

Patricia Hayes & Assocs. v. Cammell Laird Holdings U.K. United States Court of Appeals for the Second Circuit 339 F.3d 76 (Decided August 5, 2003)

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IT WAS NOT AN ABUSE OF DISCRETION FOR THE COURT TO DECLINE TO EXERCISE JURISDICTION OVER THE SURETIES CLAIM WHEN THERE WAS NO EVIDENCE THAT ANY ACTUAL DAMAGE WAS INCURRED

The Court of Appeals for the Second Circuit Court held that the district court did not abuse its discretion in declining to exercise jurisdiction over the sureties claim based on the absence of a showing that they had paid any claims under the FMC Bond.

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Appellant-interveners Greenwich Insurance Co. and NAC Insurance Co. (“sureties”) appealed an order by the United States District Court for the Southern District of New York denying their motion to intervene. Accompanying the sureties motion to intervene were allegations that they had maritime liens against Big Red Boat II (“BRBII”), which entitled them to enforce those liens *in rem* against BRBII.

Patricia Hayes & Associates, Inc. (“Hayes”) and Smithall Electronics, Inc. (“Smithall”) filed complaints against the BRBII, International Shipping Partners (“ISP”), Premier Cruises, Inc. (“Premier”) and the Master of the BRBII (collectively “the defendants”) alleging that they were entitled to an arrest warrant for the BRBII because of maritime liens held against the vessel. On September 15, 2000, Southern Marine Electric Company (“Southern Marine”) and Alpha Marine (“Alpha Marine”) filed similar complaints against the defendants. The district court signed the arrest warrants pursuant to Supplemental Rule C of the Federal Rules of Civil Procedure on September 15, 2000. When BRBII entered the district on Saturday, September 16, 2000, it was seized by United States Marshals. Following the arrest of the BRBII, the sureties filed their motion to intervene. The district court signed an order consolidating all claims filed against the defendants on September 28, 2000 and granted all motions to intervene regarding all uncontested claims. Once the majority of claims against BRBII were settled, the vessel was released from arrest on November 10, 2000.

The claims raised by the sureties are related to a bond they issued to Premier. Although Premier did not own the BRBII, the vessel had been chartered from its owners and operated by Premier as a part of its fleet. Procedurally, Premier is legally required to prove financial ability to refund any unearned passenger deposits before a carrier can transport passengers for hire from U.S. ports. In order to meet this requirement, Premier had the sureties post a Federal Maritime Commission Passenger Vessel Surety Bond (“FMC Bond”), which covered Premier’s entire fleet of six vessels. Coverage was limited to \$5 million per vessel and \$15 million collectively. The consideration for the FMC Bond was an agreement by Premier to pay a premium and indemnify the sureties for all “losses, costs, and expenses, including reasonable attorney’s fees.”

At the time Premier ceased operations in the fall of 2000, there remained outstanding passenger ticket deposits for the BRBII’s future trips in the amount of \$2,310,028.44. In addition, due to the cancellation of several summer 2000 voyages by BRBII, the sureties claimed that they were exposed to total potential liability of \$5

million. However, the sureties never actually paid any claims under the FMC Bond. Although the primary issue the parties referred to in their briefs was whether an FMC Bond constitutes a maritime contract and whether a maritime lien can attach to a party pursuant to payments under the FMC Bond, the Court of Appeals found that the present case did not require the court to reach those issues because the sureties' motion to intervene and ensuing filings did not allege that they had made any payment under the FMC Bond.

The court established that in order to intervene as of right, "the applicant must: (1) file a timely motion; (2) show an interest in the litigation; (3) show that its interests may be impaired by the disposition of the action; and (4) show that its interest is not adequately protected by the parties to the action." *In re Holocaust Victim Assets Litigation*, 225 F.3d 191, 197 (2d Cir. 2000). A maritime lien is "a special property right in the vessel...as security for a debt or claim...[which] arises when the debt arises and grants the creditor the right to seize the vessel, have it sold, and be repaid the debt from the proceeds." *Itel Containers Int'l Corp. v. Atlanttrafik Express Serv. Ltd.*, 982 F.2d 765 (2d Cir. 1992).

In the present action, the sureties argue that amounts due under the FMC Bond entitle them to maritime liens against the BRBII. In addition, the sureties argue that passengers who had paid for a trip on the BRBII but did not redeem it were thereby given the right to maritime liens against the BRBII and those sureties, as payors of those claims, were thereby subrogated to those liens. However, the court found that the sureties' claims could not become ripe so as to justify granting a maritime lien against BRBII until there were amounts due under the FMC Bond. Contrary to the sureties' claims, the court repeatedly established that there was no money owed, nor had there been any amounts paid by the sureties under the FMC Bond that would thereby give rise to a maritime lien against the BRBII. Therefore, the court found no error in the district court's finding that the sureties' claims were not ripe.

The sureties additionally relied upon *Greenwich Marine, Inc. v. S.S. Alexandra*, 339 F.2d 901 (2d Cir. 1965) and *The Lassell*, 193 F. 539 (E.D. Pa. 1912) to assert that a maritime claim can be filed prior to a breach of a maritime contract if the potential breach of contract is apparent. The court struck down this argument, clarifying that the cited cases only establish that a district court has the discretion to proceed on a premature claim. In denying the sureties motion to intervene, the district court noted that the sureties had not yet paid any claims amounts on the bond, and that the sureties were holding \$3.7 million in cash collateral for any potential claims to be paid. These factors established there was no abuse of discretion in declining to exercise jurisdiction. The court instead concluded that the lack of payments by sureties proves that their claims against the BRBII were dubious and therefore unable to be adjudicated. For the forgoing reasons the Court of Appeals for the Second Circuit affirmed the district court's decision to deny the sureties' motion to intervene.

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