

1982 August 27

[SAVVIDES, J.]

KOULOUMBIS PANAYIOTIS,

*Plaintiff,*

v.

THE SHIP "MARIA" NOW ANCHORED IN THE PORT  
OF LIMASSOL,

*Defendant.*

(Admiralty Action No. 73/82).

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*Practice—Evidence—Interested party's application to set aside judgment in admiralty action—Application, at conclusion of addresses, to produce file of another action—Plaintiff not a party to that action—And contents of such file res inter alios acta as far as he is concerned—Application for production of file refused on this ground and as made at a very late stage.* 5

In the course of the hearing of an application by applicants to have the judgment of the Court in favour of respondent-plaintiff set aside, and after counsel for the other parties concluded their addresses, counsel for applicant in the course of his reply sought to put as part of his case, the file of action No. 59/82 between the mortgagors of the defendant ship "Maria" and the ship "Maria" in which the applicant was an intervener. Counsel for applicant admitted that the parties in the present action, save the defendant ship, were strangers in that action; but he sought to put in the said file in support of his application that he was an interested party and in consequence he had a *locus standi* in the action enabling him to make an application to set aside the judgment. 10 15

*Held*, that the question as to whether the applicant had a *locus standi* in the proceedings was raised by the respondent-plaintiff in his opposition, and it was therefore, one of the issues which had to be determined at the hearing; that once this matter was in issue, applicant could if he considered it necessary, to do so, have sought to produce such file at an early stage and 20 25

before the main addresses were concluded and not at such very late stage; that since respondent-plaintiff was not a party in the said Action No. 59/82, whatever may be contained in the file of such action, is, as far as the respondent-plaintiff is concerned, res inter alios acta and not admissible in the present proceedings; accordingly the application must fail.

*Application dismissed.*

Cases referred to:

*Asimenos v. Paraskeva* (1982) 1 C.L.R. 145 at. p. 168.

#### 10 Application.

Application by applicant's counsel for leave to put in as part of his case, the file of Action No. 59/82 between the mortgagors and the defendant ship "MARIA" in which the applicant was an intervener.

15 *E. Vrachimi (Mrs.) with H. Solomonides, for L. Papaphilippou; for the applicant-interested party.*

*P. Pavlou, for the respondents-plaintiffs.*

*A. Skordis with A. Paschalides, for M. Eliades, for the defendant ship.*

20 *M. Montanios, for the intervener.*

SAVVIDES J. gave the following ruling. In the course of the hearing of the application of the applicants to have the judgment of the Court in favour of respondent-plaintiff set aside and after counsel for applicant and counsel for respondent and other interested parties concluded their addresses, counsel for applicant in the course of his reply, sought to put in as part of his case, the file of Action No. 59/82 between the mortgagors of the defendant ship "MARIA" and the ship "MARIA" in which the present applicant was an intervener. Counsel for applicant admitted that the parties in the present action save the defendant ship were strangers in that action. Such application was objected by counsel for respondent-plaintiff.

Applicant sought to put in the said file in support of his application that the applicant is an interested party and in consequence has a locus standi in this action enabling him to make an application to set aside the judgment. The objection that the applicant has no locus standi was raised by respondent plaintiff at an early stage before the hearing and in fact it is one of the grounds set out in support of the opposition.

I am not prepared to grant this application for the following reasons:

(a) The question as to whether the applicant had a locus standi in the proceedings was raised by the respondent-plaintiff by his opposition, and, therefore, it was one of the issues which had to be determined at the hearing. It was not a matter which was raised by the respondent - plaintiff for the first time in his address in support of the opposition which might justify the applicant to allege that it is a new matter which arose in the course of the proceedings and that he was taken by surprise. Once this matter was in issue, applicant could, if he considered it necessary, to do so, have sought to produce such file at an early stage and before the main addresses were concluded. The application to produce the file of Action No. 59/82 is made at a very late stage and after counsel for applicant and respondents had already concluded their addresses and counsel for applicant had only to reply on matters raised in the address of counsel for respondents.

(b) It has been conceded by counsel for applicant that the respondent-plaintiff was not a party in Action No. 59/82. Therefore, whatever may be contained in the file of that action is, as far as the respondent-plaintiff is concerned, res inter alios acta and not admissible in the present proceedings.

For all these reasons the application of counsel for applicant to produce the file of Action No. 59/82 which has been made at this late stage in the day, is refused and the objection of counsel for respondent-plaintiff against its production is sustained. As this application is part of proceedings which are continuing today, I make no order for costs.

*Application dismissed. No order  
as to costs.*