

1989 March 14

(DEMETRIADES, J.).

JAYEE PVC PIPES PVT LTD. & OTHERS,

*Plaintiffs,*

v.

INTERTRUST SHIPPING CORPORATION,

*Defendants.*

*(Admiralty Action No. 96/88).*

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5. *Admiralty — Practice — Intervention in an admiralty action by third parties claiming interest in a res affected by the action — Whether intervention limited to actions in rem — Question determined in the negative — In view of the wording of Rules 29, 30, 31, 32 and 35 of the Cyprus Admiralty Jurisdiction Order, 1893, there can be no distinction in this respect in Cyprus between actions in personam and actions in rem.*

10 *Admiralty — Practice — The English Rules applicable in virtue of Rule 237 of the Cyprus Admiralty Jurisdiction Order, 1893 are those in force on the day preceding Independence Day — Rules enacted thereafter are not applicable.*

15 The respondents to this application sought and obtained leave to intervene in the proceedings, claiming to be the true owners of the cargo, the subject-matter of the action. The action is an action in personam. By means of this application the plaintiffs applied to set aside the said leave on the grounds that there can be no intervention in an action in personam and on the ground that the interveners ought to have applied to join the action as co-defendants.

20 As the wording of the relevant Rules (29-32 and 35) of the Cyprus Admiralty Jurisdiction Order, 1893 does not make any distinction between actions in rem and actions in personam and in view of the nature of the interveners' claims, the application has to be dismissed.

*Application dismissed with costs.*

*Cases referred to:*

*Co-operative Organization of General Trade (S.O.G.E.K.) v. The Ship «Blue Sea» and others* (1975) 1 C.L.R. 472;

*Psichoullas v. The Ship Seagull* (1985) 1 C.L.R. 1;

*Asimenos v. Chrysostomou* (1982) 1 C.L.R. 45;

*Gurtner v. Circuit* [1968] 1 All E.R. 328; 5

*Re Vandervell Trusts, White v. Vandervell Trustees Ltd. and Another* [1969] 3 All E.R. 496;

*Vandervel Trustees Ltd. v. White and Others* [1970] 3 All E.R. 16.

**Application.**

Application by plaintiffs for setting aside the order granting leave to the respondents to intervene in the proceedings. 10

*A. Theophilou*, for applicants-plaintiffs.

*E. Lemonaris with St. Karides*, for the respondents-interveners.

*Cur. adv. vult.* 15

DEMETRIADES J. read the following ruling. After the present action was filed, which is one in personam, the following corporate bodies, namely Formosan Rubber Group, Ta Win Industrial Co. and Epoch Products Corporation, all of Taiwan, applied ex parte and were granted leave to - 20

(a) intervene in the proceedings,

(b) apply for an order to set aside the filing, sealing and issue of the writ of summons, and

(c) apply for the setting aside of the order of sequestration made on the 19th July, 1988. 25

Their application was based on the Cyprus Admiralty Jurisdiction Order 1893, rules 29-34, 203-212, 237, the English Order 75 rule 12, the Admiralty practice and the inherent powers and jurisdiction of the Court.

The plaintiffs then filed a motion by which they prayed for the setting aside of the said order on the following grounds - 30

(a) that there can be no intervention in the action as it is one in personam, and

(b) that the interveners ought to have applied instead to be joined as co-defendants.

The plaintiffs based their motion on Rules 30, 32, 35, 203, 204, 206-209, 211, 212 and 237 of the Cyprus Admiralty Jurisdiction Order 1893, the Admiralty Practice and the inherent jurisdiction and powers of the Court.

The interveners opposed the motion on the ground, as this appears in para. 8 of the affidavit filed in support of the opposition, that -

10 «there is no jurisdiction under the Rules (the Cyprus Admiralty Jurisdiction Order 1893) to support the plaintiffs' application to discharge the order granting to the respondents leave to intervere and that the said application is frivolous and vexatious and an abuse of the Court's process».

15 By their action, the plaintiffs claim -

20 «A. 2,680,000:-USA Dollars or its equivalent in Cyprus pounds being the value of 1944 Metric Tons of P.V.C. Resin, Type Bovil M, property of the plaintiffs, which was loaded at Thessaloniki on or about 23.12.88 on board Defendant's Vessel M/V SANTA MARIA I by virtue of an agreement between the Defendants and the Plaintiffs (evidenced in the B/L No. 1-8), for its carriage by the Defendants and delivery to the Plaintiffs at India and was never so delivered but was instead converted by the Defendants and/or misdelivered and/or taken away, and part of it was carried to Limassol, in breach of the above agreement of carriage thus depriving the Plaintiffs of their property.

