

1986 November 17

[DEMETRIADES, J.]

FRIXOS ELIADES,

*Plaintiff.*

v.

THE SHIP "FRIXOS II" NOW LYING AT THE  
PORT OF LIMASSOL,

*Defendant.*

*(Admiralty Action No. 175/86).*

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*Admiralty—Action in rem—Intervention by a person not a party to the action—Prerequisites—Position governed by Ord. 12, rule 24 of the old English Rules applicable in virtue of Rule 237 of the Cyprus Admiralty Jurisdiction Order, 1893—Ship sold before application for leave to intervene—Allegation that no money left in Court—Directions that evidence in respect of such allegation be heard before submissions in respect of the application for leave to intervene*

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10       The defendant ship was sold by order of the Court pendente lite. By further order of the Court dated 7.10.86 the order of priorities was fixed. On the 5.11.86 the applicants filed three applications praying for an order staying the order of priorities, for leave to intervene in the

15       action and for order varying or rescinding the said order of priorities. The basis of their said applications is an allegation that the ship is mortgaged by a first legal mortgage in favour of the applicants. It was agreed that the first two applications be heard together.

20       On the 12.11.86 counsel for the plaintiff/judgment creditor in the action applied and obtained an order directing the Chief Registrar, a Bank employee and the Marshal to appear before the Court and give evidence and produce documents relating to the sale of the ship.

cheques given in payment of the price and documents relating to the clearance of such cheques. The purpose of the application was to show that there was no balance of the proceeds in the hands of the Chief Registrar. On the 15.11.86 counsel for the plaintiff invited the Court to hear first the evidence of the three witnesses and then the submission as to whether the applicants were entitled to leave to intervene in the action. 5

*Held:* (1) Intervention by a person, not a party to an Admiralty action in rem, is not expressly provided by the Cyprus Admiralty Jurisdiction Order, 1893 and, therefore, in accordance with Rule 237 thereof, the rules of the Supreme Court of England in force in 1960 are applicable. The matter is governed by Ord. 12, rule 24 of the old English rules. 10 15

(2) From the wording of the said rule it appears that for such a person as aforesaid in order to intervene, the ship must be either under arrest or the proceeds of its sale are held by the Court.

(3) Consequently, as there is an allegation that there is no money in the fund of the Court, it is proper for this Court to hear evidence in respect of such allegation. 20

*Order accordingly.*

#### **Applications.**

Applications by Saudi Lebanese Bank as interveners for (a) an order staying the order dated 7.10.86 which fixed the order of priorities (b) leave to intervene and (c) an order rescinding or varying the above order. 25

*P. Pavlou*, for the applicants-interveners.

*L. Papaphilippou*, for the respondents-caveators. 30

*Cur. adv. vult.*

DEMETRIADES J. read the following ruling. On the 5th November, 1986, the Saudi Lebanese Bank S.A.L., of Beirut, Lebanon, hereinafter referred to as "the Bank",

filed in this action three applications. By the first the Bank prays for -

5 "A temporary order of the Court staying the order dated 7.10.86. which fixed the order of priorities in the above action and ordered the payment out of court of the proceeds of sale of the defendant ship, until such time as the applicants may be heard by the court on an application to rescind and/or vary the above order, which application has been filed on 10 5.11.1986, and fixed for hearing on 10.11.1986."

The second application is for leave to intervene in the action and by its third application the Bank applies for an order of the Court rescinding or varying the said order which was given on the 7th October, 1986.

15 The Bank in its said applications alleges that the ship is mortgaged in its favour by a first legal mortgage as security for loans, facilities and financial credits granted to her owners: that they have a right to intervene in these proceedings in order to safeguard their interests and that 20 at the time the ship was mortgaged to them it was named "JAMAL B".

The ship was sold by public auction on the 27th September, 1986, after an order of the Court dated the 10th September, 1986, which was made as a result of an application by the plaintiff in this action for her sale pendente 25 lite.

Several actions had already been filed against the ship for a number of causes, including crew claims, but as neither the ship nor persons interested in her entered an appearance, judgments were entered after the plaintiff in 30 each of these actions proved his claim.

