

Shipping & Transport - Cyprus

Reminder of effect of consent judgments in *in rem* proceedings

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Facts
Principle
Effect
Comment

A recent judgment of the Admiralty Court is a useful reminder of the need to prove a claim in *in rem* proceedings.⁽¹⁾

Facts

The claim was one of a series of actions that the claimant, a bank, instituted against several ship-owning companies within the same group, following default by the parent company in the loan facilities that were granted and secured by way of mortgages over the ships owned by the subsidiaries.

The vessel was arrested in Limassol port and was subsequently sold pending litigation with the proceeds from the sale being deposited with the court. At the hearing, the lawyers representing the defendant ship informed the court that they were prepared to accept judgment in accordance with the claim filed by the claimant. Lawyers for the claimant asked the court to proceed with proof in order for the judgment to be binding and enforceable against all third parties, on the basis of the principle laid down in *SAPPHIRE SEAS*.⁽²⁾

Principle

In contrast to a judgment '*in personam*', which determines the legal relationship only between the parties to the action, a judgment '*in rem*' is a judgment that states, defines or otherwise determines the legal status of the subject matter not only as between the parties to the action, but also with regard to the rest of the world in general. However, where a judgment *in rem* is given by consent, it lacks the necessary judicial consideration and decision of the court on the evidence that should be presented to prove the claim against the *res* (ie, the object or subject matter of the legal proceedings). In the absence of an examination of the evidence by the court and a judicial finding on the merits of the case, the judgment will be binding only on the parties in the action and not against any third parties.

Effect

This principle has three main effects on a claim:⁽³⁾

- First, the judgment becomes *inter partes* and binding only against the defendants to the action.
- Second, it deprives the claimant of the right to file or otherwise participate in proceedings for the determination of priorities, since the matter of priorities can be raised only when the claim and its nature have been proved and determined by the court.⁽⁴⁾
- Third, it creates a *res judicata* (ie, a final and binding effect). With the cause of action already being determined, no fresh proceedings can be brought to rectify the results of the judgment by consent so that the claimant is reinstated in the ranking of priorities (cause of action estoppel or re-litigation of the claim).⁽⁵⁾

Comment

Skipping proof has potentially devastating effects on a claim, since it excludes the claimant from the priorities procedure and ranks its claim after all *in rem* judgments. Even where the claimant is the sole creditor or lien holder against the vessel, it is never certain when a third party may intervene in the proceedings. Instead, doing the obvious will secure the claim with minimal effort.

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Endnotes

⁽¹⁾ *The Royal Bank of Scotland NV (ex ABN Amro Bank NV) v KALIA, lying at the Port of Limassol*, Admiralty Action 14/2011, May 16 2014.

⁽²⁾ *Demetriou Pamos ao v SS SAPPHIRE SEAS*, (1) (2000), 1C CLR 1680.

⁽³⁾ See *SAPPHIRE SEAS* and subsequent related judgments: (2001) 1B CLR 1563 and (2002) 1C CLR 1563.

⁽⁴⁾ Before the decision in *SAPPHIRE SEAS*, the practice followed by the Admiralty Court was to allow proof to take place as part of the priority proceedings, although the court described this practice as erroneous.

⁽⁵⁾ Although in his dissenting speech in *SAPPHIRE SEAS*, Judge Nicolaou supported the view that since the judgment by consent in an action *in rem* turns it into an *inter partes* judgment, a claimant should not then be deprived of the right to claim *in rem*, since the claimant's right against the ship is not in fact extinguished (based on the reasoning in *The Indian Endurance* (2) [1997] 4 All ER380).

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