1979 February 6

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

PANTELIS PANAYIOTOU,

Appellant-Defendant,

v.

DOROS SOLOMOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 5663).

Civil Procedure—Pleadings—Statement of claim—Particulars—Degree of particularity—Specific pleading of relief claimed—Claim for special damages for cost of repairs to car—Not a matter in respect of which particulars had to be given—But a matter in respect of which it was open to the defendant to ask for further and better particulars—Not necessary to be pleaded in an itemized manner in the circumstances of this case—Receipts proving the payment of the amount claimed properly held to be admissible evidence —Rules 5, 6 *and* 7 *of Order* 19 *of the Civil Procedure Rules.*

Contract—Consideration—Adequacy—Not necessary for express promise to forbear when such understanding can be inferred from the circumstances—Agreement by appellant to pay expenses for the repairs of respondent's car damaged in a collision with appellant's car—Consideration that clearly emerged therefrom was that the respondent would forbear from suing the appellant if the latter would pay the said expenses—And it amounted to adequate consideration—Sections 2(2)(d), 10(1) *and* 23 *of the Contract Law, Cap.* 149.

Contract—Illegality—Contract tending to affect administration of justice—When illegal—Agreement for payment of repairs to car, following traffic accident, in consideration of forbearance to sue—Not an illegal contract—Moreover said agreement not an illegal contract in the sense that it is against public policy.

Damages—Motor-vehicle damaged in collision—Claim for damages for loss of use—Action not based on negligence but on agreement

entered into immediately after collission which contained no provision for such damages—Award therefor set aside.

Immediately after a collision between the cars driven by the parties to this appeal they entered into the following agreement:

"Today Thursday 20.12.73 an accident in which there were involved Mr. Doros Solomou and Mr. Pantelis Panayi occurred in Taygetos street, Kaimakli. The vehicle of the first is GY. 963 and of the second EW. 308. It has been agreed between them as follows:

Mr. Pantelis Panayi undertakes to bear all the damage to his own vehicle. Also, he undertakes to pay all the expenses for repairing car GY. 963, as well as for the replacement of any spare parts, so that it will be restored to its previous condition".

The respondent repaired his car at his own expense and sued the appellant for the cost of the repairs and for the damage suffered for the loss of use of the car. The statement of claim, so far as relevant, read:

"(5) The plaintiff repaired his vehicle for the sum of £164.645 mils and asked the defendant to pay the above sum, but the defendant refused and/or failed to do so.

(6) The plaintiff suffered further damage, due to the loss of the use of his car, amounting to £50.000 mils which he claims from the defendant.

(7) Therefore the plaintiff filed the present action by which he claims:

(A) £214.645 mils as stated".

Upon appeal against the award of £199 by way of damages, which comprised £164 special damages for the repair of the car of the respondent and £35 special damages for the loss of use of such car, Counsel for the appellant contended:

(a) That the relief claimed has not been specifically pleaded in paragraph 7 of the statement of claim and therefore the respondent, as plaintiff, could not have succeeded in the action on the basis of the prayer for relief as set out in the said paragraph 7.

(b) That the amount of £164.645 mils was not pleaded with sufficient particulars, in that it was not itemized so as to show how the cost of the repairs came to amount to £164.645 mils; and that evidence in this connection, by way of the production of the receipts in question, was wrongly admitted.

(c) That there was no consideration given for the agreement entered into between the parties; and that, in any event, such agreement was an illegal contract, as being contrary to public policy, in that it aimed at preventing criminal proceedings against the appellant in relation to the traffic accident in question.

During the hearing of the appeal counsel for the respondent conceded that the amount of £35 could not have been awarded against the appellant in the process of the determination of the civil action in question, because such action was not based on negligence but on the said written agreement which contained no provision at all for the payment of damages to the respondent for loss of the use of his car.

Held, (1) that there can be no doubt at all that when by means of paragraph 7(A) of the statement of claim the appellant claimed £214.645 mils "ὡς ἀναφέρεται" ("as stated") he did, in effect, specifically claim the amounts mentioned in paragraphs (5) and (6) of the statement of claim, one of them being the amount of £164.645 mils which he had paid in order to repair his car; and that, accordingly, contention (a) must fail.

