

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INDIAN RIVER RECOVERY CO.,)
)
Plaintiff,)
)
v.) C.A. No. 85-312CMW
)
THE SANTA ROSEA LEA,)
HER APPURTENANCES,)
FURNITURE, CARGO, ETC.,)
)
Defendant.)

PLAINTIFF'S ANSWERING BRIEF
IN OPPOSITION TO
APPLICANT'S MOTION TO INTERVENE

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Dated: 7-22-85

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NATURE AND STAGE OF THE PROCEEDINGS

The Applicant, John L. Amrhein, Jr., has filed a Motion to Intervene and an Opening Brief in support thereof. This is Plaintiff's Answering Brief in Opposition to the application.

STATEMENT OF FACTS

On May 24, 1985 the plaintiff, Indian River Recovery Co., filed a Complaint in the United States District Court for the District of Delaware for the salvage rights to the ship known as The Santa Rosea Lea. On May 29, 1985 the Honorable Caleb M. Wright ordered that service be made on The Santa Rosea Lea and that plaintiff be appointed as custodian of the appurtenances, furniture, cargo and apparel of The Santa Rosea Lea. On June 20, 1985 the State of Delaware filed an Application for Intervention. On July 8, 1985 John L. Amrhein, Jr. filed an Application to Intervene also.

QUESTION PRESENTED

WHETHER APPLICANT, JOHN L. AMRHEIN, JR., HAS ANY BASIS TO INTERVENE IN THIS ACTION UNDER RULE 24 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

ARGUMENT

THE APPLICANT, JOHN L. AMRHEIN, JR., DOES NOT HAVE ANY BASIS TO INTERVENE IN THIS ACTION UNDER RULE 24.

Applicant Amrhein's Opening Brief in support of his Motion to Intervene merely discusses possible substantive issues and does not address the relevant procedural issue of his intervention attempt. "The court, in determining the intervention issues, does not undertake to decide the ultimate validity of the plaintiff's alleged rights". Panamco, Inc. v. Nardo Management Company, Inc., Del.Super., 435 A.2d 726 (1981).

Intervention is governed by Rule 24 of the Federal Rules of Civil Procedure which provides as follows:

Rule 24. Intervention.

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C., §2403.

Under Rule 24(a)(1) the applicant's intervention will not be permitted since there is no statute of the United States which confers an unconditional right to intervene in this case. In regard to Rule 24(a)(2) the applicant also does not have a right to intervene since the applicant is not claiming any interest in the property or the transaction involved in this case. As far as plaintiff can determine, the applicant's only interest is in making sure that the plaintiff properly names the vessel which will be salvaged in this case.

Applicant therefore must be proceeding under Rule 24(b). Under Rule 24(b) the application to intervene is addressed to the discretion of the court. The applicant is contending that The Santa Rosa Lea is not located off of the coast of Delaware but rather is located off of the coast of Cape Charles, Virginia. In addition, the applicant is contending that The Santa Rosa Lea is actually the "Santa Rosalia". From the application it is clear that the applicant is concerned that the sunken vessel which is the subject matter of this action might be confused with The Santa Rosalia which is allegedly located off of the coast of Cape Charles, Virginia. Although that concern is perhaps understandable it is not sufficient

to allow the applicant to intervene in this action.

Under Rule 24(b)(2) the intervenor must " . . . establish the existence of a jurisdictional basis for its claim independent of the jurisdiction that the court has over the claim in the principal action." Jet Traders Investment Corp. v. Tekair, Ltd., D.Del., 89 FRD 560 (1981). This is an additional requirement for putative Rule 24(b) intervenors. Pierson v. United States District of Delaware, 71 FRD 75, 81 (1976). Its derivation comes from Rule 82 which provides that the Federal Rules of Civil Procedure "shall not be construed to extend or limit the jurisdiction of United States district courts . . ." Id. Rule 82 is violated by allowing an intervention of a party with a claim "not otherwise within the jurisdictional cognizance of Federal District Courts." Id. Nowhere in his pleadings has the applicant asserted the necessary independent jurisdiction required for a Rule 24(b) intervention.

Whether the intervention sought is by right or is permissive, it is conditioned on the requirement of Rule 24(c) that the intervenor state his grounds accompanied by a pleading setting forth the claim or defense to the action. Rhode Island Federal of Teachers, AFL-CIO v. Norberg, First Circuit, 630 F.2d 850 (1980). Rule 24(c) requires that a motion to intervene "shall be accompanied by a pleading setting forth the claims or defenses for which the intervention is sought." A motion to intervene is properly denied when not accompanied by a pleading that conforms to Rule 7(A), permitting the parties and the court to understand the intervenor's claims or defenses. Gabauer v. Woodcock, Eastern District of Mo., 425 F.Supp.

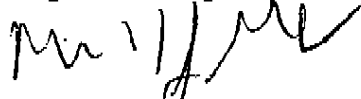
1 (1976) affirmed in part and reversed in part on other grounds,
8 Circuit 594, F.2d 662, Cert.Denied 444 U.S. 841 (1979);
Abramson v. Pennwood Investment Corp., 2nd Circuit, 392 F.2d 759
(1968); Pikor v. Cinorama Products Corp., Southern District of NY,
25 FRD 92 (1960).

Since applicant's Motion and Brief do not state the grounds of his application to intervene in this case his application should be denied.

CONCLUSION

Based upon the foregoing the plaintiff respectfully submits that the applicant's Motion to Intervene should be denied.

Respectfully Submitted,




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STATE OF DELAWARE:
 : ss.
NEW CASTLE COUNTY:


BE IT REMEMBERED, that on this 22nd day of July , 1985 , personally appeared before the undersigned, a Notary Public for the State and County aforesaid, the deponent, who being duly sworn deposes and says that she is employed in the offices of Tomar, Parks, Seliger, Simonoff and Adourian, 901 Market Street, Suite 1111, Wilmington, Delaware 19801, and on July 22, 1985 , she deposited in the mail the attached papers addressed to:

JOHN L. AMRHEIN, JR.
BROOKVIEW DRIVE
SALISBURY, MD 21801



Donna L. Weible

Sworn to and subscribed before me
the day and year aforesaid.



Notary Public