

1978 June 23

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

ELECTROFABRIC CO. LTD.,

Appellants—Applicants,

v.

RENA PH. NICOLAIDOU,

Respondent.

(*Civil Appeal No. 5773*).

Civil Procedure—Appeal—Grounds of appeal—Amendment—Discretion of the Court—Rule that application for amendment should be made prior to the hearing of the appeal not inflexible—Additional grounds relating to one of main issues at the trial—Not included in original notice of appeal through inadvertence—Amendment allowed in the interests of justice—Extension of time within which to file application for amendment—Order 35, rule 4, of the Civil Procedure Rules.

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The Court of appeal adjourned the hearing of the above appeal, after it had commenced, in order to enable counsel for the appellant to apply for leave to amend the notice of appeal, and directed that the application for amendment should be filed within one month, that is on May 13, 1978. The application for amendment was filed belatedly, i.e. on May 27, 1978, and so counsel for appellant sought, also, an extension of time in order to regularize the position.

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Held, allowing both applications (1) that, in the particular circumstances of this case the one month's time-limit was not really intended not to be extendable; that the delay in filing the application is not so long as to lead this Court to the conclusion that it should refuse to extend the said time-limit; and that, accordingly, it will be extended up to May 27, 1978.

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(2) That though it is normally desirable to file an application for the amendment of the notice of appeal prior to the hearing of the appeal (see *Papadopoulou v. Polykarpou* (1968)

1 C.L.R. 352) this cannot be regarded as an inflexible rule; that this Court has decided to exercise its discretion in favour of the appellants, because the matters which they seek to raise by means of the additional grounds of appeal relate to an issue which was one of the main issues at the trial and they are, thus, very material for the proper determination of the appeal and that it seems to be quite obvious that it is through inadvertence that they were not included initially in the grounds of appeal; and that it is in the interests of justice to allow the amendment of the notice of appeal applied for.

Applications granted.

Cases referred to:

Papadopoulou v. Polykarpou (1968) 1 C.L.R. 352 at pp. 359, 360;

Leontiadis v. Leontiadis (1972) 1 C.L.R. 46;

Phanos N. Epiphaniou Ltd., v. Charlwood International Livestock Co. Ltd., (1978) 1 C.L.R. 112;

Vassiades v. M. Michaelides Bros. (1973) 1 C.L.R. 80;

S.O.R.E.L. Limited v. Servos (1968) 1 C.L.R. 123 at pp. 125, 126.

Applications.

Application for leave to amend the notice of appeal against the judgment of the District Court of Nicosia (Boyadjis, S.D.J.) given on the 30th November, 1977 (Rent Control Applic. No. 197/76), whereby the rent payable for a shop in Nicosia was fixed at £148.— per month, and application for an extension of the time within which to file the amended notice of appeal.

G. Ladas, for the applicants.

G. Mitsides, for the respondent.

TRIANAFYLLIDES P. gave the following decision of the Court. On April 13, 1978, after the hearing of this appeal had commenced, counsel appearing for the appellants — who is not the same one as counsel who appeared for them at the trial — applied for an adjournment so as to be enabled to apply for leave to amend the notice of appeal.

As a result it was ordered that the application for the amendment should be filed within one month from that date, but, actually, it was, eventually, filed somewhat belatedly on May

27, 1978, and, so, quite properly, counsel for the appellants has sought an extension of time in order to regularize the position.

5 Counsel for the respondent has objected that it was not open to counsel for the appellants to file the application for the amendment of the notice of appeal after the period of time, which was specified for such purpose by this Court on April 13, 1978, had expired.

10 We are of the opinion that, in the particular circumstances of the present case, the one month's time-limit which was laid down on April 13, 1978, was not really intended not to be extendable, and that the delay, after the expiry of such time-limit, in filing the application for the amendment of the notice of appeal, which is actually only two weeks, is not so long as
15 to lead us to the conclusion that we should refuse to extend the said time-limit; we, therefore, extend it up to May 27, 1978, so that the application in question may be treated as having been filed within time.

20 In relation, next, to the merits of such application it must not be lost sight of that, under Order 35, rule 4, of the Civil Procedure Rules, this Court has to exercise a discretionary power, and that this is to be done in accordance with the circumstances of each individual case; instances of the exercise of such power are, *inter alia*, *Papadopoulou v. Polykarpou*, (1968) 1
25 C.L.R. 352, 359, 360, *Leontiades v. Leontiades*, (1972) 1 C.L.R. 46 and *Phanos N. Epiphaniou Ltd. v. Charlwood International Livestock Co. Ltd.* (1978) 1 C.L.R. 112, where amendments of notices of appeal were allowed. A case in which an amendment was disallowed is *Vassiades v. M. Michaelides Bros.*,
30 (1973) 1 C.L.R. 80, but the position there was clearly distinguishable from that in the present case.

We do agree with counsel for the respondent that it is, normally, desirable to file an application for the amendment of the notice of appeal prior to the hearing of the appeal, as has
35 been pointed out in the *Papadopoulou* case, *supra*, and in *S.O.R.E.L. Limited v. Servos*, (1968) 1 C.L.R. 123, 125, 126; but this cannot be regarded as an inflexible rule.

In the present instance we have decided to exercise our discretion in favour of the appellants, because the matters which

they seek to raise by means of the additional grounds of appeal relate to an issue which was one of the main issues at the trial and they are, thus, very material for the proper determination of this appeal; and it seems to be quite obvious that it is through inadvertence that they were not included initially in the grounds of appeal. We are of the view that it is in the interests of justice to allow, and so we do allow, the amendment of the notice of appeal applied for by the appellants; and the new grounds of appeal are to be deemed to be included in the notice of appeal, without it being necessary to file a new amended notice. 5 10

The costs of the two applications of the appellants, with which we have dealt today, that is the one for the extension of time and the other for leave to amend the notice of appeal, are costs thrown away to which the respondent is, in our opinion, entitled, and should, therefore, be awarded against the appellants. 15

Applications granted.