

1985 October 31

[TRIANTAFYLIDIS. P.. LORIS. PIKIS, JJ.]

DIANA VASSILIADOU,

*Appellant-Defendant,*

v.

THE NATIONAL BANK OF GREECE.

*Respondent-Plaintiff.*

*(Civil Appeal No. 6679).*

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*Appeal—Amendment of Notice of—Principles applicable.*

*Civil Procedure—Pleadings—Illegal transaction—Some particulars of the alleged illegality should be stated.*

5 *The Exchange Control Law, Cap. 199—Section 31—“Settlements”—As at present advised a mortgage is not “a settlement” in the sense of the said section.*

10 Counsel for the appellant, having abandoned all grounds of appeal, except ground 3, applied for leave to amend ground 3 by introducing for the first time in the proceedings between the parties the contention that the mortgages on the properties of the appellant were effected contrary to the provisions of Cap. 199, that is without the permission of the Central Bank. Counsel made it clear that he would pursue the appeal further only if he was  
15 allowed to amend the notice of appeal, as aforesaid.

*Held*, dismissing both the application and the appeal:  
(1) When it is sought to show that a transaction, such as a voluntary conveyance is illegal “some particulars of the illegality should be stated” (Per Lord Davey in  
20 *Bullivant v. Attorney-General of Victoria* [1901] A.C. 196). In this case the issue of illegality was never pleaded or raised at all till now.

(2) In the light of the well settled principles governing the fate of an application to amend a notice of appeal,

there is no difficulty to hold that it is too late in these proceedings to grant leave for the amendment applied for and that if this was done it would be contrary to the interests of justice.

(3) In any event no useful purpose will be served by the proposed amendment, because, as at present advised, the mortgage in question could not be treated as "settlements" in the sense of section 31 of Cap. 199, so as to render necessary the permission of the Central Bank.

*Application dismissed.*  
*Appeal dismissed with costs.*

**Cases referred to:**

*Saint Nicolas Shipping Co. Ltd. v. Nisaho-Iwai Co.*  
(1984) 1 C.L.R. 604; 15

*Kyriakides v. Kaffa* (1985) 1 C.L.R. 465;

*Bullivant v. The Attorney-General for Victoria* [1901]  
A. C. 196;

*Swiss Bank Corporation v. Lloyds Bank Ltd.* [1981] 2  
All E. R. 449. 20

**Application.**

Application for leave to amend the grounds of appeal.

*G. Nicolaidis*, for the appellant.

*A. Dikigoropoulos*, for the respondent.

*Cur. adv. vult.* 25

TRIANTAFYLLIDES P. read the following judgment of the Court. On the 17th June 1985, during the hearing of this appeal, counsel appearing for the appellant abandoned all grounds of appeal in the notice of appeal except ground 3, and he applied for an adjournment in order to be given the opportunity to apply for leave to amend the said ground 3 by introducing the contention that the mortgages on the properties of the appellant, which are involved in

this case, were effected contrary to the provisions of the Exchange Control Law, Cap. 199, without the permission of the Central Bank of Cyprus.

5 Counsel for the appellant made it clear that he would pursue this appeal further only if he was allowed to amend, as aforesaid, ground 3 of the notice of appeal.

10 The application for amendment was filed by counsel for the appellant on the 14th September 1985 and was opposed by counsel for the respondent on the 12th October 1985. It was heard on the 21st October 1985.

15 The present action was filed on the 9th May 1978 by the respondent as the plaintiff. The statement of defence of the appellant, as the defendant, was filed on the 18th December 1978, and after a lengthy hearing the judgment against which the present appeal has been made was delivered on the 29th December 1983.

This appeal was filed on the 6th February 1984.

20 Neither by the statement of defence, nor at any stage during the hearing of the case before the trial Court, nor by the notice of appeal as initially filed, was there raised by the appellant the issue of the contravention of Cap. 199, which is now being sought to introduce by amending the notice of appeal.

25 In the case of *Saint Nicolas Shipping Co. Ltd., v. Nissho-Iwai Co. Ltd.*, (1984) 1 C.L.R. 604, there were pointed out the following (at p. 608):

30 "It was well settled by a line of decisions of this Court that though an amendment of the notice of appeal is a matter within the discretion of the appellate Court, nevertheless, such discretion should be jealously exercised, bearing in mind the particular circumstances of the case."

Later on in the case of *Kyriakides v. Kkaffa* (see C.A. 6692, in which judgment was delivered on the 22nd

March 1985 and is not reported yet)\* there was made lengthy reference to case-law in which the principles applicable to the amendment of a notice of appeal were expounded and, therefore, we need not do so now once again.

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In *Bullivant v. The Attorney-General for Victoria*, [1901] A. C. 196, Lord Davey, in delivering his judgment in the House of Lords in England, stressed that when it is sought to show that a transaction, such as a voluntary conveyance, is illegal "some particulars of the illegality should be stated".

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As, however, pointed out earlier on in the present judgment the issue of the alleged illegality of the mortgages in question was never pleaded or raised at all and till now no step has been taken in order to amend the statement of defence of the appellant in this respect.

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In the light of the well settled principles governing the fate of an application such as the present one we have no difficulty in holding that it is too late in the present proceedings to grant leave for the proposed amendment of the notice of appeal and that if this was done it would be contrary to the interests of justice.

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In any event, it appears that no useful purpose would be served by allowing such amendment because, as at present advised and in the light of case-law such as *Swiss Bank Corporation v. Lloyds Bank Ltd.*, [1981] 2 All E. R. 449, 454, 455, we think that the mortgage in question could not be properly treated as "settlements," in the sense of section 31 of Cap. 199, so as to render necessary the permission of the Central Bank of Cyprus in relation to them.

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Thus, there does not appear to exist even a real probability that if the amendment in question is allowed the appellant might succeed on the new ground which he is seeking to introduce by the amendment of ground 3 in the notice of the appeal.

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\* Reported in (1985) 1 C.L.R. 465.

For all the foregoing reasons the application to amend the notice of appeal is dismissed; and as there does not remain any other ground of appeal on the basis of which this appeal is to be pursued the appeal as a whole has to  
5 be dismissed with costs.

*Application and appeal dismissed  
with costs.*