On the 7th October, 1986, the Court, after an application for fixing the priority of payments, the judgment creditors, caveators and other persons entitled to be paid 35 out of the proceeds of the sale of the ship, made an order and directed that the Registrar, who was holding the money, complied with the order fixing the priorities for the pay-

ment and, also, pay out to each claimant the amount that appeared in the order to be due to each of them.

On the 10th November, 1986, counsel appearing for the applicant Bank, the plaintiffs/judgment creditors in this action and Action No. 79/86, as well as counsel for claimants against the ship who entered caveats, agreed that the first two applications of the Bank be heard together.

On the 12th November, 1986, Mr. Papaphilippou, counsel for the plaintiff/judgment creditor in this action, applied and obtained an order by which the Chief Registrar of this Court, a Bank employee and the Marshal were directed to appear before the Court in order to give evidence and produce -

- (a) documents relating to the sale of the ship,
- (b) cheques given in payment of the sale price of the ship, and
- (c) documents relating to the clearing of the said cheques.

It appears to me that such application was made in order to show that at the time the application of the Bank was filed, no balance of the proceeds of the sale of the ship was in the hands of the Chief Registrar of this Court.

On the 15th November, 1986, and immediately after the applicants were called, Mr. Papaphilippou invited the Court to hear first the evidence of the three witnesses and then proceed to ask counsel for the parties to put forward their submissions as to whether the Bank is entitled to be given leave to intervene. Counsel submitted that the hearing of the evidence of these witnesses was essential as it would enlighten the Court on the factual aspects of the case, especially regarding the opening of a Bank account in the name of the Chief Registrar of this Court, and how the proceeds of the cheques, given in payment of the proceeds of the sale of the ship, were treated, negotiated, deposited or paid out. Counsel further submitted that there is no fund in Court and that there is no money which can be touched by an order of the Court because the money

realised from the sale of the ship had already, by order of the Court, been released and been ordered to be paid to the beneficiaries. He further submitted that because of this the applicants have no locus standi to proceed with their applications.

Mr. Papaphilippou further submitted that if his application to allow the three witnesses to give evidence on the factual aspect of the case was refused, the Court would be left without assistance in evaluating the respective rights of the litigants and there would be, in his opinion, a miscarriage of justice.

Counsel for the Bank, Mr. Pavlou, submitted that leave for intervention should be granted in view of the contents of the affidavit accompanying his application. He further submitted that although the usual practice is for the Court to grant leave for intervention on an ex-parte application, the Court was right, in the circumstances of this case, to ask that the judgment creditors and caveators were also heard. Mr. Pavlou expressed the opinion that evidence can neither be heard by the Court at this stage, nor the evidence intended to be given now is relevant to the proceedings.

Intervention by a person who is not a party to an Admiralty action in rem is not expressly provided by the Cyprus Admiralty Jurisdiction Order, 1893, which gives jurisdiction to the Supreme Court of Cyprus to try Admiralty cases. The power to accept and deal with applications of this nature by this Court is based on rule 237 of the said Order, which provides:

“Rule 237. In all cases not provided by these Rules, the practice of the Admiralty Division of the High Court of Justice of England, so far as the same shall appear to be applicable, shall be followed.”

The provision in England that allows a person not a party in an Admiralty action in rem to intervene in proceedings is now Order 75, rule 17, which came into force in 1962 and which reproduces, with amendments, the old Order 12, rule 24. It has been repeatedly said by this

Court that the rules of the Supreme Court of England that apply in Cyprus are those that were in force in 1960. The rule, therefore, which is applicable in the present case is Order 12, rule 24, of the old Rules of the Supreme Court of England, which reads:

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“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.”

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From the wording of this rule, it appears that a person not a party in an Admiralty action in rem, in order to intervene, the ship must be either under arrest by an order of the Court or has been sold and the proceeds of the sale are held by the Court.

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In the present instance it is the allegation of the respondents that there is no money in the fund of the Court, as same has been, by directions of this Court, allocated, although not yet paid, for reasons unknown at present to the Court.

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In the circumstances, I think that it will be proper for me to hear evidence as to whether there is money in the fund of the Supreme Court.

The application is fixed for hearing on the 13th December, 1986, at 9.30 a.m.

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*Order accordingly.*