

[A. LOIZOU, J.]

THE NATIONAL SUPPLY CORPORATION OF THE  
LIBYAN ARAB REPUBLIC (THE SUCCESSORS IN TITLE  
TO THE MONOPOLIES DEPARTMENT),

*Plaintiffs,*

v.

ACHAIA SHIPPING LIMITED,

*Defendants.*

*(Admiralty Action No. 4/74).*

1975  
Dec. 20

NATIONAL  
SUPPLY  
CORPORATION  
OF LIBYAN  
ARAB  
REPUBLIC ETC.

v.

ACHAIA  
SHIPPING LTD.

*Civil Procedure—Practice—Particulars—Principles applicable  
—Function of particulars—Court will not sanction an  
attempt to deliver interrogatories under the guise of  
seeking particulars—Certain particulars asked for outside  
ambit of rule governing the making of an order for  
further and better particulars.*

*Admiralty—Practice—Particulars—Rule as to particulars  
applies to Admiralty Actions—Master's qualifications  
—Better particulars of, ordered.*

This was an application by the plaintiffs for further  
and better particulars of the answer. The application  
was granted in part for the reasons which appear in  
the judgment.

Cases referred to :

*Turquand v. Fearon*, 48 L.J. Q.B. 703;

*Lister v. Thompson*, 7 T.L.R. 107;

*Wootton v. Sievier* [1913] 3 K.B. 499.

### **Application.**

Application by plaintiffs under Rule 237 of the Rules  
of the Supreme Court of Cyprus in its Admiralty Juris-  
diction and Order 19, rule 6 of the Civil Procedure Rules,  
for further and better particulars of the answer.

*S. G. McBride*, for the applicants.

*M. Papas*, for the respondents.

1975  
Dec 20

NATIONAL  
SUPPLY  
CORPORATION  
OF LIBYAN  
ARAB  
REPUBLIC ETC.

v.  
ACHAIA  
SHIPPING LTD.

The following ruling was delivered by :-

A. LOIZOU, J. : The plaintiffs who, as owners of goods or as indorsees of bill of lading of goods or otherwise, shipped on board the steamship "Pride of Morea" owned by the defendants, "claim against the defendants for the loss, non-delivery and damage to the said goods and cargo arising out of breach of the bill of lading contract and/or breach of duty and/or negligence of the defendants their servants and agents", by the present application apply for further and better particulars of the answer. The application is based on Rule 237 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction and Order 19, rule 6, of the Civil Procedure Rules.

The further and better particulars asked for are set out in an Appendix to the application.

On the 18th June, 1975, the defendants-respondents filed and delivered to the applicants-plaintiffs, further and better particulars of most of the matters requested, and claimed that the applicants-plaintiffs are not entitled to further and better particulars on the remaining issues, in respect of a number of which the applicants-plaintiffs do not insist. I shall, therefore, deal with each one of the particulars prayed for, in the order in which counsel has argued them, but before doing so, a reference to the principles of law applicable to such a case, will be useful. As stated in the Annual Practice, 1960, under the heading "Particulars", p. 450 —

"In every pleading a certain amount of detail is necessary to ensure clearness, and to prevent 'surprise' at the trial. Each party must state his case with precision; otherwise his opponent will not know for certain what is the real point in dispute, and therefore will not be able to properly prepare his evidence for the trial. (See the remarks of Jessel, M.R., in *Thorp v. Holdsworth*, 3 Ch. D. p. 639, and of Cotton, L.J., in *Spedding v. Fitzpatrick*, 38 Ch. D. pp. 413, 414). On the other hand, the issue may be obscured by too much detail. A party who pleads with unnecessary particularity may thereby fetter his hand at the trial (as in *James v. Smith* [1891] 1 Ch. 384), or lay on himself an increased

burden of proof (as in *West v. Baxendale*, 9 C.B. 141)."

1975  
Dec. 20

NATIONAL  
SUPPLY  
CORPORATION  
OF LIBYAN  
ARAB  
REPUBLIC ETC.

v.

ACHAIA  
SHIPPING LTD.

5 The rule that all necessary particulars should be stated in the pleading, is, also, strictly observed in all admiralty actions and, if this is disregarded particulars of any general allegation in any pleading can be obtained under Rule 7 of Order 19, as readily as in any other division. (See *Rory* [1882] 7 P.D. 117).

10 As far as a traverse by a defendant is concerned, it is pointed out in the Annual Practice (*supra*) p. 458 —

15 "A traverse by a defendant even of a negative allegation which plaintiff must establish in order to succeed is not a matter stated of which particulars will be ordered (*Weinberger v. Inglis*, [1918] 1 Ch. 133), but particulars may be ordered where the traverse involves a positive allegation (*McLulich v. McLulich*, [1920] P. 439). The principle may be thus stated: where a negative allegation by a plaintiff is traversed in the defence, the question whether or not the defendant can be ordered to give particulars depends on whether the traverse is a mere traverse, or whether, though negative in form, the negative is pregnant with an affirmative. If the latter is the case, particulars of such affirmative must be given; *Pinson v. Lloyds, etc., Bank, Ltd.*, [1941] 57 T.L.R. 558, C.A.; but see *Duke's Court Estates, Ltd. v. Assoc. British Eng. Ltd.*, [1948] Ch. 458."

