

1988 March 1

(DEMETRIADES, J.)

IN THE MATTER OF AN APPLICATION BY  
1. CHRISTOFOROS PELEKANOS, 2. GEORGHIOS PELEKANOS, 3. C  
& A PELEKANOS ASSOCIATES LTD., AND 4. CHRISTOFOROS  
PELEKANOS LTD., FOR LEAVE TO APPLY FOR AN ORDER OF  
CERTIORARI,

AND

IN THE MATTER OF AN INTERIM ORDER GRANTED BY THE  
DISTRICT COURT OF NICOSIA, IN ACTION NO. 377/88,  
ON 18.1.88.

*(Application No. 27/88).*

*Prerogative orders — Certiorari — Leave to apply for — Principles  
applicable — Applicant should make out a prima facie case.*

The facts of this case appear sufficiently in the judgment of the  
Court.

*Leave to apply for an order 5  
of certiorari granted.*

**Application.**

Application for leave to apply for an order of certiorari for the  
purpose of quashing an interim order given on the 18th January,  
1988 on an ex-parte application in Action No.377/88 of the 10  
District Court of Nicosia and, further, for an order that compliance  
with the interim order be stayed until the hearing of this  
application or until further order.

*K. Michaelides with M. Georghiou, for the applicants.*

*Cur. adv. vult. 15*

DEMETRIADES J. read the following ruling. This is an  
application by which the applicants -

(a) Seek leave to apply for an order of certiorari for the purpose  
of quashing the interim order given on the 18th January, 1988, on  
an ex-parte application filed in Action No. 377/88 of the District 20  
Court of Nicosia, and

(b) apply that further compliance with the interim order and all proceedings in relation to the said order be stayed until the hearing of this application or further order.

5 The applicants in the present proceedings are the defendants in the action before the District Court of Nicosia, which was brought against them by the plaintiff in that action, in his capacity, as he alleges, as a director and shareholder in the company which is defendant No. 3 in the action.

10 The plaintiff in Action No. 377/88 of the District Court of Nicosia, in brief, claims for -

(A) Injunctions restraining defendants 1, 2 and 4 personally, their servants and agents, from -

15 (i) using and/or exploiting machinery, tools, materials and labourers belonging to defendant No. 3 for the construction of two blocks of flats at Nicosia,

(ii) altering or destroying the books, receipts, contracts, papers and correspondence of defendant No. 3 and/or of falsifying the entries to their books and files.

20 (B) An order directing the defendants to give on oath detailed accounts and explanations relating to machinery, materials and labour which were used from the property of defendant No. 3 for the construction of the two blocks of flats in the name of «PELEKANOS COURT NO 10» and «PELEKANOS COURT NO 11» situated at Nicosia, in the name and/or on  
25 account of defendant No. 4.

(C) Declaration by the Court that the blocks of flats which are being constructed under the characteristics or names of «PELEKANOS COURT NO 10» and «PELEKANOS COURT NO 11» in Nicosia in the name of defendant No. 4 and/or all  
30 profits which will be made out of them, belong and form part of the property of defendant No. 3.

(D) Damages as a result of breach of duty and/or dishonesty and/or trust and/or fraud etc.

35 (E) Damages against defendant No. 3 amounting to £95,820.- plus interest at 9% p. a. as from 1.1.1980.

(F) Order that defendant No. 1 gives on oath full particulars of all dealings that he carried out as the agent of the plaintiff.

(G) Judgment against defendant No. 1 for all amounts of money that he had collected and withholds by virtue of the power of Attorney dated the 7th November, 1979, which was given by the plaintiff to defendant No. 1.

The interim order granted by the District Court of Nicosia prohibits the defendants from - 5

- (a) parting or disposing of the books, receipts, contracts and correspondence of defendant No. 3,
- (b) changing or destroying the books, receipts, contracts and correspondence of defendant No. 3, 10
- (c) Using machinery, tools, building materials, labourers and personnel of defendant No. 3 for the purpose of erecting the blocks of flats under the name «PELEKANOS COURT NO 10» and «PELEKANOS COURT NO 11» situated at Nicosia and which belong to defendant No. 4. 15

The Court further made an order in the form of an Anton Piller Order.

The grounds upon which the applicants base the relief sought by them are the following:

- (1) Neither ss. 6 or 9 of the Civil Procedure Law CAP. 6 nor s. 32 of the Courts of Justice Law, Law 14/60, empowered the District Court of Nicosia to make the said interim order. 20
- (2) The Court had no jurisdiction to prevent the commission of acts which are merely criminal; and paras (a) and (b) of the said order amount in essence to prevention of the commission of criminal acts. 25
- (3) The Court had no jurisdiction or power to make an order in the Anton Piller form as part of the said order.
- (4) Even if the Court had jurisdiction or power to make an order in the form of an Anton Piller order, the subject matter of the said action was not one justifying, the making of such a draconian and oppressive order which amounted in essence to a search warrant. 30
- (5) The books, documents and records of a company must be kept at its Registered Office. Consequently the Court had no jurisdiction or power to Order Applicants to consent to five persons, not named in the order, to enter immediately the premises of Applicant 3 for the purposes of removing, 35

inspecting, photocopying or copying *all* the books, receipts, contracts, documents and correspondence of Applicant 3.

Not even the shareholders of Applicant 3 had such rights under the law.

- 5 (6) The Order complained of violates the Constitutional and other legal rights and privileges of Applicant 3 to preserve the confidentiality of its business, transactions, documents, books, accounts, etc.
- 10 (7) Para (c) of the said order made against all applicants and in the terms made is contrary to the relevant legal provisions as interpreted by our Courts.
- 15 (8) It is evident from the aforesaid and the whole contents of the said order that the Court in making the said order erred and/or was mistaken and/or applied wrongly the relevant legal provisions.
- (9) The Court entirely disregarded that Plaintiff in the said action was not in law entitled to claim reliefs (a) to (e) of the general indorsement or the order applied for and granted.
- 20 (10) The said Order was granted in excess or abuse of the powers of the Court.

As it has repeatedly been said, this Court in granting or refusing an application of this nature, has to exercise a discretion and that what it has to decide at this stage is not whether the order applied for should be issued but whether on the material before it, there is  
25 a prima facie case made out sufficiently to justify the granting of leave to the applicant to move the Court to issue the order of certiorari.

In the light of the contents of the affidavit filed in support of this application, and having heard lengthy arguments by counsel for  
30 the applicants, I am satisfied that a prima facie arguable case has been made out for granting the application.

I, therefore, make the following order:

- 35 (1) The applicants are granted leave to apply for an order of certiorari within ten days from today. Any opposition to it must be made and filed within twenty-one days thereafter.
- (2) All proceedings related to the interim order granted on the 18th January, 1988, in Civil Action No. 377/88, of the District Court of Nicosia, by way of execution or otherwise, are hereby stayed for ten days as from today and if the applicants

apply within the period hereinabove provided, or such extended time as the Court may order, for an order of certiorari, then the stay shall continue to be in operation until further order of the Court.

- (3) Copy of this order to be served on the Registrar of the District Court. 5

*Order accordingly.*