25 B. An Order of the honourable Court ordering the Defendants and/or their servants and/or their agents and/or assignees to deliver to the Plaintiffs the cargo of PVC Resin, type BOVIL M, now staffed in bags into the containers at the Port of Limassol as prescribed in Appendix A.»

30 On the day the writ was filed in the Registry the plaintiffs obtained, after they had applied to the Court ex parte, an order by which the Marshal of the Court was appointed as «sequestrator» with powers to enter upon and take the goods which were described in the Bills of Lading referred to in the writ and to keep them in safety doing everything necessary for their preservations till the final determination of the action and/or further order of the Court.

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In the affidavit filed in support of their above application, it was deposed:

«On or about beginning of December, 1987, the Plaintiffs and/or their agents agreed with the Defendants at Thessaloniki, Greece, and loaded on board Defendants' Vessel SANTA MARIA I, 1944 M. Tons of PVC Resin, Type BOVIL M, to be carried and delivered to them at Bombay, India.

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Such agreement is evidenced in the attached photocopies marked Exhibit A bundle of Bills of Lading.

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The above goods of the Plaintiffs were never delivered to them in India or elsewhere and the Plaintiffs tried to contact the Defendants and/or to find the whereabouts of their above ship without result.

The Plaintiffs appointed the International Maritime Bureau, an English organization linked with Marine Insurers and Underwriters, to carry out an investigation for them, who advised them in writing on 18.4.88 that their cargo was deliberately discharged on or about the 8.2.88 by the Defendants and/or their Master of the ship SANTA MARIA I at the unofficial port of Ras Selaata near Tripoli, in Lebanon.

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On or about 26.6.88 part of the Plaintiffs cargo converted and/or taken away as above by the Defendants was carried by them in Cyprus (Limassol) stuffed in the containers as appear in the attached in photocopy marked Exhibit B cargo declarations delivered to the customs by the carrier Vessels EVANGELIA and PETER M, delivered to Messrs Frangoudi & Stephanou to be re-exported to Taiwan».

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In paragraphs 3, 4, 5 and 6 of the affidavit filed by the interveners in support of their opposition to this motion they claim -

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«The Respondents/Intervenors claim to be the rightful owners of the cargo which is described in Appendix «A» of the writ of summons in virtue of the Bills of Lading copies whereof are exhibited in this Affidavit marked SK1, SK2 and SK3.

From enquires which I have made it came to my knowledge that the above cargo was landed at Limassol ex the vessels PETER M and EVANGELIA and was placed in the custody of Messrs Francoudi & Stephanou Ltd. of Limassol

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for transhipment to Taiwan and there to be delivered to the Respondents/Intervenors against production of the Bills of Lading copies whereof are exhibited hereto marked SK1, SK2 and SK3.

5 In this connection I have on the 27th July 1988, together with Mr. Emilios Lemonaris, visited the offices of Messrs Francoudi & Stephanou Ltd. at Limassol and spoke to their operations Manager, Mr. Sotos M. Demetriou, concerning the above cargo. Mr. Sotos M. Demetriou confirmed to us that the  
10 instructions of his firm are to tranship the cargo to Taiwan and there to be delivered against production of the Bills of Lading copies whereof are attached hereto marked SK1, SK2 and SK3. Mr. Sotos M. Demetriou further confirmed to us that the voyage from Limassol to Taiwan would be covered by house  
15 Bills of Lading.

In virtue of the premises aforesaid it is certain that the interests of the Respondents/Intervenors are affected by the institution of the above proceedings and by the order of sequestration made therein and they have on 23rd July 1988  
20 applied to the Court and obtained leave of the Court to intervene in the proceedings».

Counsel for the plaintiffs argued that the right of intervention exists only in an action in rem where the res is under arrest; when somebody comes forward showing interest in the res and because  
25 of this he is allowed to intervene in order to protect his interest.

In support of his argument counsel for the plaintiffs referred me to Halsbury's Laws of England 4th Ed. Vol. 1 para 395, the Rules of the Supreme Court of England, (R.S.C.) 1958 Order 16 rule 2 (at p. 324), The British Shipping Laws, Admiralty Practice 1964  
30 Vol. 1 at p. 137, paragraphs 311 and 312, and the cases of *Co-operative Organization of General Trade (S.O.G.E.K.) v. The Ship «Blue Sea» and Others*, (1975) 1 C.L.R. 472 at pp. 479-480 and *Psichoulas v. The Ship Seagull*, (1985) 1 C.L.R. 1 at p. 3. He further argued that rules 29 - 34 of the Order of 1893 are not  
35 applicable in the present case.

In his argument before me counsel for the intervenors relied on Rules 29 - 32 of the Order and submitted that although the intervenors are not interested in the contest between the plaintiffs and the defendants, they are interested in the destiny of the cargo  
40 as they claim ownership of it and that if they had applied to be

joined as parties, they would become involved in the litigation between the parties to the action.