30 In paragraph 3 of the answer, the respondents-defendants after admitting that they became bailees of the goods upon shipment of the goods on board their motor vessel "Pride of Morea", do not admit that they were under the duty, as carriers, or bailees for reward alleged in paragraph 3 of the petition and the respondents-defendants proceed to state that. "Further or alternatively, it is not admitted that there was an express or implied term in any contract contained in or evidenced by the bill of lading dated Dunkirk 4th November, 1971, to deliver the goods in like good order and condition as when shipped". The request made is whether it is admitted that there was a contract contained in or evidenced by the bill of lading, or if not, stating the nature of the

1975  
Dec. 20  
—

NATIONAL  
SUPPLY  
CORPORATION  
OF LIBYAN  
ARAB  
REPUBLIC ETC.

v.  
ACHAIA  
SHIPPING LTD.

defendants' case. It was argued on behalf of the applicants-plaintiffs that this was an evasive answer.

This is, however, a denial of the allegation contained in paragraph 3 of the petition, where the applicants-plaintiffs say, "In the premises the defendants were under a duty as carriers and/or bailees for reward and/or by the contract contained in or evidenced by the bill of lading they expressly or impliedly contracted, to deliver the goods in the good order and condition as when shipped".

By the aforesaid paragraph the respondents-defendants deny the existence of any term as alleged by applicants-plaintiffs. What the applicants-plaintiffs are asking under the guise of particulars, is an admission of an allegation made in the petition that there was a contract contained in or evidenced by the bill of lading they expressly or impliedly contracted. In my view, there is no room for particulars to be ordered in respect of this paragraph.

In paragraph 11 of the answer, it is stated, "The goods were lost as a result of 'Perils of the sea' and/or 'accidents of Navigation.'" And, in sub-paragraph 3 thereof, it is stated, "At 11.11 hours on 5th March, 1972, the Master weighed anchor in order to proceed to a safer anchorage. In the course of this operation, at about 11.35 hours, as the anchor was being let go, the Master ordered 'full Astern'. The chief engineer attempted to obey the telegraph orders immediately, but the port engine stalled because of blockages in the fuel pipes, owing to sludge from the settling tanks being stirred up by the violent rolling of the ship in the heavy seas. The ship therefore grounded in Malpica Bay at 11.40 hours the same day."

The particulars asked for are,

(a) whether the starboard engine was operating at any material time, and if not, why not; (b) what if any attempts were made at the time to start either the port or starboard engine, by whom and with what result.

Particulars under (a) are asked, according to counsel for the applicants, because in the answer they refer to port engine stalled because of blockages and they do not say whether the starboard engine was operating at

1975  
Dec. 20

NATIONAL  
SUPPLY  
CORPORATION  
OF LIBYAN  
ARAB  
REPUBLIC ETC.

v.

ACHALA  
SHIPPING LTD.

the time. The object of the particulars under (b), is to have clearer the case of the respondents-defendants, so that they will not have to call witnesses from abroad and for this reason exceptional clarity is required.

5 This is an answer to the allegations made in the petition where no mention is made of the starboard engine, and it is outside the ambit of the rule governing the making of an order for further and better particulars.

The next particulars asked for are in respect of the last part of paragraph 16(B) of the particulars of the answer which reads: "The coupling flange of the boiler feeder pump was modified". Applicants-plaintiffs want to know the precise nature of the modification carried out and why they were required.

15 I cannot explain why there has been an objection to supplying particulars regarding the modifications effected on the coupling flange of the boiler feeder pump and, in my view, on this issue an order will, in due course, be made for further and better particulars in respect of this modification.

Then we have the particulars given under paragraph 17A: "The master of the ship, Nicolaos Galiotos, was a fully competent master. Full inspection of his documents, inquiries from previous employers and an interview had been made before he joined the ship at Hamburg on 26th October, 1971, and these indicated that captain Galiotos was reasonably fit to occupy the post of Master of the ship".

30 The particulars asked for are—(a) to state fully the qualifications and experience of the Master of the ship; (b) what documents were inspected, when and by whom and what they revealed; (c) what inquiries were made, when, by whom, of whom, how and with what results; and (d) what were and when the said interview took place, by whom it was carried out on behalf of the respondents-defendants, how long it lasted and what was discussed.

Counsel for the applicants-plaintiffs has argued that he is entitled to be told the qualifications of the Master of the ship and that they should disclose the documents

1975  
Dec 20

NATIONAL  
SUPPLY  
CORPORATION  
OF LIBYAN  
ARAB  
REPUBLIC ETC.

v.

ACHAIA  
SHIPPING LTD.

which they inspected, so that he should know what documents they are.

I agree with counsel for the applicants-plaintiffs on this issue, as narrowed down in his address, and further and better particulars should be given about the Master's qualifications and the documents referred to should be identified. (See *Turquand v. Fearon*, 48 L.J. Q.B. 703). 5

Regarding the rest of the questions asked for under this item, I would only like to say that they are nothing more but interrogatories and there is authority that the Court will not sanction an attempt to deliver interrogatories under the guise of seeking particulars. (*Lister v. Thompson*, 7 T.L.R. 107). Had it been, however, a case where the party applying for particulars was entitled to the information which he sought, the order would have been made although the respondents-defendants would be, thereby, compelled to disclose the names of their witnesses. If any authority is needed for this proposition, see *Wootton v. Sievier*, [1913] 3 K.B. 499. 10 15

With regard to particulars D of paragraph 17 applied for, regarding detailed plans "... and instructions ..... available ... on board the ship" it has been agreed that the information referred to therein will be supplied as soon as same is received by counsel for the respondents-defendants, and, therefore, no question of making an order arises regarding this paragraph. 20 25

As already stated, the function of particulars, as it is well established, is to ensure clearness and to prevent surprise at the trial, by having each party stating his case with precision, so that the opponent will know for certain what is the real point in dispute and prepare for the trial. 30

In the result, an order for particulars is made accordingly, as hereinabove set out, but as this application succeeds only in some respect and fails in another, the costs of this application will be costs in cause. 35

*Order accordingly*