

(1989)

1989 August 11

(DEMETRIADES, J.).

JAYEE PVC PIPES PVT LTD. AND OTHERS,

Plaintiffs,

v.

INTERTRUST SHIPPING CORPORATION,

Defendants.

(Admiralty Action No. 96/88).

Admiralty — Practice — Intervenors — Application by an intervener to strike out the answer of another intervener — Question whether such an application is permissible not covered by authority — In any event in the circumstances of this case the application must be dismissed.

5

Having found that the respondents were given leave to intervene in order to protect their interests in the containers in which the cargo under arrest was stuffed and that they had really no alternative, but plead their case in the way they did, the Court dismissed the application.

10

Application dismissed with costs.

Application.

Application by the first intervenors for an order striking out from the answer of the second intervenors dated 9th May, 1989, paragraphs 1-9 inclusive.

15

St. McBride, for applicants - 1st intervenors.

G. Michaelides, for respondents - 2nd intervenors.

Cur. adv. vult.

DEMETRIADES J. read the following ruling. On the 19th May, 1989, the first intervenors, Formosan Rubber Group Inc. Ta Win Industrial Co. Ltd. and Epoch Products Corporation, all of Taiwan, applied by summons for an order striking out from the

20

answer of the second interveners, Scandutch I/S (Pamship) of Denmark, dated the 9th May, 1989, paragraphs 1 - 9 inclusive.

The facts relied upon by the applicants are apparent upon the face of the pleadings and inter alia are:

5 «(a) An intervener can set up no defence except what the defendant could set up.

10 (b) The second interveners have stated by their answer that they are not aware of or concerned with the matters alleged in the petition. By so stating their defence they have clearly
15 *shown that any other matter that does not go in answer to the matters alleged in the petition is totally irrelevant as it does not disclose any, let alone any reasonable, answer to the cause of action pleaded*».

15 The first interveners base their application on Rules 87 and 237 of the Rules of the Supreme Court in its Admiralty Jurisdiction and on English Order 25 Rule 4.

The paragraphs sought by the first interveners to be struck out read:

20 «1. The Second Intervenors are the owners of fifty-five (55) containers out of the 56 containers in which the cargo of PVC resin, subject-matter of this action is stuffed. On or about the 11th May, 1988 the said 55 containers were supplied by the agents in Beirut of the Second Intervenors at the request of MEDSHIPTRANS SARL of Beirut for the carriage of the said
25 cargo from Lebanon to Keelung, Taiwan. The Second Intervenors reserve their rights to refer at the trial of this action as may be necessary to the relative shipping notes and/or other documents relating to the supply of the said containers.

30 2. The said cargo was stuffed in the said containers, shipped and carried on or about June 1938 from Lebanon to Limassol on the ships 'PETER M' and 'EVANGELIA' for transshipment at Limassol to Keelung, Taiwan. On the 1st July, 1988 whilst
35 in the process of being transhipped at Limassol on the Second Intervener's ship 'NDL CLARENCE' the said cargo was arrested by virtue of a warrant of arrest issued in Admiralty

Action No. 82/88. The said warrant was discharged on the 13th August, 1988.

On the 19th July, 1988 at the instance of the Plaintiffs an order for the sequestration of the said cargo was made in this action and the Marshal of the Admiralty Court was appointed as sequestrator and/or receiver of the said cargo, with powers to enter upon and take the same and to keep it in safety doing everything necessary for its preservation until final determination of the action and/or further order of the Court. 5

4. As a result of the arrest of the said cargo on the 1st July, 1988 and/or of the order of sequestration made on the 19th July, 1988 the cargo could not be transhipped from Limassol to Taiwan and the contract (if any) for the supply and/or use of the said 55 containers belonging to the Second Interveners and/or for the carriage of the said cargo from Limassol to Keelung, Taiwan on the Second Interveners' ship 'NDL CLARENCE' was frustrated. 10 15

5. Although the containers themselves were not the subject of the order of sequestration, the Marshal retained the containers for the purpose of the custody and preservation of the cargo pursuant to the said order of the Court dated 19th July, 1988. 20

