

**ΑΠΟΦΑΣΕΙΣ
ΠΟΥ ΔΟΘΗΚΑΝ ΑΠΟ ΤΟ
ΑΝΩΤΑΤΟ ΔΙΚΑΣΤΗΡΙΟ ΚΥΠΡΟΥ
ΚΑΙ ΤΟ ΔΕΥΤΕΡΟΒΑΘΜΙΟ ΟΙΚΟΓΕΝΕΙΑΚΟ
ΔΙΚΑΣΤΗΡΙΟ**

**ΚΑΤ' ΕΦΕΣΗ
ΚΑΙ
ΠΡΩΤΟΒΑΘΜΙΑ**

**ΑΠΟΦΑΣΕΙΣ ΑΝΩΤΑΤΟΥ ΔΙΚΑΣΤΗΡΙΟΥ
ΚΑΙ ΤΟΥ ΔΕΥΤΕΡΟΒΑΘΜΙΟΥ
ΟΙΚΟΓΕΝΕΙΑΚΟΥ ΔΙΚΑΣΤΗΡΙΟΥ**

Μέρος 1 (Πολιτικές Υποθέσεις)

1st August, 1984

[TRIANTAFYLLIDES, P., LORIS, STYLIANIDES, JJ.]

CYPRUS AIRWAYS LTD.,

Appellants-Plaintiffs

v.

EYDOKIOS SAVVA, (Αφ. 1)

Respondent-Defendant.

(Civil Appeal No. 6456).

Statement of Claim — Particulars — Action for account relating to specific sums of money allegedly withdrawn over a specific period — Application for further and better particulars before defence — Granted, so as to order the Plaintiffs to give particulars of the dates

and respective amounts of the alleged withdrawals, but not of the cheque numbers or of the signatories of the cheques — Principles applicable.

The appellant brought an action against the respondent claiming (a) CP241.433,401 mls and (b) further or in the alternative, an account of moneys received by the respondent during the year 1980, and consequential relief. In paragraph 6 of the statement of claim the amounts claimed under (b) above were itemised, but no further particulars were given. Before filing his statement of defence, the respondent applied for further and better particulars (set out in the Schedule to the judgment), claiming that same were necessary to enable him to identify each amount and make his defence.

The trial Court ordered the appellants to give particulars (a) of the date and respective amounts allegedly withdrawn in 1980, (b) of the reasons put forward by the respondent for each withdrawal, and (c) of each amount alleged in paragraph 6(i), (ii) and (iii) of the statement of claim, giving dates, amounts, cheque numbers and signatories. The appellants appealed against the said order. The respondent cross-appealed against the refusal of the trial Court to order particulars with regard to paragraphs 8 and 10 of the statement of claim.

Held, allowing the appeal in part and dismissing the cross-appeal:

(a) Where the claim is for account only, or where the defendant denies that he is an accounting party, no particulars will be ordered. Where, however, as in this case, a specific or liquidated sum is claimed, particulars of how this sum is made up should be given, regardless of the fact that a claim for account is also included.

(b) At this stage of the action (i.e. before the filing of the statement of defence) the only particulars necessary to enable the respondent to prepare his defence were those of the dates and respective amounts allegedly withdrawn in 1980, as set out in paragraph 6 of the statement of claim. Accordingly, the order of the trial Court should be varied, and the cross-appeal dismissed.

Appeal allowed in part, and cross-appeal dismissed without costs. Order of the trial Court varied.

Έκθεση Αιταιτήσεως — Λεπτομέρειες — Αγωγή για λογαριασμό σε σχέση με συγκεκριμένα ποσά χρημάτων που κατ' ισχυρισμό αποσύρθηκαν κατά την διάρκεια συγκεκριμένης χρονικής περιόδου — Αίτηση για περαιτέρω και καλύτερες λεπτομέρειες πριν από την υπεράσπιση — Έγινε αποδεκτή, ώστε να διαταχθούν οι ενάγοντες να δώσουν λεπτομέρειες των ημερομηνιών και αντίστοιχων ποσών των ισχυριζομένων αποσύρσεων, αλλά όχι τον αριθμό των επιτα-

γών ή των υπογραφόντων αυτές — Αρχές που εφαρμόζονται.

