

1978 September 18

[HADJIANASTASSIOU, J.]

FEDERATED AGENCIES LTD., TRADING
UNDER THE BUSINESS NAME "AELOS
CYPRUS TRAVEL BUREAU",

Plaintiffs,

v.

CHRISTOS TSIKKOS,

Defendant.

(Admiralty Action No. 1/70).

*Contract for carriage of goods by sea—Claim for balance due there-
under—Amount repeatedly demanded by defendants—Evidence
on behalf of plaintiffs giving details of the claim—No explanation
by defendants and no evidence to dispute claim—Judgment as per
claim by relying on the credibility of plaintiffs' witness.*

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*Civil procedure—Pleadings—Function of—They must be carefully
prepared.*

The plaintiffs in this action, who are a company dealing, *inter alia*, with the carriage of goods by sea, did, at the request of the defendant and upon the conclusion of an agreement for the carriage of goods by sea, pack and ship certain articles and personal effects of the defendant to London. Plaintiffs alleged that all the work carried out by them as a result of the said agreement was of the total amount of £631.000 mils; and that the defendant paid on account the sum of £480.— leaving a balance of £151.— which the defendant failed to pay in spite of repeated demands.

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Hence the present action.

The plaintiffs adduced evidence and explained the procedure which has been followed and how they arrived at the amount of £631.— The defendant, on the other hand, did not give evidence and did not call any witnesses and in the statement of defence there was no clear denial with regard to the amounts referred to in the items of the particulars of the plaintiffs' statement of claim.

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Held, having considered the evidence before me and having particularly addressed my mind to the correspondence exchanged between the parties and particularly the praise made by the defendant for the excellent work carried out by Mr. Pattouras (the person who has been handling this particular case for the plaintiffs), and in the absence of any explanation on behalf of the defendant, I have reached the conclusion that I can rely on the credibility of this witness and, therefore, I give judgment in favour of the plaintiffs for the sum of £130.—with costs to be assessed by the Registrar.

Judgment and order for costs as above.

Observations with regard to the need to prepare carefully the pleadings.

Cases referred to:

Courtis and Others v. Iasonides (1970) 1 C.L.R. 180 at pp. 182–183.

Admiralty action.

Admiralty action for the sum of £151.— being balance of fees and expenses against the defendant for carriage of goods by sea.

L. Papaphilippou, for the plaintiffs.
A.S. Angelides, for the defendant.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In this writ of summons, the plaintiffs, Federated Agencies Limited, trading under the business name of Aelos Cyprus Travel Bureau, claimed the sum of £151, the balance of fees and expenses against the defendant, Mr. Christos Tsikkos, for carriage of goods by sea.

The facts are these:—

The plaintiffs are a private company of limited liability established under the provisions of Cap. 113. The said company is dealing with the carriage of goods by sea, in shipping and clearing of goods to a number of countries. The defendant was employed by the Royal Hellenic Embassy in Cyprus and in September, 1967, when he was transferred to London, he requested the plaintiffs to collect and ship all his personal effects to London. In the meantime, an agreement for the carriage of goods by sea was concluded between the parties, and the plaintiffs packed and shipped all articles and all personal effects belonging to the defendant.

According to the particulars in the writ of summons, the total amount of expenses for loading, for freight, for the carriage of one motor car from Famagusta Port to London, Marine insurance, expenses for the clearing and delivering of the said car, costs of two wooden lift-vans, packing of domestic appliances. 5
transport expenses of the lift-vans from Nicosia to Famagusta Port, loading expenses and freight for the carriage of the above lift-vans on the ship "Scottish Prince", marine insurance, clearing expenses, storage in London, unpacking expenses and delivery and agency fees and supervision, the total amount claimed 10
was the sum of £631.-

As I said earlier, the defendant was already in London, and the plaintiffs applied for leave to seal and leave to serve notice of the writ of summons outside the jurisdiction of this Court on the defendant in London. This application was based on the 15
Cyprus Admiralty Jurisdiction Order 1893, rr. 23, 24, 25, 26 and 27. In support of the application, Mr. Nicos Charalambous Skapoulos prepared an affidavit and in paragraph 4 he said that by accepting and executing the request of the defendant, an agreement for carriage of goods by sea was concluded 20
between the litigants and submitted that any claim arising out of such an agreement fell within the jurisdiction of the Supreme Court in its admiralty jurisdiction. Furthermore, the affiant stated that all the work carried out as a result of the agreement 25
reached, was to the total amount of £631.000 mils and that the defendant paid on account of the said sum, the sum of £480 leaving a balance of £151 which the defendant failed to pay in spite of their repeated demands.

When that application came before Mr. Justice Josephides, the Judge then handling this case, there was a direction regarding the statutory basis of the claim conferring jurisdiction on the Admiralty Court (the section or sections of the particular statute applicable), and the question of the possible diplomatic immunity of the defendant. In paragraph 2, it was stated that 30
in the affidavit filed in support of the application, the position 35
of the affiant with the plaintiff firm was not stated, and that a fresh affidavit should be sworn either by the General Manager or the Managing Director of the plaintiff firm giving full particulars of the facts founding the enforceable right; and all other facts to satisfy the Court as required under the provisions of 40
rule 24, of the Admiralty Rules, and, generally, full particulars with regard to the question raised in paragraph 1 above. Final-

ly, when all the documents were before the Court, leave was granted to serve notice of the writ out of jurisdiction in the United Kingdom; and service on the defendant to be effected on the solicitors or process servers in the United Kingdom.

