

## Shipping & Transport - Cyprus

### Court considers application for security for costs

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#### Facts

#### Applicable rule

#### Decision

#### Comment

A recent judgment<sup>(1)</sup> arising from one of a series of claims being dealt with by the Cyprus courts against the ship AVANTIS II gives an insight into the principles that the courts will apply when considering applications for security for costs in admiralty cases.

#### Facts

The respondent, Delaford Trading Limited, was engaged in a separate action (20/12) in the Admiralty Court against the same ship for provision of bunkers and lubricants. By a September 6 2012 application it also sought the leave of the court to be added as a defendant, or alternatively to be allowed to intervene, in an action (8/2012) that had been instituted against the ship by the Cooperative Bank of Evoias, in order to dispute the bank's claim against the ship deriving from loans that the bank claimed to have provided to the ship. The bank filed an objection to that application (which at the date of this judgment was still pending).

The bank sought an order for security for costs of approximately €10,000, regarding the application to intervene filed by Delaford, based on Rule 185 of the Admiralty Jurisdiction Order (1893). The parties agreed that this application would be tried first.

#### Applicable rule

Rule 185 of the order reads as follows:

*"If any Plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision) or any Defendant making a counterclaim is not resident in Cyprus, the Court or Judge may, on the application of the adverse party, order him to give such security for the costs of such adverse party as to the Court or Judge shall seem fit; and may order that all proceedings in the action be stayed until such security be given."*

The court observed that in order to obtain security for costs in an admiralty case, the applicant must fall within the definition of 'adverse party' and the application must be against the plaintiff or against a defendant with a counterclaim, who are not residents of Cyprus. The case of an intervener, or of a person seeking to intervene, is not expressly provided for under Rule 185. This was the crux of the application under consideration. However, under all circumstances, the main basis for granting security for costs is that the respondent is not a resident of Cyprus.

#### Decision

The court first made clear that the matter of security for costs in an admiralty action is exclusively provided for under Rule 185 of the order, and the Civil Procedure Rules do not apply. The court referred to the admiralty case of *Jayee PVC Pipes PVT LTD v Intertrust Shipping Corporation*,<sup>(2)</sup> in which Justice Demetriades had pointed out that "the Civil Procedure Rules have no application in this case since there is special provision in the Order that provides for when a party is subject to security for costs" (paragraph 15).

The court also made clear that Rule 237 of the order, which allows the practice of the English Admiralty Court to apply for matters not covered under the order, was not applicable. The judge cited *Athanasios Salmas v the Ship M/V "ALEXANDROS" (2)*<sup>(3)</sup> in which Justice Pikis (as he then was) ruled that since Rule 185 exhaustively regulates the matter of security for costs in an admiralty action in Cyprus, Rule 237 cannot apply.

However, in regard to costs, that case differed from the facts now presented before the court. In that instance, the security for costs was being asked from a person who claimed to be the owner of the ship against another person who also claimed ownership. An intervener claiming ownership of the object does not have the status of a plaintiff and, as the judge mentioned, "it would be anomalous to place any obstacles in the way of a person presenting its claim to defend an action that according to its allegations turns against an object that is in its

ownership" (paragraph 1435). This was not the case in the present application, since no one had claimed ownership of the ship.

*Ekinciler Dis Ticaret AS v the Proceeds from the Sale of the Cargo on Board the Vessel "Marwa M"*<sup>(4)</sup> also differed from the facts of the present case. In that instance the interveners were judgment creditors of the proceeds of the sale and, as such, fell within the definition of an adverse party. Therefore, they were entitled to security for costs since the plaintiff in the case was not a resident of Cyprus.<sup>(5)</sup>

In the application under consideration, Delaford (the respondent) was neither a party nor intervener. With the application to intervene still pending, it could be considered only as a person with intention to intervene and therefore fell outside the ambit of Rule 185.

It might be argued that since the issue was outside the scope of Rule 185, Rule 237 should apply and the court should follow the practice of the English Admiralty Court as at the date of the Cyprus's declaration of independence, but the bank did not put this argument forward or cover it in its pleadings.

The court therefore rejected the bank's application and awarded the costs of the application to Delaford.

## Comment

When a court considers whether to grant an order for security for costs it will consider the nature of the party against whom such an order is sought. If it falls within the scope of the definition of an adverse party, Rule 185 will apply. The Civil Procedure Rules will not be applied because the issue is exclusively regulated by the order.

The amount of security will be that which, under normal circumstances, a party seeking such security may require. As a matter of good practice, the amount claimed as security must be supported by a detailed list of estimated expenses, indicating the amount of costs expected to be incurred until full trial of the case.

As the case law dictates, no such order may be granted in cases where a party claims ownership of the object. Likewise, where no counterclaim is filed by a defendant, no such order may be sought (as in *Jayee*).

Furthermore, under existing case law, the court will not consider the practice of the English Admiralty Court under Rule 237 of the order. However, as this recent case shows, there may be instances where the court has to consider this option because a litigant does not fit the definition of 'party' or 'intervener'.

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## Endnotes

<sup>(1)</sup> *Cooperative Bank of Evoias v The Ship "AVANTIS II" (IMO 7432305) under the Greek flag*, Admiralty Action 8/2012; application of October 9 2012, interim judgment of January 10 2013.

<sup>(2)</sup> (1990) 1 CLR 402.

<sup>(3)</sup> (1992) 1B CLR 1431.

<sup>(4)</sup> (2006) 1A CLR 288.

<sup>(5)</sup> Therefore, the enforcement of any judgment against the plaintiff or applicant would be impossible since it was a Turkish company.

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