Counsel further submitted that rule "30 was wide enough to permit his clients to join the proceedings in the action as interveners and not as co-defendants. 5

The relevant rules on which the interveners relied for obtaining leave to intervene, that is rules 29 - 32, read as follows:

«29. Any number of persons having interests of the same nature arising out of the same matter may be joined in the same action whether as Plaintiffs or as Defendants. 10

30. 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 adjucate upon and settle all questions involved in the action be added. 15 20

31. For the purposes of the last preceding rule an underwriter or insurer shall be deemed to be a person interested in the action.

32. The Court or Judge may order upon what terms any person shall be joined as a party, and what notices and documents, if any, shall be given to and served upon him, and may give such further directions in the matter as shall seem fit». 25

As it appears from Halsbury's Laws of England 4th Ed. Vol. 1 para 395 - 30

«The special rules governing the effect of appearance to defend and the right to intervene in actions in rem do not apply to actions in personam. In these respects, Admiralty actions in personam resemble any other High Court action».

and reference is then made to Order 75 rule 17 which came into force in 1962. 35

In a number of judgments of this Court, however, it has been decided that the Rules of the Supreme Court which are applicable in Cyprus as a result of the provisions of Rule 237 of the Order of 1893 are those which were in force in England prior to the year  
5 1960. In this respect, amongst other cases, see *Asimenos v. Chrysostomou*, (1982) 1 C.L.R. 145. As, therefore, Order 75 rule 17 is inapplicable in Cyprus, we must look to see what the relevant provision in force in England prior to 1960 was. This was Order 12 rule 24 which - and I quote from the White Book of 1955 - then  
10 read:-

«In an Admiralty action in rem any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the res under arrest, or in the fund in the Registry.»

15 In the present case the issue that poses for decision is whether a person claiming ownership in a res - the cargo - which is the subject matter of the proceedings and who is not a party to them has the right to intervene in an action in personam and whether the provisions of Order 12 rule 24 of the R.S.C. are applicable in  
20 Cyprus.

I have earlier quoted the rules relevant to who the parties in an Admiralty action can be. In my mind, another rule relevant to these proceedings is Rule 35 on the provisions of which counsel for the plaintiffs relied. This rule reads:-

25 «35. 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».

30 In interpreting a statutory enactment, one should look to the meaning of the enactment itself and should not read in it provisions that are not to be found there. Looking at the wording of our Rules, relevant to these proceedings, I have come to the conclusion that no differentiation can be made in Cyprus between  
35 actions in rem and actions in personam and that these rules have been enacted in order to give the right to a person, whose interest in the res is directly affected by the action, to intervene in order to protect his interests.

Useful guidance as to the reasons why a person may be granted leave to intervene in admiralty actions is to be found in the note of Order 75 rule 17 (which Order, as I have earlier said, does not apply in Cyprus) under the heading «Object of rule» in which it is stated that its object is -

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«To enable a person who has a substantial interest in the res to intervene, if this interest may be injuriously affected by the action against the res, and to protect his interests. The rights of an intervener are limited to the protection of his interest in the res, and he had no locus standi to raise issues which are not material to this purpose».

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Lord Denning M.R., in delivering his judgment in the case of *Gurtner v. Circuit*, [1968] 1 All E.R. 328, on the issue when the Court may order that a person, whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, be added as a party, said the following at p. 332:-

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«It seems to me that, when two parties are in dispute in an action at law and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party on such terms as it thinks fit. ....»

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It enables all matters in dispute 'to be effectually and completely determined and adjudicated upon' between all those directly concerned in the outcome».

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The above opinion expressed by Lord Denning M.R. was approved by the Appeal Court in the case of *Re Vandervell Trusts, White v. Vandervell Trustees, Ltd. and another*, [1969] 3 All E.R. 496. Although the decision of the Court of Appeal in this case was reversed by the House of Lords (see *Vandervell Trustees Ltd. v. White and Others*, [1970] 3 All E.R. 16) it appears that the test that a Court has to apply in allowing the joinder of parties is whether, in the absence of a party, the Court can ensure effectual and complete determination and adjudication of the matters in dispute before it.

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Having in mind the allegations on which the three Corporations from Taiwan based their case for obtaining leave to intervene and in the light of the English authorities I have cited, and, also, the

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meaning of the provisions of our Rules, I have come to the conclusion that the presence of the said Corporations before the Court is necessary in order that the Court may effectually and completely determine, adjudicate upon and settle all questions  
5 involved in the action as regards the ownership of the goods.

In the result, I find that the motion of the plaintiffs fails and is dismissed with costs.

Costs to be assessed by the Registrar.

*Application dismissed with costs.*