5 Η εφεσείουσα κίνησε αγωγή εναντίον του εφεσίβλητου αξιωνο-
ντας (α) ΔΚ241.433.401 μιλς και (β) περαιτέρω ή διαζευκτικά, λο-
γαριασμό για χρήματα που έλαβε ο εφεσίβλητος κατά την διάρκεια
του έτους 1980, και παρεπόμενες θεραπείες. Στην παράγραφο 6
της έκθεσης απαιτήσεως τα ποσά που εξητούντο δυνάμει του (β)
10 ανωτέρω αναφέρονταν κατά κονδύλι, αλλά δεν δόθηκαν περαιτέ-
ρω λεπτομέρειες. Προτού καταχωρήσει την έκθεση υπεράσπισης
του, ο εφεσίβλητος ζήτησε περαιτέρω και καλύτερες λεπτομέρειες
(εκτίθενται στον πίνακα της απόφασης), ισχυριζόμενος ότι αυτές
ήσαν αναγκαίες για να μπορέσει να εντοπίσει το κάθε ποσό και να
υποβάλει την υπεράσπισή του.

15 Το πρωτόδικο Δικαστήριο διέταξε την εφεσείουσα να δώσει λε-
πτομέρειες (α) των ημερομηνιών και αντίστοιχων ποσών που κατ'
ισχυρισμό αποσυρθηκαν το 1980, (β) των λόγων που προβλήθηκαν
από τον εφεσίβλητο για κάθε απόσυρση, και (γ) του κάθε ποσού
που ανεφέρτε στην παράγραφο 6 (i), (ii) και (iii) της έκθεσης απαι-
τήσεως, δίδοντας ημερομηνίες, ποσά, αριθμούς επιταγών και τους
20 υπογράφοντες αυτές. Η εφεσείουσα υπέβαλε έφεση εναντίον της εν
λόγω διαταγής. Ο εφεσίβλητος υπέβαλε αντέφεση εναντίον της έρ-
νησης του πρωτόδικου Δικαστηρίου να διατάξει την χορήγηση λε-
πτομερειών σχετικά με τις παραγράφους 8 και 10 της έκθεσης
απαιτήσεως.

25 *Αποφασίσθηκε, επιτρέποντας εν μέρει την έφεση και απορρί-
πτοντας την αντέφεση:*

30 (α) Όπου η απαίτηση είναι μόνο για λογαριασμό, ή όπου ο
εναγόμενος αρνείται ότι έχει υποχρέωση να δώσει λογαριασμό,
δεν διατάσσονται περαιτέρω λεπτομέρειες. Όπου, όμως, όπως
στην παρούσα περίπτωση, απαιτείται συγκεκριμένο ή εκαιθαρι-
σμένο ποσό, λεπτομέρειες από τι αποτελείται αυτό το ποσό πρέπει
να δίδονται, ανεξάρτητα από το γεγονός ότι περιλαμβάνεται και
αξίωση για λογαριασμό.

35 (β) Σ' αυτό το στάδιο της αγωγής (δηλαδή πριν από την κατα-
χώρηση της έκθεσης απαιτήσεως) οι μόνες λεπτομέρειες που ήσαν
αναγκαίες για να δώσουν την δυνατότητα στον εφεσίβλητο να ετοι-
μάσει την υπεράσπισή του ήσαν αυτές των ημερομηνιών και αντί-
στοιχων ποσών που κατ' ισχυρισμό είχαν αποσυρθεί το 1980, όπως
αναφέρονται στην παράγραφο 6 της έκθεσης απαιτήσεως. Κατά
40 συνέπεια, η διαταγή του πρωτόδικου Δικαστηρίου έπρεπε να τρο-
ποποιηθεί, και η αντέφεση να απορριφθεί.

*Η έφεση επιτράπηκε εν μέρει, και η
αντέφεση απορρίφθηκε, χωρίς έξοδα.
Το διάταγμα του πρωτόδικου Δικα-
στηρίου τροποποιήθηκε.*

Cases referred to:*Augustinus v. Nerincks* [1880] 16 Ch.D. 13.*Sharer v. Wallace* [1950] 2 All E.R. 463.*Re Wells* [1962] 1 W.L.R. 397.*Blackie v. Osmaston* [1884] 28 Ch.D. 119. 5*Kemp v. Goldberg* [1887] 36 Ch.D. 505.*Carr v. Anderson* [1902] 18 T.L.R. 206.*Panayiotou v. Solomou* (1979) 1 C.L.R. 779.**Appeal and cross - appeal.**