(2) That the amount concerned was not a matter in respect of which full particulars had to be given in the statement of claim by virtue of the relevant provisions of rule 5 of Order 19 of the Civil Procedure Rules, but it was a matter in respect of which it was open to the appellant, as defendant, to ask for further and better particulars under rules 6 and 7 of the same Order, and he has failed to do so (after stating the principles governing the degree of particularity of pleadings); that in the context of the circumstances of this case it was not necessary to plead in an itemized manner the said amount of £164.645 mils special damages; that the trial Judge rightly decided that the special damages had been properly pleaded and allowed the respondent to adduce in evidence receipts proving the payment

by him of £164.645 mils in relation to the repairs to his car; and that, accordingly, contention (b) must fail.

Per curiam:

Even if we had found that it was required to plead in an itemized manner the said amount of special damages, we would have proceeded to allow, at the present stage, in the interests of justice, an amendment of the statement of claim, so that the rights of the respondent, under the agreement entered into with the appellant for the repair of the car of the respondent, would not be defeated by a mere technicality (see, *inter alia*, in this connection, *Pourikkos* v. *Fevzi* (1963) 2 C.L.R. 24, 33).

(3) That the trial Judge has correctly found that the consideration emerging, clearly, from the contents of the said agreement was that the respondent would forbear from suing the appellant if the latter would pay the expenses for the repair of the car of the former and that this amounted to adequate consideration (see the following passage from Cheshire and Fifoot's Law of Contract, 8th ed. p. 72: "Nor need there be any actual promise to forbear, if such an understanding can be inferred from the circumstances and is followed by a forbearance in fact").

(4) (*On the issue of whether the said agreement was an illegal contract*) that though it is admitted that any contract or engagement having a tendency, however slight, to affect the administration of justice is illegal and void, this rule applies only where the offence for which the defendant is prosecuted is a matter of public concern; that in this case there is nothing in the relevant agreement about stifling a pending prosecution, or preventing the police from instituting proceedings in relation to the traffic collision in question or interfering otherwise, in any way, with the course of the administration of justice; that, on the contrary, the two parties to this appeal reached the said agreement, immediately after the accident, with the encouragement and approval of the policeman who came to investigate it; that, moreover, the said agreement is not an illegal contract, in the sense that it is against public policy, because it does not offend in the least against the relevant principles of law which have been set out in this judgment (pp. 791–2 *post*); and that, there-

fore, the appeal must fail in every respect, except in so far as it relates to the award of £35 for loss of use of the car.

Appeal partly allowed.

Cases referred to:

Imam v. *Papacostas* (1968) 1 C.L.R. 207, at p. 209;

Ratcliffe v. *Evans* [1892] 2 Q.B. 524 at pp. 532–533;

Perestrello e Companhia Limitada v. *United Paint Co., Ltd.* [1969] 3 All E.R. 479 at p. 486;

Broome v. *Cassell & Co. Ltd. and Another Same* v. *Same* [1971] 1 All E.R. 262;

Pourikkos v. *Fevzi* (1963) 2 C.L.R. 24 at p. 33;

Egerton v. *Brownlow*, 10 E.R. 359 at p. 424;

Keir v. *Leeman and Pearson*, 115 E.R. (at pp. 118 and 1315);

Fisher & Company v. *Apollinaris Company* [1874–75] 10 Ch. 297 at p. 303;

Windhill Local Board of Health v. *Vint* [1890] 45 Ch. D. 351 at pp. 363–366.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Laoutas, D.J.) dated the 7th January, 1977 (Action No. 2303/74) whereby he was ordered to pay to the plaintiff the sum of £199.— by way of damages.

A. Serghides, for the appellant.

T. Eliades, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The appellant has appealed against the judgment of the District Court of Nicosia in action No. 2303/74 by means of which he was ordered, as the defendant in the action, to pay to the respondent, who was the plaintiff in the action, the amount of £199 by way of damages.

