IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3073
Summary Calendar

IN RE: IN THE MATTER OF THE COMPLAINT OF MALMAC SDN BHD, HYDRO MARINE SERVICES, INC., EASTERN MARINE SERVICES, INC. and McDERMOTT INTERNATIONAL, INC. for Exoneration from or Limitation of Liability:

MALMAC SDN BHD,
HYDRO MARINE SERVICES, INC.,
EASTERN MARINE SERVICES, INC. and
McDERMOTT INTERNATIONAL, INC.,

Appellees,

v.

MICHAEL LEE and wife CHRISTINE LEE and MARTIN PRINGLE and wife, JOAN PRINGLE,

Claimants-Appellees,

v.

MICHAEL TESTA and TESTA and TESTA,

Movants-Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana
(91-CV-3016-A(6))

(February 18, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.[*]

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

PER CURIAM:

The appellants in this case are discharged attorneys who sought to intervene in a case to protect their contingency-fee interests. The district court denied their motion to intervene as untimely. Finding no abuse of discretion, we affirm.

BACKGROUND

On August 15, 1991 Derrick Barge No. 29, an ocean-going combination derrick and pipe laying barge, capsized in the South China Sea as it was being towed to escape a severe tropical storm. Of the 195 hands aboard the vessel, 22 persons lost their lives. On the same day as the accident, the owners/operators/charterers of the barge filed a preemptive complaint seeking exoneration from, or limitation of, liability arising out of the incident. On September 2, 1991, two sets of claimants against the plaintiffs, the Pringles and the Lees, retained Michael Testa and his law firm, Testa & Testa ("Testa"), to represent their interests. Under the terms of the contingency-fee contract with the Pringles and Lees, Testa had an interest in 40% of any collection or settlement made after the suit was filed.

On or about April 3, 1992, Testa received a letter from another law firm, Keaty & Keaty, over the signature of Robert B. Keaty ("Keaty"), informing Testa that the Pringles and the Lees had substituted Keaty as their counsel in the limitation proceeding. This letter invited Testa to submit a claim for attorneys fees incurred up to that time and suggested that the two firms discuss ways to protect Testa's interest in those fees. The record does

not indicate that Mr. Testa or his firm submitted a claim or discussed their interests in the case with Keaty.[1]

The district court ordered that the trial commence on October 26, 1992. At several points in its order, the court stated that the only issue for this trial was whether the petitioners were entitled to exoneration from or limitation of liability: "[T]he sole issue which will be presented to the court at trial on October 26, 1992, is whether or not petitioners are entitled to exoneration from or limitation of liability." In the same order, the district court repeated that it would be a "trial on liability only." (emphasis in original). The district court in its pre-trial order reiterated that the October 26 trial would "involve[] only the petitioners' entitlement to limitation of or exoneration or exoneration from liability . . . . The issue of liability will be tried separately from that of quantum."

On October 26, 1992, the day of trial, attorneys appeared before the district judge and announced that the parties had settled the matter as to both liability and damages. Testa learned of the settlement that same day and, to protect its interest in attorneys fees related to the Pringle and Lee judgments, filed papers in connection with its motion to intervene that afternoon.

Keaty opposed Testa's intervention. On January 6, 1993, the district court denied Testa's motion to intervene as untimely, finding that 1) Testa had been aware of its interest in the matter

[1] The lawyer representing Testa stated in his motion for leave to file intervention that he had attempted unsuccessfully to contact Keaty with regard to this matter.

since receipt of the Keaty letter in April, 1992; 2) that it had offered no excuse or justification for its seven-month delay in seeking intervention; 3) that Testa's intervention would prejudice the parties, noting particularly that the Lees and Pringles, as foreign citizens living in England, would be required to return to this country and participate in a whole new round of litigation; 4) that Testa could pursue its claims in an independent action; and 5) that there were no factors militating in favor of finding that the application was timely.