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Appeal and cross - appeal against a ruling of the District Court whereby it was ordered that the plaintiffs file in Court and deliver within one month particulars in respect of certain items of the statement of claim without making any order as to costs. 15

P. Polyviou, for the appellants.*L. Papaphilippou*, for the respondent.*Cur. adv. vult.*

TRIANAFYLLIDES, P.: The Judgment of the Court will be delivered by Mr. Justice Stylianides. 20

STYLIANIDES, J.: The appellants-plaintiffs raised an action against the defendant-respondent claiming, by a specially indorsed writ:-

(a) Cp241,433.401 mls due and payable by the defendant to the plaintiffs; and 25

(b) Further or alternatively an account of moneys received by the defendant during the year 1980 not

accounted for to the plaintiffs and/or an inquiry as to all moneys of the plaintiffs had and received by the defendant to his own use upon the taking of such account.

5 The defendant, before defence, by application based on O.19, rr.5-8 and O.48, r.2, sought an order directing the plaintiffs to give further and better particulars of the statement of claim indorsed on the writ of summons, as shown on the annexed Schedule "A", attached to this Judgment.

10 This application was filed after a letter of request for the same particulars was unsuccessful. In the accompanying affidavit in support of the application, it is stated that the
15 particulars applied for are necessary in order to enable the defendant to plead his defence; the plaintiffs claim aggregate huge amounts of money allegedly received over a period of a whole year without giving particulars. Such particulars are necessary to enable the defendant to identify each amount
20 and make his defence. It is necessary for the defendant to know, before his defence, how each amount was paid to him or through him, whether by cheques or cash and who issued and signed such cheques.

The application was opposed.

The trial Court, after hearing addresses of counsel, in a reserved ruling ordered the plaintiffs to file in Court and
25 deliver within one month the following particulars:-

"(a) Particulars of the dates and the respective amounts alleged to have been withdrawn during 1980 by the defendant from the Plaintiffs' funds.

30 (b) Particulars of the reasons put forward by the defendant in respect of each amount alleged to have been withdrawn by the defendant, identifying the document stating such reasons or if such reasons were oral the dates and effect thereof.

(c) Particulars of each amount alleged in subparagraphs (i), (ii), and (iii) of paragraph 6 of the statement of claim giving dates, amounts, numbers of cheque signatories."

No order as to costs was made.

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The appellants-plaintiffs by this appeal challenge the aforesaid ruling.

The respondent-defendant by cross-appeal complains that the Court wrongly differentiated the necessity of particulars for the preparation of the defence from the preparation of the presentation of the case and seeks that the order be varied so as to direct the appellants-plaintiffs to give particulars as regards paragraphs 8 and 10 of the statement of claim. He, also, complains that the Court made no order for costs in his favour.

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The trial Court in the well considered ruling meticulously expounded the Law on the matter - (Pages 36-43 of the record).

There was no contest over the principles of Law governing the matter.

20

Counsel for the appellants conceded that the trial Judge has well set out the Law in his ruling and, after referring to a number of authorities, he submitted that, having regard to the nature of the claim and the statement of claim, no order for particulars should have been made.

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The matter is not a novel one. According to the authorities, where it is essential for the plaintiff's case to have an account he should indorse his writ with a claim to have an account taken. If the plaintiff's claim is for an account only or for an account as well as money had and received but the issue is whether the defendant is an accounting party, the plaintiff will not be compelled to give particulars of the sums which he says the defendant has

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received to his use or for which the defendant has to account to the plaintiff, since such particulars will form part of the subsequent account (*Augustinus v. Nerincks* (1880) 16 Ch.D. 13 at 17; *Sharer v. Wallace* [1950] 2 All E.R. 463; In re **5 Wells** [1962] 1 W.L.R. 397). On the other hand, if the plaintiff's claim is for a specific or liquidated sum, he will be compelled to give particulars of how such sum is made up, although the claim is formulated as for an account (*Blackie v. Osmaston* (1884) 28 Ch.D. 119 at 123, where the plaintiff **10** claimed a definite sum as well as an account; *Kemp v. Goldberg* [1887] 36 Ch.D. 505; *Carr v. Anderson* [1902] 18 T.L.R. 206, C.A.).

Particulars should not be confused with interrogatories or discovery and inspection of documents. The particulars **15** must be material in the sense of O.19, r.4, necessary for the purpose of formulating a complete cause of action and to be required for the formulation of the defence so as the other party not to be taken by surprise. Particulars are, of course, required of facts and not of evidence - (see *Panayiotou v. **20 Solomou*** (1979) 1 C.L.R. 779).

