

Shipping & Transport - Cyprus

Never too early to intervene: court revisits third-party intervention

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Facts
Decision
Comment

The Cyprus Admiralty Court recently considered another application for intervention against the proceeds of the sale of a ship.⁽¹⁾

Facts

The applicant, SKP Enterprises Limited, was the judgment creditor in Action 30/2011 against the ship AVANTIS II for the provision of bunkers and lubricants. By a separate application dated February 13 2012 filed within the context of that action, the ship was sold *pendente lite*.⁽²⁾ The purpose of the present application was to allow the applicant to dispute the claim against the ship put forward by the bank.

The application was brought under Rules 30 and 35 of the Admiralty Jurisdiction Order, on the basis that the applicant had an interest in the property sought to be affected by the bank's action. The bank objected to the application, arguing that the applicant had produced no evidence to support its contention that such a direct interest existed. The bank further disputed the applicant's allegation that the bank's claim was "untrue, fictitious and fallacious".

Decision

The issues considered by the court focused on:

- whether the applicant had an interest in the ship; and
- the time within which an interested party should take the necessary steps to intervene in order to protect its interests.

With reference to case law,⁽³⁾ the court concluded that a judgment creditor is a person with an interest in the ship. Therefore, in the present case, the applicant had the right to intervene, subject to observance of all relevant legal procedures when applying for intervention.⁽⁴⁾ The right to intervene is confined strictly to the applicant's own interests,⁽⁵⁾ and is allowed provided that such interest is affected by the outcome of the action against the ship.⁽⁶⁾ The right to intervene must be exercised at the earliest possible opportunity, usually at the start of proceedings.

In the case at hand the court found that the applicant was unreasonably late in filing its application. Giving Rule 35 its strict and plain meaning (ie, that the interested party must appear at the court "at the time named in that behalf in the writ of summons"), Justice Erotokritou concluded that the application was filed too late to stand and therefore rejected it. The court also noted that the applicant had produced no evidence to support its assertion that the bank's claim was fictitious.

Comment

Securing an interest against competing claimants can be a race against time, especially when it is likely that the value of the *res* will not cover all claims against it.

In this instance, the applicant established its claim early enough, but failed to safeguard it against other claims. Even though the applicant had been aware of the bank's proceedings at least since the application for the sale of the vessel *pendente lite* in February 2012, it waited a year before exercising its right to intervene in the bank's action. Such undue delay may result in an application being rejected, even where a clear interest exists. Failure to address such matters in time can jeopardise the entire claim and risk losing priority over other claims when the time arrives for distribution of the proceeds of sale of the *res*.

The court further noted that the applicant had no connection with the subject matter of the bank's action against the ship, which could mean that the application could not proceed under Rule 30.

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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 February 20 2013, interim judgment dated July 4 2013.

⁽²⁾ For further details on the earlier related judgments please see "Admiralty jurisdiction: ship arrest, cargo arrest and sale *pendente lite*", "Court considers application for security for costs" and "Court considers application for third-party intervention in admiralty action".

⁽³⁾ *The Two Ellens* (1871) LR 3 A & E 345, *The Chioggia* (1898) P 1 at 3, *Fayza Shipping Co Ltd v the Ship M/V Haj Anies Ex 'Anne'* (1994) 1 AAD 188.

⁽⁴⁾ *Themeli v the Tug Elpida* (2005) (1A) CLR 187.

⁽⁵⁾ *The Lord Strathcona* [1925] P 143; *The Byzantion* (1922) 16 Asp 19.

⁽⁶⁾ *Chantiers et Ateliers Du Maroc v the Ship Cattle Trail One* (1997) 1 CLR 948, at 951.

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