DISCUSSION

We review the district court's determination of the timeliness of a motion to intervene for abuse of discretion. Ceres Gulf v. Cooper, 957 F.2d 1199, 1202 n.8 (5th Cir. 1992). In determining whether a motion to intervene is timely, we consider four factors:

> (1) The length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene.
>
> (2) The extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case.
>
> (3) The extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied.
>
> (4) The existence of unusual circumstances militating either for or against a determination that the application is timely.

Engra, Inc. v. Gabel, 958 F.2d 643, 644-45 (5th Cir. 1992) citing Stallworth v. Monsanto Co., 558 F.2d 257, 264-66 (5th Cir. 1977).

An attorney who has entered into a contingency-fee contract with a client and who is subsequently discharged by that client is entitled to intervene as of right in the underlying law suit under Fed. R. Civ. P. 24(a). Keith v. St. George Packing Co., 806 F.2d 525 (5th Cir. 1986). Finally, intervention as of right is subject to a more lenient standard of timeliness than intervention under Rule 24(b). Stallworth, 558 F.2d at 266.

First Factor

The district court placed great emphasis on its finding that Testa had known of its interest in the case for nearly seven months prior to its motion to intervene. Testa argues that its interest did not actually ripen until its former clients' case settled. Until that time, its interest was simply contingent on a favorable outcome. We must decide which definition of "interest" to adopt for contingency-fee intervenors.

In Engra, supra, we affirmed the denial of an attorney's motion to intervene to enforce his contingency-fee contract with his former client because his motion was untimely. A bankruptcy judge in that case had approved a compromise and settlement of the claims initially brought by the attorney and had dismissed the case with prejudice. Eight months after this dismissal the attorney moved to intervene in district court seeking attorney fees. We wrote: "[The attorney] knew of his interest in this case from its inception. In particular, he knew that his rights to collect his fee, whatever those rights may be, were no longer being represented

in mid-March 1988, when he became aware of the proposed settlement . . . ." Engra, 958 F.2d at 645.

Although, Testa reads Engra as implicitly condoning intervention as of right at or near the settlement date, the Court could not have intended generally to endorse eleventh-hour interventions by discharged attorneys because that issue was not before the Court and because timeliness is a fact-specific issue. Although Testa's interest was contingent until October 26, 1992, we agree with the district judge that Testa was aware of his interest in this matter from the moment he was discharged by his clients and could have petitioned for leave to intervene at a much earlier date.

Second Factor

The district court's concern about prejudice against the Lees and Pringles as residents of another country is well-intentioned and reasonable. Had Testa sought intervention earlier, its claims could have been included during the normal course of discovery or other pretrial proceedings between the parties. The only issue the proposed intervention raises--Testa's share of the work product generated on behalf of the Pringles and Lees--could have been fully aired and possibly resolved concurrent with the settlement by Testa's former clients.

Third Factor

The district court found that Testa's ability to pursue its claims against the Lees and Pringles in an independent action limited any prejudice he might suffer by denying his motion to

intervene. Although this is a close question, we cannot find that the court erred.

Testa asserts that obtaining jurisdiction over the former clients, citizens of Great Britain, would likely present serious problems. Moreover, Testa asserts they would have to execute on a judgment in England. Testa cites no supporting facts or law for these speculative consequences of the denial of intervention. But even if he is correct, he may be inconvenienced but not severely prejudiced by having to file an independent lawsuit or pursue redress in the courts of the United Kingdom.

Fourth Factor

The district court found no special factors militating toward a finding of timeliness and specifically observed that Testa ignored a pretrial deadline for filing pleadings that he participated in setting.

Based on all the surrounding facts and circumstances, we cannot conclude that the district court abused his discretion in denying the motion to intervene as untimely.

Finally, the Keaty law firm requested that this Court impose sanctions on Testa under 28 U.S.C. § 1927 for unreasonably and vexatiously multiplying proceedings. The request is without merit.

For the foregoing reasons, the trial court's order denying intervention is **AFFIRMED**.