

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO.3712 OF 2022
IN
COMMERCIAL ADMIRALTY SUIT (L) NO.18896 OF 2022

Ceto Shipping Corporation	...Applicant
<i>In the matter of</i>	
Kroll Trustee Services Limited	...Plaintiff
vs.	
M.V. AEON (IMO NO. 9576818)	...Defendant

Mr. Dhruva Gandhi a/w. Mr. Naishadh Bhatia, Mr. Saakshat Relekar
i/b. M/s. Crawford Bayley & Co., for the Applicant.

Mr. Prashant Pratap, Senior Advocate a/w. Mr. Shyam Kapadia, Mr.
Pabitra Dutta, Mr. Nishaan Shetty, Mr. Raghvendra Desai i/b. Bose
and Mitra & Co., for the Plaintiff.

Mr. Rahul Narichania, Senior Advocate a/w. Mr. Prashanti Patel i/b.
Mulla & Mulla CBC, for Erstwhile owner of defendant.

CORAM : N. J. JAMADAR, J.
DATE : FEBRUARY 28, 2023

P.C.:

1. This application preferred seeking to intervene in Commercial Admiralty Suit (L) No. 18896 of 2022 instituted by Kroll Trustee Services Limited (Kroll), the plaintiff against M.V. Aeon, the defendant vessel, purportedly under Rule 1086 of the Bombay High Court (Original Side) Rules, 1980 (the rules 1980).

2. The substance of the application is that the applicant is the bareboat charterer of the vessel M/T Victor 1. The applicant had

entered into a Management Agreement dated 17th August, 2020 with Saint James Shipping Limited (SJSL) whereby SJSL was appointed as a commercial manager of the vessel M/T Victor 1. SJSL is a company incorporated under the laws of the Republic of Marshall Islands. SJSL is the true owner of the defendant/vessel. M/s. Samnium Maritime Limited, the registered owner of the defendant vessel is merely the *alter ego* of SJSL and has been created with the sole purpose of defeating legitimate claims against SJSL.

3. The applicant claims that it has instituted a suit being Commercial Admiralty Suit (L) No. 20876 of 2022 against the defendant vessel to enforce its maritime claim arising out of the Management Agreement dated 17th August, 2020, entered into with SJSL. By instant application, the applicant professes to secure and preserve its rights, interest and security against the defendant vessel. In the event a decree is passed against the defendant vessel in favour of the plaintiff, it would impair the rights of the applicant. Hence, this application.

4. An affidavit in reply is filed on behalf of the plaintiff resisting the prayer to intervene.

5. I have heard Mr. Dhruva Gandhi, learned counsel for the applicant, Mr. Prashant Pratap, learned senior counsel for the plaintiff and Mr. Rahul Narichania, learned senior counsel for the defendant.

6. Mr. Gandhi, learned counsel for the applicant made an endeavour to demonstrate that the registered owner of the defendant vessel M/s. Samnium Maritime Limited is a part of an intricate web of corporate holding by the Samnium and St. James Group of Companies. The ultimate beneficiary and operator of this group is one Mr. Postantzis Panagiotis, a Greek national. According to him, SJS� is the arm of the said group and fraudulently circulates vessels under its service to third parties and misappropriates the proceeds from illegal charterparties. It was urged that the fraud perpetrated by the aforesaid group warrants lifting of the corporate veil.

7. Evidently, the applicant does not claim to have rendered any service or supplied any necessities to the defendant vessel or its crew. The claim is based on the alleged ownership of SJS� of the defendant vessel. Keeping this broad nature of the applicant's claim, the prayer in the instant application are required to be

considered.

8. Rule 1086 provides that a person who is interested in a ship which is under arrest or the sale proceeds of such ship against which an action in rem is brought, may with the leave of the Judge intervene in the suit. Rule 1086 of the Rules, 1980 reads as under:-

1086. Interveners.-

- (a) Where a ship against which a suit in rem is brought is under arrest or money representing the proceeds of sale of that ship is in court, a person who has interest in that ship or money but who is not defendant to the suit may, with the leave of the Judge, intervene in the suit.
- (b) An application for grant of leave under this rule may be made ex-parte by an affidavit showing the interest of the applicant in the ship against which the suit is brought or in the money held in court.
- (c) A person to whom leave is granted to intervene shall thereupon become a party to the suit and shall file an appearance in person or by vakalatnama within the period specified in the order granting leave. On filing such appearance or vakalatnama, the intervener shall be treated as if he were a defendant in the suit.
- (d) The Judge may order that a person to whom he grants leave to intervene in a suit, shall, within such period as may be specified in the order, serve on every other party to the suit such pleading as may be specified.

9. In the case of The Board of Trustees of the Port of Mumbai in the matter between Irwin Edmund Sequeira and Others vs. M.V. Karnika¹, I had an occasion to deal with the import of the provisions contained in Rule 1086. It was, inter alia, observed as under :-

15. Sub-clause (a) of Rule 1086 provides that where an action in rem is brought against a ship, which is under

¹ IA No.895/2021 in COMAS No.11/2021 Dt.22/03/2022.

arrest, or the sale proceeds of the ship, (which is in deposit with the Court), a person, who has interest in that ship or sale proceeds may intervene in the suit, with the leave of the Judge, if he is not party defendant to the suit. On a plain reading, four postulates emerges. One, an action in rem must have been brought against the vessel. Two, the vessel must be either under arrest or, post its sale, the Court holds seisin over the sale proceeds of the ship. Three, the person who seeks to intervene must have an interest in the said vessel or its sale proceeds. From the point of view of the intervener, what has to be established is the existence of an interest in the vessel or the sale proceeds. Four, it is in the discretion of the Court to allow a party to intervene.

.....

26. The conspectus of aforesaid consideration is that in view of Rule 1086 of the Admiralty Rules, if the Court is satisfied that the applicant has an interest in the vessel or the sale proceeds, he can be allowed to intervene in the suit for the limited purpose of demonstrating that the plaintiff is not entitled to a decree in excess of the genuine and sustainable claim. In short, a claimant, who is allowed to intervene, cannot definitely step into the shoes of original defendant – vessel and/or its owner, much less take all the defences which are open to such defendant. An intervener would be entitled to raise only those defences which are appropriate to his character as the competing maritime lien holder/ claimant. Thus, I am inclined to allow the application.

10. Applying the aforesaid principles to the facts of the case, it becomes abundantly clear that the applicant's assertion that it has maritime claim against the defendant vessel is contentious, in the least. Prima facie, there is no cogent material which lends assurance to an inference that the applicant is a competing maritime lien holder/ claimant. Impleadment of the applicant as a party defendant to this suit would inevitably expand the scope of

adjudication and the Court would be required to delve into the aspect as to whether the corporate veil is required to be lifted. Such an inquiry would be wholly extraneous to the adjudication of the plaintiff's claim against the defendant vessel.

11. I am, therefore, impelled to hold that the applicant has not succeeded in making out a case for intervention.

Hence, the following order.

ORDER

1] The application stands rejected.

2] By way of abundant caution, it is clarified that the observations are confined to justifiability of the applicant's claim for intervention in the instant suit and they may not be construed as expression of opinion on the merits of the applicant's claim in Commercial Admiralty Suit (L) No. 18896 of 2022 against the defendant vessel.

(N. J. JAMADAR, J.)