5 In the meantime, when service was effected on the defendant, counsel appearing for the plaintiffs applied for further directions and Mr. Justice Josephides made this order: "Mr. Papaphilipou states that he has already given full particulars of his claim in his writ of summons which should be considered as the pe-
10 tition in this case; (2) the defendant shall file and state his answer within one month from today; (3) the plaintiff shall file and deliver his reply if any within 10 days of the delivery to him of the answer".

15 The defendant, in the statement of defence, admitted paras. 1 and 2 of the statement of claim, and that the plaintiffs, as regards para. 3, incurred expenses and offered their services as pleaded in the statement of claim, but denied all and/or any and/or at all of the rest of the allegations of the plaintiffs in the said paragraph and in particular the particulars of the expenses
20 that the plaintiffs alleged that they have incurred. Furthermore, the defendant denied paragraphs 4 and 5 of the statement of claim and alleged that he had agreed with the plaintiffs to pack, ship and deliver in London to him certain articles and personal effects at the agreed amount of £480 and claimed that
25 that amount was paid in full settlement for the expenses incurred and the services rendered to him by the plaintiffs.

It will be seen, with respect, that the statement of defence, as drafted, does not indicate clearly whether the agreement reached was for the sum of £631 or whether it was a lesser amount. In
30 any event, before the trial comes on, it is highly desirable that the parties should know exactly what they are fighting about, otherwise they may go to a great expense in procuring evidence to prove at the trial facts which the opponents will at once concede. It has been found by long experience that the most
35 satisfactory method of attaining this object is to make each party in turn state his own case and answer that of his opponent before the hearing. The function of the pleadings, I reiterate, is to ascertain with precision the matters on which the parties differ and the points on which they agree, and thus to arrive at
40 certain clear issues on which both parties desire a judicial decision.

As it was said in *Courtis and Others v. Iasonides*, (1970) 1 C.L.R. 180 at pp. 182-183:-

“The pleadings in an action are the foundation of the litigation; they must be carefully prepared as the set of rails upon which the train of the case will run. The Civil Procedure Rules (Or. 19 r. 4) are clear on the point; and daily practice lays stress on the need to apply strictly this rule. A case is decided on its pleaded facts to which the law must be applied.” 5

I would reiterate that in the present case there was no clear denial with regard to the amounts referred to in the items of the particular of the plaintiff's statement of claim. 10

With this in mind, I think it is clear that the plaintiff in this case has presented a list of items for which they are claiming the amounts due, and also made it clear in the particulars that in the amount of £631.- the expenses of the freight for the car of the defendant were included. 15

Mr. Menelaos P. Pattouras, the person who has been handling this particular case for the plaintiffs, has given evidence and explained the procedure which has been followed in this case and how he had arrived at the amount of £631.- claimed in the statement of claim. Furthermore, he added that the balance was claimed from the defendant by correspondence, but no reason was given to them why the balance was not paid. In cross-examination by counsel for the defendant, with regard to the loading of the car of the defendant and the expenses incurred, including the amount of insurance, the witness said that the amount of the insurance which is shown in *exhibit 4*, as well as the amount for the loading of expenses of the car in question, were paid by his firm and not on account of the defendant. 20 25 30

Then, the witness was questioned in these terms:-

“Q. I put it to you that both amounts of £64.635 as well as the amount of £14.150 were paid directly by the defendant himself and not by your firm. 35

A. No, they were paid by our firm.

Q. You are aware of the terms of *exhibit 7*, can you tell

me why you have not told the defendant about the expenses you have paid regarding the delivery of his car and the insurance?

A. I did not do so because these were extra expenses.

5 Q. I put it to you in view that you have already paid it before writing *exhibit 7*, that you should have included those expenses in your letter.

A. I think that we had prepared a summary of the costs which the defendant ought to have paid, but I did not include it in my letter.

10 Q. I am aware that the insurance and the cost of transporting from one place to the other a motor car belonging to a civil servant are not paid by the Government of Greece."

15 Questioned further, he said that looking at *exhibit 27* he agrees that the amount of £480 has been approved by the Ministry of Finance in Greece, and in fact that was the amount which was paid to them, but he added, they have not written to the Ministry regarding the amount of £102.500 mils. In
20 re-examination, this witness said that regarding the delivery of the car in question to England, they have charged the defendant the usual charge which was considered reasonable. Then, counsel appearing for the defendant quite rightly and fairly in my view conceded that their client being away from
25 Cyprus, he cannot call any witnesses on the issues raised in these proceedings.

Counsel appearing for the plaintiffs complained that the defence of payment was not pleaded by the other side and has not clearly indicated what was the case for the other side. But
30 it is equally true to say that counsel for the defendant was well-aware of his difficulties regarding certain items which appeared in the list of expenses and quite fairly, when the judgment was reserved, in view of his difficulties, to adduce evidence to dispute the said items, he agreed with the other side on May 15, 1978,
35 after a long delay, that the amount of £21 should not be claimed by the plaintiffs.

Having considered the evidence before me, and having particularly addressed my mind to the correspondence exchanged

between the parties, and particularly the praise made by the defendant for the excellent work carried out by Mr. Pattouras, and in the absence of any explanation on behalf of the defendant, I have reached the conclusion that I can rely on the credibility of this witness and, therefore, I give judgment in favour of the plaintiffs for the sum of £130.- with costs to be assessed in favour of the plaintiffs by the Registrar of this Court.

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*Judgment and order for costs
as above.*