

CHARALAMBOS KYRIAKOU,

*Appellant-Plaintiff,*

v.

LICENCES & GENERAL INSURANCE CO. LTD.,

*Respondents-Defendants.*

CHARALAMBOS  
KYRIAKOU  
v.  
LICENCES &  
GENERAL  
INSURANCE  
Co. LTD.

(Civil Appeal No. 4722).

*Practice—Pleadings—Particulars—Further and better particulars—Action on fire insurance policies—Clause in policy exempting the insurers from liability for loss or damages due to certain abnormal conditions (i.e. hostilities or war-like operations, mutiny, riot, military or popular rising, insurrection etc. etc.)—Onus cast upon insured to prove that fire occurred independently of such conditions—Statement of claim—Particulars of the cause of the fire to be given therein—Statement of defence—Particulars as to which of the various abnormal conditions enumerated in the exemption clause existed as well as particulars of the alleged breach of the conditions and warranties to be given therein—The Civil Procedure Rules, Order 19, rules 4, 6, 7 and 8—Kapatais v. London and Lancashire Insurance Co. Ltd. (1958) 24 C.L.R. 66, followed.*

*Pleadings—Particulars—See above.*

*Particulars—Pleadings—See above.*

*Fire Insurance Policy—Exemption clause—Onus of proof—Pleadings—Particulars—See above.*

Cases referred to:

*Kapatais v. London and Lancashire Insurance Co. Ltd. (1958)*  
24 C.L.R. 66;

*Levi v. The Assicurazioni Generali [1940] 3 All E.R. 427.*

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

#### Appeal and Cross Appeal.

Appeal and cross-appeal against the judgment of the District Court of Paphos (Malachtos P.D.C.) dated the 24th May,

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1968 (Action No. 5/65) whereby both the parties to the action were directed to give further and better particulars regarding certain allegations in their respective pleadings.

*Chr. Demetriades*, for the appellant.

*C. Melissas*, for the respondents.

The judgment of the Court was delivered by:

VASSILIADES, P.: This is an appeal by the plaintiff and a cross-appeal by the defendants from an order of the District Court, Paphos, for further and better particulars regarding certain allegations in their respective pleadings.

The claim in the action is under two fire insurance policies issued by the defendants, a British Insurance Company carrying on business in Cyprus, to the plaintiff a shop-keeper in the township of Paphos.

According to his statement of claim, the plaintiff was insured under the two policies in question, against damage by fire to his goods in certain premises described therein. The policies had been kept in force with regular renewals, for some three or four years; and were both due to expire on March 19, 1964.

On March 12, 1964, (about a week before expiry) plaintiff's pleading alleges that the goods insured under one of the policies were totally destroyed by fire; and on March 18, 1964, a few hours before the other policy was due to expire, the goods covered by that policy were likewise destroyed by fire. It is further alleged in the statement of claim that the loss was estimated by the Anchor General Surveying and Assessing Bureau at £2,480 in the first fire; and £3,760 in the second. The claim is for £2,000 in respect of the first and £3,760 for the second, i.e. a total of £5,760.

The defendants declined liability; and the action was filed on January 5, 1965. For reasons into which I need not now enter, the statement of claim was not filed or delivered until about two years later, on January 24, 1967; and the defence not until June 10, 1967. This was followed by a reply filed on June 19, 1967.

The salient facts alleged in plaintiff's pleading were that (a) plaintiff's goods were insured with the defendants (para.

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4); (b) during the validity of the policies the goods were destroyed by fire (paras. 6 and 8); (c) the plaintiff's loss as a result amounted to a total of £6,240 (paras. 7 and 9) out of which the plaintiff was entitled to recover under his policies £5,760; and (d) that the plaintiff having duly lodged his claims, the defendants repudiated liability (paras. 10 and 11); hence the action with a claim for damages accordingly.

The salient points in the defence were (a) admission of the policies (para. 3); (b) denial of the allegation that the goods were destroyed or damaged by fire as alleged (para. 5); (c) an admission that the defendants repudiated liability on the ground that the policies were not operative by reason of breach of warranty on the part of the insured "and generally because the policies did not cover the risk" (para. 6); (d) that condition No. 6 in the policies expressly provided that they did not cover any loss or damage happening during the existence of abnormal conditions as stated therein, i.e. hostilities or war-like operations, mutiny, riot, military or popular rising, insurrection, rebellion, revolution military or usurped power, except to the extent that the insured shall prove that such loss or damage happened independently of the existence of such abnormal conditions (para. 7); and (e) that the abnormal occurrences specified in condition No. 6 did exist at the material time. By his reply the plaintiff joined issue on all the points raised by the defence.

On June 14, 1967, plaintiff's advocate wrote to the advocate of the defendants, exhibit 'A', asking for further and better particulars as to (a) what conditions and warranties did the defendants allege that the plaintiff broke so as to make the policies inoperative? (As alleged in para. 6 of the defence); (b) when and how did the defendants repudiate liability on the ground of plaintiff's alleged breach of warranty? (c) What abnormal conditions did the defendants allege that existed at the material time so as to exclude the risk from the policies? And (d) in what way, did the defendants allege, that the plaintiff's losses were directly or indirectly connected with such occurrences?

On December 18, 1967, defendants' advocate replied as per exhibit 'B', stating that the abnormal occurrences in question are all or any of those set out in condition No. 6 of the policy "with the exception of war, invasion, and act of foreign enemy." Regarding the last paragraph of plaintiff's letter, the

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burden of proof is on the plaintiff and therefore the defendants had nothing to say.