What gave rise to the proceedings is a traffic accident which occurred on December 20, 1973, when motor-car No. GY963, driven by the respondent, collided with motor-car No. EW308, driven by the appellant.

The aforesaid amount of £199 comprises £164 special damages

for the repair of the damage caused by the collision to the car of the respondent and £35 special damages for the loss of the use of his car by the respondent for a period of two weeks while it was being repaired.

During the hearing of this appeal counsel for the respondent conceded that the latter amount of £35 could not have been awarded against the appellant in the process of the determination of the civil action in question, because such action was not based on negligence but on a written agreement which was entered into between the parties immediately after the collision and which contains no provision at all for the payment of damages to the respondent for loss of the use of his car while it was being repaired.

The text of the said agreement, as drafted and signed by the parties to this appeal within a few minutes after the accident, reads as follows:-

" Σήμερον Πέμπτην 20.12.73 συνέβη δυστύχημα μεταξὺ τοῦ κ. Δώρου Σολωμοῦ καὶ τοῦ κ. Παντελῆ Παναγῆ εἰς τὴν ὁδὸν Ταϋγέτου-Καϊμακλί. Τὰ ὀχήματα τοῦ μὲν πρώτου εἶναι GY.963 τοῦ δὲ δευτέρου EW.308. Συνεφωνήθη μεταξὺ ἀλλήλων τὰ κάτωθι:

'Ο κ. Παντελῆς Παναγῆ ἀναλαμβάνη εὐθύνην νὰ ὑποστῆ πλήρως τὴν ζημίαν τοῦ ὀχήματος του. 'Ως ἐπίσης ἀναλαμβάνη νὰ πληρώση ὅλα τὰ ἔξοδα τῶν ἐπιδιορθώσεων ὡς καὶ τὴν ἀνταλλαγὴν οἱουδήποτε ἐξαρτήματος ἤθελε γίνη ἐπὶ τοῦ αὐτοκινήτου GY.963 διὰ νὰ γίνη ὡς καὶ πρότερον."

("Today Thursday 20.12.73 an accident in which there were involved Mr. Doros Solomou and Mr. Pantelis Panayi occurred in Taygetos street, Kaimakli. The vehicle of the first is GY.963 and of the second EW.308. It has been agreed between them as follows:

Mr. Pantelis Panayi undertakes to bear all the damage to his own vehicle. Also, he undertakes to pay all the expenses for repairing car GY.963, as well as for the replacement of any spare parts, so that it will be restored to its previous condition").

In pursuance of this agreement the car of the respondent was taken to a mechanic chosen by the appellant; but two or three

days later the mechanic informed the respondent that he had instructions from the appellant not to proceed to repair it at the expense of the appellant; so the respondent said that it should be repaired at, initially, his own expense and then, having paid for the repairs the amount of £164.645 mils, he filed the aforementioned action against the appellant.

The material paragraphs of the statement of claim in this action, namely paragraphs 5, 6 and 7, read as follows:–

"(5) Ὁ ἐνάγων ἐπιδιόρθωσεν τὸ ὄχημά του ἔναντι τοῦ ποσοῦ τῶν £164.645 μίλς καὶ ἐκάλεσεν τὸν ἐναγόμενον ὅπως καταβάλη τὸ ὡς ἄνω ποσὸν, ἀλλ' ὁ ἐναγόμενος ἠρνήθη ἢ/καὶ παρέλειψε νὰ πράξη τοῦτο.

(6) Ὁ ἐνάγων ὑπέστη περαιτέρω ζημίας δι' ἀπώλειαν χρήσεως τοῦ ὀχήματός του ἀνερχομένη εἰς £50.000 μίλς τὴν ὁποίαν οὗτος ἀπαιτεῖ παρὰ τοῦ ἐναγομένου.

(7) Διὰ ταῦτα ὁ ἐνάγων ἐκίνησεν τὴν παροῦσαν ἀγωγὴν δι' ἧς ἀξιοῖ:

(A) £214.645 μίλς ὡς ἀναφέρεται

(B) Νόμιμον τόκον

(Γ) Ἔξοδα."

