

1978 January 24

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

PHANOS N. EPIPHANIOU LTD.,

*Appellant-Defendant,*

v.

CHARLWOOD INTERNATIONAL LIVESTOCK CO. LTD.,

*Respondent-Plaintiff.*

(Civil Appeal No. 5627).

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*Civil Procedure—Appeal—Notice of Appeal—Amendment—Discretion of the Court—Respondent company in process of a creditors voluntary winding up which had commenced prior to the delivery of the judgment appealed from—Appellant became aware of this development after filing of appeal—Proposed new grounds relating to the winding up—Amendment allowed—Civil Procedure Rules Order 35, rule 4.* 5

This was an application for leave to amend the notice of appeal. The judgment appealed from was delivered on September 10, 1976 and the appeal was filed on November 8, 1976. The respondent company was since July 24, 1975, in the process of a creditors voluntary winding up. The appellant was unaware of this development and came to know about it after the filing of the appeal. When the appellant sought to obtain information in this connection from counsel appearing for the respondent no reply was received from the latter because, apparently he, too, was not aware during the trial of the action and for some time afterwards, of the winding up of the company. The proposed new grounds of appeal related to the winding up of the respondent company. 10 15 20

*Held, granting the application, this is a proper case in which to exercise our discretionary powers under Order 35, rule 4 of the Civil Procedure Rules, in order to allow the notice of appeal to be amended, so that there may be added thereto the*

proposed three new grounds of appeal, which are all related to the winding up of the respondent company.

*Application granted.*

**Application.**

5 Application for leave to amend the notice of appeal against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Artemides, D.J.) given on the 10th September, 1976, (Action No. 5423/74) whereby the appellant was ordered to pay to the respondent the sum of £4,172.-, agreed and/or  
10 reasonable price of 40 calves sold and delivered by respondent to appellant.

*P. Ioannides*, for the appellant.

*X. Syllouris*, for the respondent.

The following ruling was delivered by:

15 TRIANTAFYLLIDES P.: At this stage of the proceedings in this appeal we are dealing with an application for leave to amend the notice of appeal.

The appeal was filed on November 8, 1976, and the applica-  
tion was filed on November 17, 1977; on that date the appeal  
20 was to be heard, but it had to be adjourned in view of the filing of the application.

This appeal has been made against a judgment delivered on  
September 10, 1976, in an action filed by the respondent against  
the appellant on November 7, 1974. The hearing of the action  
25 commenced on June 9, 1976, and it was concluded on July 7, 1976.

The facts, on the basis of which it is sought to amend the notice of appeal, are briefly as follows:

The respondent company is since July 24, 1975, in the process  
30 of a creditors voluntary winding up. This development did not come to the knowledge of the appellant until after the appeal had been filed, and when it was sought to obtain information in this connection, by means of a letter dated September 6, 1977, no reply was received from counsel appearing  
35 for the respondent; apparently, he, too, was not aware, during the trial of the action and for some time afterwards, of the winding up of the respondent company.

In the circumstances we are of the opinion that this is a proper case in which to exercise our discretionary powers under Order 35, rule 4, of the Civil Procedure Rules, in order to allow the notice of appeal to be amended so that there may be added thereto the proposed three new grounds of appeal, which are all related to the winding up of the respondent company. 5

The said new grounds will be deemed to be included in the notice of appeal without a new notice having to be filed.

By allowing the amendment of the notice of appeal we are not in any way committing ourselves, at this stage, regarding the merits of the new grounds, even though we have to point out that we decided to allow the amendment because, as at present advised, we cannot go so far as to agree with counsel for the respondent that such grounds are—as he has described them—“useless”, and, that therefore, it would serve no purpose at all to allow counsel for the appellant to argue them. 10 15

The costs entailed by the amendment are awarded against the appellant and in favour of the respondent.

*Application granted.* 20