On the same day December 18, 1967, the defendants applied under Order 19, rules 6, 7 and 8, of the Civil Procedure Rules, for an order directing the plaintiff to give further and better particulars as to the cause of the fires alleged in the statement of claim; and of the facts and matters upon which the plaintiff based his allegation that his loss happened independently of the existence of the abnormal conditions alleged in the defence. Pending the hearing of that application on January 12, 1968, the plaintiff filed a counter-application under the same rules, for (a) further and better particulars regarding the breach of conditions and warranties alleged in para. 6 of the defence; (b) when and how did the defendants repudiate liability? (c) Which of the various abnormal conditions enumerated in condition No. 6 of the policy was it alleged that existed at the material time? And (d) in what way was it alleged that plaintiff's losses were directly or indirectly connected with such occurrences? There were several affidavits sworn and filed on behalf of the parties in connection with the two applications for particulars to which (affidavits) we need not further refer. The two applications were heard together on March 8, 1968, the plaintiff contending that he was entitled to the particulars requested by his letter and now the subject of his application; and the defendants contending that they were entitled to the particulars applied for, while not bound to give any further particulars than those which they had already given.

On March 8, 1968, the Court decided the two applications by a single ruling in which the proceedings are described as well as the submissions made on behalf of the parties respectively. Reference is made in the ruling to two cases cited in the course of the argument, *Andreas Savvides Kapatais v. The London and Lancashire Insurance Co. Ltd.* 24 C.L.R. p. 66; and *Levi v. The Assicurazioni Generali* [1940] 3 All E.R. p. 427.

In conclusion the Judge decided that the defendants were entitled to particulars as required by their application as held in the *Kapatais* case, which was precisely in point.

Regarding plaintiff's application, the Judge decided that he was entitled to particulars under para. (a) of his application, i.e. what are the conditions and warranties in the policy on which the defendants relied; and, that the defendants were

entitled to particulars under para. (a) of their application, i.e. as to the causes of the fire on each occasion; and made an order directing accordingly.

This is the order which is the subject matter of the appeal and cross-appeal before us. After hearing counsel I am inclined to think that they seem to attach more importance to form and prestige than to substance. Order 19, r. 6 under which both applications are made reads:

“ A further and better statement of the nature of the claim or defence, or further and better particulars of any matters stated in any pleading, notice or written proceeding requiring particulars, may in all cases be ordered upon such terms as to costs and otherwise as may be just.”

We are here concerned with pleadings and in particular with certain allegations made in the statement of claim and certain allegations made in the defence. Each of these pleadings must be drawn according to r. 4 of O. 19 which provides that —

“ Every pleading shall contain and contain only a statement in a summary form of the material facts on which the party pleading relies for his statement of claim or defence, as the case may be, but not the evidence by which they are to be proved.”

Plaintiff's statement of claim alleges damage by fire but does not give the facts or circumstances, as far as known to the plaintiff, under which the fire occurred on each of the two occasions in question. Defendants' pleading, on the other hand, alleges breach of warranty on the part of the other side without specifying the warranty upon which he relies and the facts which constitute the breach which he intends to prove. Moreover, the defendants allege the existence of abnormal conditions owing to which the policies became inoperative but do not state which of the numerous conditions in the policies existed at the time so as to enable the plaintiff to meet the case pleaded by the Insurance Company; and to discharge the onus cast upon the plaintiff under the policy, i.e. to prove that the fire occurred independently of the existence of such abnormal conditions.

It is obvious to us that the object for which a whole series of such abnormal conditions was inserted in the policy, was to make it clear that the Insurance Company would not be

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liable for any loss consequent upon fire which occurred during any of such abnormal conditions. But relying on this part of the contract, they cannot, in our view, list all such abnormal conditions as this would not be a pleading containing only the facts on which the defendants will rely for their defence. They know what conditions they have in mind as existing at the material time which bring the case within one or more of the conditions specified in the policy. Once they so plead their case, the onus is then cast by the policy on the plaintiff to prove that the damage happened independently of the existence of the abnormal conditions pleaded in the defence.

We think this case is on all fours with the *Kapatais* case (*supra*); and, we accordingly decide the appeal as follows:

- (1) We allow ground (a) of the plaintiff's appeal, set aside the order of the District Court on this point and order in the terms of paragraph (c) of the plaintiff's application to the effect that the defendant company shall, within one month from today, deliver further and better particulars as to which of the various abnormal conditions enumerated in condition 6(2) of the Insurance Policy it is alleged that did exist at the time and place of the fire-losses (as alleged in paragraph 8 of the Defence) namely, which of the following abnormal conditions it is alleged that did exist at the time: War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), mutiny, riot, civil commotion, insurrection, rebellion, revolution, conspiracy, military, naval or usurped power, martial law or state of siege, or any of the events or causes which determine the proclamation or maintenance of martial law or stage of siege.
- (2) Ground (1) of the defendants' cross-appeal is dismissed; and the order of the District Court to the following effect is upheld, that is to say, that the defendant company shall, within one month from today, deliver further and better particulars of the alleged breach of the conditions and warranties of the policies (such allegations being contained in paragraph 6 of the defence), namely, what are specifically the conditions and warranties allegedly broken and in what such breach allegedly consists.
- (3) The order of the District Court on paragraph (A) of the defendants' application (dated 28.12.67) to the following

effect shall stand: That is to say, that the plaintiff shall, within one month from today, deliver further and better particulars of the cause of the fires (as far as the plaintiff may have been able to ascertain) alleged in paragraphs 6 and 8 of the Statement of Claim, as well as of all facts and matters referred to in the aforesaid paragraph (A).

- (4) The party failing to comply with this order shall not be entitled to proceed with his case on the basis of the pleading filed.
- (5) All other grounds of the appeal and cross-appeal are hereby dismissed; and in the circumstances of this case we make no order as to costs, as we think that both sides were at fault.

*Order accordingly.*

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