6. At the request of the Second Interveners the Marshal applied on or about the 6th September, 1988 to the Court for directions for the unstuffing of the said cargo from the containers and storage of the cargo in a warehouse, as the cost of storage in a warehouse was substantially less than the keeping of the cargo in the containers. The First Interveners opposed the Marshal's application and by its ruling dated 28th December, 1988 the Court ruled that the Marshal was authorised to take all steps that are necessary for the preservation and custody of the cargo at the minimum expense and, if he considers it necessary, to unstuff the cargo from the containers in which it is stuffed, in which case he should allow their owners to take possession of them. The First Interveners applied for a review of the said ruling of the Court and for a stay of the effect of the ruling dated 14th March, 1989 the Court refused to grant the stay applied for and ordered the First Interveners to pay the costs resulting from the keeping of cargo in the containers until the date of the ruling i.e. the 14th March, 1989. 25 30 35 40

7. The second Interveners allege that the cost of the keeping of the cargo in the containers from the time of the order dated 19th July, 1988 form part of the Marshal's expenses for the custody and preservation of the said cargo pursuant to the said order and should be claimed by the Marshal from the party or parties liable for the same, having also regard to the order of the Court dated 14th March, 1989 and then paid to the Second Interveners.

8. The said cargo was kept in the said containers from the 19th July, 1988 until the present day. For the use of the said 55 containers the Second Interveners claim the sum of U.S. \$15.00 per container per day (i.e. U.S. \$15.00 x 55 = U.S. \$825.00 per day) which is the usual and/or reasonable charge as from the 19.7.88 until the unstuffing and delivery of the same to the Second Interveners. For the material period to this action from 19.7.88 to 8.5.89 the cost of the use of the said 55 containers amounts to the sum of U.S. \$241,725.00 (i.e. U.S. \$15.00 x 55 containers x 293 days). The Second Interveners further claim U.S. \$ 825.00 per day as from the 9.5.89 until the delivery of the containers to the Second Interveners.

9. In the premises the Second Interveners pray for:

(A) A declaration by the Court that the cost of the keeping of the cargo in the said 55 containers belonging to the Second Interveners form part of the Marshal's expenses for the custody and preservation of the cargo pursuant to the order of the Court dated 19.7.88.

(B) An order that the sum of U.S. \$15.00 per container per day i.e. U.S.\$ 825.00 per day should be paid to the Second Interveners for the use of the said 55 containers from the 19.7.88 until the return of the said containers to the Second Interveners.

(C) The Second Interveners' costs in this action.

Counsel for the applicants submitted that any intervener in any proceedings intervenes and is allowed to intervene in order to put a defence in only such matters of a defence which the defendant in the action could put and that normally interveners come and put forward a defence because the defendant has no real motive or incentive to defend. In the present case, he submitted, the answer

filed by the second interveners is tantamount to a claim by the second interveners against the first interveners. In other words the allegations made by the second interveners raise a claim between the two interveners and that is not allowed in the intervening proceedings.

5

Counsel for the second interveners submitted that what they have done by their answer is to plead the matters relevant to the protection of their interest in the containers; that they simply asked the Court to direct that the cost of the detention of the cargo in containers to be part of the Marshal's expenses for the custody and preservation of the cargo; and that if because of any order of the Court either in the past or in the future this cost will be ordered to be paid by the first interveners or part of this cost, if the case may be so, this is another matter and the first interveners have the right to attack such an order by the proper means available to them.

10

15

The issue that pauses for decision is whether an intervener can apply to the Court praying for the striking out of pleadings of another intervener. For this matter I had no assistance from counsel. I have carried out research but I have found no instance for which an application of this nature was made and an order for the striking out of pleadings granted.

20

The application, as I have earlier mentioned, is based on the Cyprus Admiralty Jurisdiction Order 1893, Order 87 and Order 25 Rule 4 of the English Rules of the Supreme Court. Order 87 is irrelevant. Order 25 Rule 4 makes provision as to when the Court will strike out an action or pleadings. As it appears from this rule an action or a defence may be struck out if it discloses no reasonable cause and in such a case it must be shown that the pleadings are frivolous or vexatious, unnecessary or scandalous or they intend to prejudice, embarrass or delay the fair trial of the action.

25

30

In the present case and having gone through the file of this action I noted that the purpose for which the second interveners applied for and were granted leave to intervene was to protect their interest in the containers in which the cargo in dispute was stuffed and which containers were in effect for a considerable period suffering the result of the warrant of arrest issued for the cargo.

35

It is, therefore, my view that in the circumstances the application for the striking out of the answer of the first interveners must be

dismissed. In any event the second interveners had no other alternative and had no cause other than to proceed and plead their case in their answer on the lines that appear in it.

Application dismissed with costs.