("(5) The plaintiff repaired his vehicle for the sum of £164.645 mils and asked the defendant to pay the above sum, but the defendant refused and/or failed to do so.

(6) The plaintiff suffered further damage, due to the loss of the use of his car, amounting to £50.000 mils which he claims from the defendant.

(7) Therefore the plaintiff filed the present action by which he claims:

(A) £214.645 mils as stated

(B) Legal interest

(C) Costs.").

Two, out of the three, grounds of appeal which counsel for the appellant has argued in this case relate to the mode in which the statement of claim has been drafted:

It has, first, been submitted that the relief claimed has not been

specifically pleaded in paragraph 7 of the statement of claim and that, therefore, the respondent, as plaintiff, could not have succeeded in the action on the basis of the prayer for relief as set out in the said paragraph 7.

The trial Judge stated the following in relation to this aspect of the case:-

> " If one looks in the statement of claim one cannot seriously argue that no specific relief is sought therein. In the body of the specially indorsed writ the relief is clear and unambiguous. The remedies sought by the plaintiff are obvious and specific and they are not confused."

We are in full agreement with him as there can be no doubt at all that when by means of sub-paragraph (A) of paragraph 7 the appellant claimed £214.645 mils "ὡς ἀναφέρεται" ("as stated") he did, in effect, specifically claim the amounts mentioned in paragraphs (5) and (6) of the statement of claim, one of them being the amount of £164.645 mils which he had paid in order to repair his car.

Counsel for the appellant has, secondly, argued that the said amount of £164.645 mils was not pleaded with sufficient particulars, in that it was not itemized so as to show how the cost of the repairs came to amount to £164.645 mils.

In this respect the trial Judge stated the following:-

> " From what it is stated hereinabove I am satisfied that particulars of special damage need not have been given, because it is specifically stated in the statement of claim what is the damage claimed and defendant knew very well what he had to face at the trial. In my opinion the omission on the part of the plaintiff to give particulars of each item does not render the pleading bad, because the defendant had the opportunity and the means to ask for further particulars.
>
> Concluding on this issue I would say that the defendant was not taken by surprise and was fully aware all along what was the claim of the plaintiff."

Actually, during the hearing of the action counsel for the appellant objected to the production by the respondent of the receipts concerning the cost of the repairs to his car, since no

particulars had been given of the amount of £164.645 mils which was claimed as special damages, and he has repeated the same argument before us in the sense that he has contended that evidence in this connection, by way of the production of the receipts in question, was wrongly admitted.

The trial Court gave the following ruling when counsel for the appellant raised an objection to the admissibility of the receipts:-

> " Having considered the arguments of both counsel I am of the opinion that the evidence of plaintiff on this issue is admissible. There was a remedy to the defendant respecting this issue by applying to the Court for further particulars with regard to the special damages. The defendant could have easily availed himself of the above procedure. It is not necessary to appear in the pleadings particulars on the damages, this being an action not based on negligence but rather on an agreement between the parties."

The amount concerned was not a matter in respect of which full particulars had to be given in the statement of claim by virtue of the relevant provisions of rule 5 of Order 19 of the Civil Procedure Rules, but it was a matter in respect of which it was open to the appellant, as defendant, to ask for further and better particulars under rules 6 and 7 of the same Order, and he has failed to do so (see, *inter alia*, on this point, *Imam* v. *Papa-Costas*, (1968) 1 C.L.R. 207, 209).

In Bullen & Leake and Jacob's Precedents of Pleadings, 12th ed., it is stated (at p. 110) that:-

> " The practice as to particulars demands in every pleading such a sufficiency of detail as will elucidate the issues to be tried and prevent 'surprise' at the trial. No hard-and-fast line can be laid down as to the degree of particularity which is required of the pleader and which an opponent may demand of him when formulating his claim or defence.
>
> .....
>
> The precise degree of particularity required in any particular case cannot of course be predicated, but as much certainty and particularity must be insisted on as is reasonable having regard to the circumstances and the nature of

the acts alleged[1]. As Cotton L.J. stated in *Philipps* v. *Philipps*[2].