PARTICULARS BEFORE DEFENCE:

In order to prevent a request for particulars of the statement of claim being used as an instrument of delay, an order for particulars will not be made before the service of **25** the defence, unless in the opinion of the court, the order is necessary or desirable to enable the defendant to plead or for some other special reason. Particulars before defence are necessary or desirable where otherwise the defendant would be prejudiced or embarrassed in his pleading, or to enable **30** the defendant to decide how to plead. Thus, where the defendant genuinely desires to consider making a payment into court, particulars of special damage will ordinarily be ordered before defence, as, for example, in actions for wrongful dismissal. On the other hand, although the **35** defendant may be entitled to the particulars requested, they will not be ordered before the defence if they are not necessary or desirable at that stage, as for example, where

the defendant intends to contest the issue of whether he is an accounting party, particulars of the sums alleged to have been paid to him will not be ordered before the defence.

Particulars may be ordered to be served before discovery or interrogatories with liberty to supplement them by serving further particulars after discovery or interrogatories. 5

The trial Court ruled that the particulars applied for in respect of paragraphs 8 and 10 of the statement of claim are not necessary for the preparation of the defence, but observed that the respondent might at a later stage be entitled to such particulars. 10

The subject matter of an appeal is the judgment or order of the subordinate Court only and not its observations.

Had the case been one for accounts, no order for particulars would be given. 15

With regard to the second or further and alternative claim of the statement of claim, itemization of the amounts as set out in paragraph 6 is not sufficient to enable the respondent-defendant to prepare his defence. The particulars required for the purpose are particulars of the dates and the respective amounts alleged to have been withdrawn in 1980 by the defendant from the plaintiffs' funds, as set out in paragraphs 6(i), (ii) and (iii). The numbers, however, of the cheques and the signatories thereof are not material facts in the sense of O.19, r.4. 20 25

Therefore, in view of the above, neither the reason put forward by the defendant in respect of each amount alleged to have been drawn by the defendant nor the identification of the documents stating such reasons, is necessary.

We decided to vary the order under appeal. 30

We set aside the order of the trial Court and substitute it by the following Order:-

Plaintiffs to file and deliver within forty-five days the following particulars:-

**Particulars of the dates and the amounts alleged in paragraph 6(i), (ii) and (iii) of the statement of claim to have
5 been withdrawn by the defendant.**

With regard to costs, no order as to costs before both the trial Court and this Court.

Appeal allowed.

"SCHEDULE A

10 Paragraph 3

Particulars of the contents of the minutes of the Board Meeting of the 14th July, 1981 and/or the effect thereof.

Paragraph 4

15 (a) Particulars of the reports mentioned in paragraph 4 of the Statement of Claim giving dates and contents.

(b) Particulars of the indications concerning the alleged possible acts of misconduct and/or omission and/or mismanagement of the part of the Defendant, giving dates & grounds.

20 (c) Particulars of the acts of misconduct and/or omission and or mismanagement.

(d) Particulars of the "thorough investigations into the affairs of the Plaintiffs".

25 (e) Particulars of the activities of the Defendant during the year 1980, stating the date of each activity and the actual activity complained of.

Paragraph 5

The date when Metaxas, Loizides, Syrimis and Co. were appointed by the Plaintiffs, and particulars of their investigations.

Paragraph 6

**Particulars of the dates and the respective amounts 5
alleged to have been withdrawn during 1980 by the
defendant from the Plaintiffs' funds.**

**(b) Particulars of the reasons put forward by the
Defendant in respect of each amount alleged to have 10
ben withdrawn by the Defendant, identifying the
document stating such reasons or if such reasons
were oral the dates and affect thereof.**

**(c) Particulars of each amount alleged in sub- paragraphs 15
(i), (ii), and (iii) of paragraph 6 of the Statement of
Claim giving dates, amounts, numbers of cheques
and signatories.**

Paragraph 8

**The dates when the defendant allegedly admitted having
received from the Plaintiffs' assets and funds, stating whether 20
it was orally or in writing. If in writing identifying the
document or documents containing such admittance.**

Paragraph 10

**(a) The date when allegedly the Defendant was asked to
give a full account and if in writing identifying the 25
relevant document.**

**(b) Whether the defendant gave any account which as
alleged was not a full account and the contents
thereof."**