) in the Admiralty Court against the ship AVANTIS II 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 Action 8/2012 which the Cooperative Bank of Evoias had instituted against the ship, to dispute the bank's claim against the ship, deriving from loans that the bank claimed to have provided to the ship's owners.

SKP Enterprises Limited was the judgment creditor in another action (30/2011) against the ship for recovery of debts for the provision of bunkers and lubricants. Through a separate application dated February 13 2012, filed within the context of that action, the ship was sold *pendente lite* when the litigation was pending. The purpose of the application was to allow the applicant to dispute the claim against the ship put forward by the bank.

Both applications at first instance were brought under Rules 30 and 35 of the Admiralty Jurisdiction Order, with Delaforde and SKP claiming respectively that they had an interest in the property affected by the bank's action. The applications were rejected and Delaforde and SKP applied for review.

Decision

The Supreme Court found that Rule 30 did not apply in either case and that only Rule 35 was of relevance. It provides that:

"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."

The following principles were set out⁽¹⁾:

- Parties whose interest is clear may appear even without filing an affidavit, while parties whose interest is not so obvious should seek the court's leave, once they have established their interest against the *res*.
- A judgment creditor (SKP) or parties that are claimants in other actions *in rem* against the same property (Delaforde) are considered to have an interest against the *res* or the proceeds from sale of the *res*. In the first instance the interest is clear, whereas in the second instance it would require explicit evidence brought to the attention of the court by way of affidavit.
- A party that may suffer loss from a potential judgment in an action has the right to be heard in that action even if it is ultimately proven that it cannot obtain any benefit from the outcome of that action.
- Any implications that the intervention or addition of a party may have in the course of the action are not to be considered within the frame of interim applications.
- An intervener can only set up defences which the owner of the *res* could set up. The applicants' allegation that the bank's claim was "untrue, fictitious and fallacious" was a defence that would be available to the owners of the ship.
- Rule 35 does not provide for a specific time scale. The court commented that in the *SKP* case, there was no

evidence that the company knew of the bank's claim earlier, but failed to act. However, the court provided no further answer as to what its reaction would have been if such evidence had been presented.

Comment

The simple fact that all actions against a vessel are scheduled on the same day or that different parties may be represented by the same lawyers does not by itself lead to a conclusion that the filing of an application to intervene long after the event may be an abuse of court procedure. Since the bank in this case did not proceed with the issuance of a judgment in its favour, and provided that there had been no intentional delay in filing the application to intervene, SKP's application could not be rejected on the basis of this reason alone.

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Endnotes

⁽¹⁾The leading judgment was in SKP's application for review of the interim judgment dated July 4 2013, which the court adopted with some additional remarks in Delaford's application for review of the interim judgment dated February 25 2013.

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