In *Ratcliffe* v. *Evans*, [1892] 2 Q.B. 524, Bowen L.J. stated the following (at pp. 532–533):–

> " In all actions accordingly on the case where the damage actually done is the gist of the action, the character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry."

In *Perestrello e Companhia Limitada* v. *United Paint Co., Ltd.*, [1969] 3 All E.R. 479, Lord Donovan, after referring to the *Ratcliffe* case, *supra*, said (at p. 486):–

> " The same principle gives rise to a plaintiff's undoubted obligation to plead and particularise any item of damage which represents out-of-pocket expenses, or loss of earnings, incurred prior to the trial, and which is capable of substantially exact calculation. Such damage is commonly referred to as special damage or special damages but is no more than an example of damage which is 'special' in the sense that fairness to the defendant requires that it be pleaded.
>
> The obligation to particularise in this latter case arises not because the nature of the loss is necessarily unusual, but because a plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible.
>
> .....
>
> What amounts to a sufficient averment for this purpose

1. See *Ratcliffe* v. *Evans* [1892] 1 Q.B. 524, per Bowen L.J. at 532.
2. [1878] 4 Q.B.D. 127, at 139.

will depend on the facts of the particular case, but a mere statement that the plaintiffs claim 'damages' is not sufficient to let in evidence of a particular kind of loss which is not a necessary consequence of the wrongful act and of which the defendants are entitled to fair warning."

In the subsequent case of *Broome* v. *Cassell & Co Ltd. and another Same* v. *Same*, [1971] 1 All E.R. 262, Lawton J. referred to both the *Ratcliffe* and *Perestrello* cases, *supra*, and observed the following (at p. 264):-

" The object of pleadings is to enable: first, the parties to know what case is being made by the other side; and, secondly, for the Court to know what are the issues to be tried. The days when pleadings were a form of catch-as-catch-can are over."

In the light of all the foregoing, we are of the view that the trial Judge rightly decided that the special damages claimed by the respondent had been properly pleaded and allowed the respondent to adduce in evidence receipts proving the payment by him of £164.645 mils in relation to the repairs to his car.

Thus, in the context of the circumstances of this case, we cannot hold that it was necessary to plead in an itemized manner the aforesaid amount of special damages; but, even if we had found that this was required, we would have proceeded to allow, at the present stage, in the interests of justice, an amendment of the statement of claim, so that the rights of the respondent, under the agreement entered into with the appellant for the repair of the car of the respondent, would not be defeated by a mere technicality (see, *inter alia*, in this connection, *Pourikkos* v. *Fevzi*, (1963) 2 C.L.R. 24, 33).

The third, and last, ground of appeal, which has been argued by counsel for the appellant, was based on the contention that there was no consideration given for the agreement entered into between the parties, as aforesaid, immediately after the collision of their cars; and that, in any event, such agreement was an illegal contract, as being contrary to public policy, in that it aimed at preventing criminal proceedings against the appellant in relation to the traffic accident in question.

In this respect, the trial Judge stated the following:-

" In the agreement, *exhibit* 1, although there is no express

provision that the plaintiff would forbear from suing nevertheless that was in reality agreed, on consideration that the defendant would pay the expenses for the repair of the car.

I am satisfied that there is adequate consideration.

.....

Reading the agreement (*exhibit* 1) in the light of what has been stated hereinabove, and taking into consideration all the surrounding circumstances, I am of the opinion that it was not contrary to public policy. The prosecution or not of the defendant was not a public concern in as much as the plaintiff could vindicate his rights by a civil action, irrespective of whether the defendant was criminally prosecuted or not.

The interests of the public were not in any way affected because of the agreement. For these reasons I find that the agreement was lawful and valid."

What is "consideration" is defined in section 2(2)(d) of the Contract Law, Cap. 149, as follows:-

" (d) when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;".

Section 10(1) of the said Law provides, *inter alia*, that—

" All agreements are contracts if they are made by the free *consent of parties competent to contract, for a lawful* consideration and with a lawful object, and are not hereby expressly declared to be void,...."

