

1981 October 2

[TRIANTAFYLIDIS, P., DEMETRIADES, SAVVIDES, JJ.]

TAKIS ASSIOTIS KASSAPI,

Appellant,

v.

EVANGELOS LOUCA,

Respondent.

(Civil Appeal No. 6127).

Civil Procedure—Particulars—Discretion of the Court—Principles applicable—Landlord and tenant—Business premises—Recovery of possession—Particulars of tenant’s allegation for loss of goodwill and for increase of rental value of premises due to such goodwill—Trial Judge’s discretion correctly exercised—Whether application for particulars has to be supported by an affidavit—Rule 9(i) of Order 48 of the Civil Procedure Rules. 5

The appellant in this appeal challenged the order of the District Court by means of which he was ordered to give particulars regarding his contention that his eviction from the premises of the respondent would cause to him, as tenant of the premises, loss of goodwill and would, also, consequently, due to such goodwill, increase the rental value of the premises concerned. 10

Held, that the trial Judge expounded correctly the basic principle that particulars may be ordered to enable a party to know, before the trial, with a degree of certainty, the case of his opponent, but that by an order for such particulars a party should not be made to disclose evidence supporting allegations in his pleadings; that the trial Judge has exercised his relevant judicial discretion correctly in the present instance and that the appellant should comply, consequently, with the order for particulars which is the subject matter of this appeal; accordingly the appeal must fail. 15 20

Held, further, that this Court cannot agree with the submission of counsel for the appellant that the application for particulars was made irregularly in that there was not filed an affidavit 25

in support of such application (see rule 9(i) of Order 48 of the Civil Procedure Rules).

Appeal dismissed.

Cases referred to:

- 5 *Kapatais v. The London & Lancashire Insurance Co. Ltd.*, 24 C.L.R. 66;
 Kyriakou v. Licences & General Insurance Co. Ltd., (1969) 1 C.L.R. 505.

Appeal.

- 10 Appeal by the tenant against the order of the District Court of Larnaca (Pikis, P.D.C.) dated the 26th May, 1980 (Rent Appl. No. 17/79) by means of which he was ordered to give particulars regarding certain allegations made by way of a counterclaim by him for compensation.
- 15 *A. Koukounis*, for the appellant.
 M. Louca, for the respondent.

Cur. adv. vult.

- TRIANTAFYLIDIS P. read the following judgment of the Court. By means of the present appeal the appellant challenges an
 20 order made in Rent Application No. 17/79, in the District Court of Larnaca, by means of which the appellant was ordered to give particulars regarding certain allegations made by way of a counter-claim by him for compensation.

- The said particulars related to his contention that his eviction
 25 from the premises of the respondent, which was sought by means of the Rent Application in question, would cause to the appellant, as tenant of the premises, loss of goodwill and would, also, consequently, due to such goodwill, increase the rental value of the premises concerned.

- The trial Judge made the order for particulars, which is
 30 complained of by the appellant, under rule 6 of Order 19 of the Civil Procedure Rules, and referred, in this respect, *inter alia*, to the decisions of the Supreme Court in *Kapatais v. The London & Lancashire Insurance Co. Ltd.*, 24 C.L.R. 66 and
 35 *Kyriakou v. Licences & General Insurance Co. Ltd.*, (1969) 1 C.L.R. 505.

In his careful judgment the trial Judge expounded correctly the basic principle that particulars may be ordered to enable a party to know, before the trial, with a degree of certainty, the case of his opponent, but that by an order for such particulars a party should not be made to disclose evidence supporting allegations in his pleadings. 5

We are of the opinion that the trial Judge has exercised his relevant judicial discretion correctly in the present instance and that the appellant should comply, consequently, with the order for particulars which is the subject matter of this appeal; he should do so within three weeks from today and if he fails to do so then the respondent shall be at liberty to apply for the dismissal of the appellant's counter-claim. 10

Before concluding this judgment we would like, also, to state that we cannot agree with the submission of counsel for the appellant that the application for particulars was made irregularly in that there was not filed an affidavit in support of such application. 15

Under rule 9(i) of Order 48 of the Civil Procedure Rules, it is clear that unless an affidavit had been required by the trial Judge—and he did not give such a direction—the application of the respondent for further and better particulars did not have to be supported by an affidavit. 20

In the light of the foregoing this appeal is dismissed with costs.

Appeal dismissed with costs. 25