Also, section 23 of the same Law reads as follows:-

"23. The consideration or object of an agreement is lawful, unless—

(a) *it is forbidden by law; or*

(b) is of such a nature that, if permitted, it would defeat the provisions of any law; or

(c) is fraudulent; or

(d) involves or implies injury to the person or property of another; or

(e) the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

We are of the opinion that the trial Judge has correctly found that the consideration emerging, clearly, from the contents of the agreement, *exhibit* 1, was that the respondent would forbear from suing the appellant if the latter would pay the expenses for the repair of the car of the former and that this amounted to adequate consideration.

In this connection it is useful to quote the following passage from Cheshire and Fifoot's Law of Contract, 8th ed., at p. 72:-

" Nor need there be any actual promise to forbear, if such an understanding can be inferred from the circumstances and is followed by a forbearance in fact."

Regarding, next, the issue of whether the said agreement is an illegal contract, it is correct that, as was pointed out by Lord Lyndhurst in *Egerton* v. *Brownlow*, 10 E.R. 359 (at p. 424):-

" It is admitted, that any contract or engagement having a tendency, however slight, to affect the administration of justice, is illegal and void."

But, in Cheshire and Fifoot's Law of Contract, *supra*, after reference has been made to the above quoted dictum there appears the following passage (at pp. 328, 329):-

" This rule, however, applies only where the offence for which the defendant is prosecuted is a matter of public concern, i.e. one which pre-eminently affects the interests of the public. If the offence is not of this nature, but is one in which the injured person has a choice between a civil and a criminal remedy, as for instance in the case of a libel or an assault, a compromise is lawful and enforceable."

As an authority in this connection the leading case of *Keir* v. *Leeman and Pearson*, 115 E.R. (at pp. 118 and 1315) is relied on in the aforesaid textbook.

In *Fisher & Company* v. *Apollinaris Company*, [1874–75] 10 Ch. 297, Sir G. Mellish L.J. said (at p. 303):–

> " But, in my opinion, there is no objection to the compromise of a charge of this sort on such terms. The complaint was that Fisher had used the trade-mark of this company. Now, previously to the Trade Marks Act (25 & 26 Vict. c. 88), the sole remedy for the wrong complained of by the company would have been by action at law or suit in equity, but under this Act the wrong became also the subject of a criminal prosecution. There was no authority for saying that it was wrong in the prosecutors to withdraw from such a charge of this kind. The prosecutors allowed him to state that his offence was not wilful, and accepted an apology. Such compromises are constantly made before criminal Courts in cases of assault or libel. In some cases there is a payment of money; in other cases, no payment at all; and it has never been considered that there was anything wrong in such transactions. It would, of course, be different if there was any case alleged of extorting money under threats."

Also, in *Windhill Local Board of Health* v. *Vint*, [1890] 45 Ch. D. 351 (at pp. 363–366) the case of *Keir*, *supra*, was referred to with approval.

It is to be pointed out that in the present case there is nothing in the relevant agreement, *exhibit* 1, about stifling a pending prosecution, or preventing the police from instituting proceedings in relation to the traffic collision in question, or interfering otherwise, in any way, with the course of the administration of justice; on the contrary, as it appears from the evidence, the two parties to this appeal reached the said agreement, immediately after the accident, with the encouragement and approval of the policeman who came to investigate it.

Moreover, we are of the opinion that the said agreement is not an illegal contract, in the sense that it is against public policy, because it does not offend in the least against the relevant principles of law which have been set out in this judgment.

For all the foregoing reasons this appeal fails in every respect,

except in so far as it relates to the award of C£35 for loss of the use of the car of the respondent while it was under repair, and, therefore, it is dismissed, subject to the amount of damages awarded against the appellant being reduced by the said amount to £164 only.

As the appellant has been successful in relation to the aspect of the damages for the loss of the use of the car of the respondent we order him to pay to the respondent only half of the costs of this appeal.

Appeal partly allowed. Order for costs as above.