

1984 November 10

[A. LOIZOU, J.]

VASSILIOS FASILIS AND OTHERS.

Plaintiffs,

v.

M.V. "SUN BOAT" HER SHIPOWNERS AND/OR
CHARTERERS AND OTHERS.

Defendants.

*(Admiralty Actions Nos. 257/83,
258/83, 259/83, 260/83, 261/83,
262/83, 263/83, 264/83, 265/83,
266/83).*

Practice—Striking out pleading—Statement of claim—Principles applicable—Foreign Law—Though it must be specially pleaded and full particulars should be given, where a pleading is defective only in not containing particulars, to which the other side is entitled, application should be made for further and better particulars and not for an order to strike out the pleadings—Striking out employed only in the plain and obvious cases—Order 25, rule 4 and Order 19, rule 7 of the old English R.S.C.

10 The defendants in the above actions applied for an order of the Court striking out paragraphs 4, 5 and 6 of the petition "for irregularity and/or tending to prejudice or embarrass or delay the fair trial of the action and/or because they refer to foreign legislation, circulars and collective agreements without particulars".

15 Applicants-defendants contended that by the averments contained in paragraphs 4, 5 and 6 of the petition the respondents plaintiffs were pleading the whole Greek Maritime Law; and that they ought to have stated the title of the law, the sections and contents so as to enable the applicants-defendants to seek expert
20 advice and plead accordingly. As regards the question why they have not resorted to particulars, the applicants contended

that this was not a case of further and better particulars, as the pleading was vitiated as far as they had to meet.

Held, though it is correct that where a party relies on foreign Law in support of his claim or defence same must be specially pleaded and full particulars should be given of the precise statute or Law or Case Law relied on with the material sections and other provisions thereof a pleading may be struck out when it discloses no reasonable cause of action or answer or only a frivolous or vexatious cause of action or defence (see rule 4 of Order 25 of the old English R.S.C.); that where, however, a pleading is too general in its terms—and this is obviously the character of the three paragraphs in the petition complained of—and thus deprives the opponent of information to which he is entitled and without which he cannot properly prepare for trial he should apply for particulars (see rule 7 of Order 19 of the old English R.S.C.); that striking out is employed only in plain and obvious cases; and that, therefore, the application must be dismissed.

Held, further, that there is a substratum of fact indicated in the paragraphs complained of and these paragraphs should not be struck out.

Application dismissed.

Cases referred to:

Asimenos v. Chrysostomou (1982) 1 C.L.R. 145;
Kemsley v. Foot and Others [1951] 2 K.B. 34 (C.A.).

Applications.

Applications by defendants for an order of the Court ordering the striking out of paras. 4, 5 and 6 of the petition for irregularity and/or tending to prejudice or embarrass or delay the fair trial of the action.

L. Papaphilippou, for the applicant.

P. Kalli (Miss), for *A. Poetis*, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following ruling. In these ten consolidated actions by which the amounts stated in their respective

endorsements of claim are claimed "as war bonus and/or additional salary and/or otherwise", the applications under consideration were filed by the defendants after the filing by the plaintiffs of their petition. It is claimed thereby:-

5 “(a) An order of the Court ordering the striking out of paras. 4, 5 and 6 of petition for irregularity and/or tending to prejudice or embarrass or delay the fair trial of the action and/or because they refer to foreign legislation, circulars and collective agreement without
10 particulars.

(b) Costs”.

The applications are based on the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction, Orders 87, 203 to 212, and 237, and on the English Rules of the Supreme
15 Court, Order 19, rules 15 and 27, and Order 25, rule 4.

The facts relied upon are stated to be apparent in the petitions in which the plaintiffs plead a foreign collective agreement, legislation and regulations without particulars.

The said applications were opposed by the plaintiffs on two
20 grounds:-

(a) That paras. 4, 5 and 6 which the applicants asked to be struck out are not irregular, nor do they tend to influence or offend or delay the fair trial of the action, and

25 (b) The applicants never asked, at any stage, further and better particulars.

The said three paragraphs read as follows:-

“4. In accordance with the said agreement, the regulations and provisions of the Greek Collective Agreement will
30 apply.

5. Alternatively, there would apply the legislation and/or circulars of the Ministry of Merchant Navy of Greece.

6. In accordance with the said agreement and/or the Greek legislation, the seaman who is engaged on board the ship
35 which sails in war zones is entitled to war bonus. The aforesaid ship sailed in war zones from March-27.9.1983”.

Order 87 of our Cyprus Admiralty Jurisdiction Order, 1893 relied upon by the applicants reads:-

"Every pleading shall be divided into short paragraphs numbered consecutively, and shall state concisely the facts on which the party relies; and shall be signed by the party filing it or his advocate".

Orders 203 to 212 deal with the manner and procedure regarding applications and Order 237 provides that "in all cases not provided by these Rules, the practice of the Admiralty Division of the High Court of Justice of England, so far as the same shall appear to be applicable, shall be followed". The caselaw of this Court (*Asimenos v. Chrysostomou and Another* (1982) 1 C.L.R. 145) has interpreted this rule as referring to the rules and practice applicable in England before the 16th August, 1960, the date of Cyprus Independence.

Order 19, rules 15 and 27, of the English Rules as set out in the Annual Practice of 1960, read as follows:-

"15. The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds.

27. The Court or a Judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the costs of the application to be paid as between solicitor and client".

And Order 25, rule 4, which deals with striking out pleadings where no reasonable cause of action is disclosed, reads as follows:-

“4. The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be
5 frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just”.

It has been argued on behalf of the applicants that by the averments contained in paragraphs 4, 5 and 6, the respondents
10 plaintiffs are pleading the whole Greek Maritime Law. They ought, it was urged, to have stated the title of the law, the sections and contents so as to enable the applicants/defendants to seek expert advice and plead accordingly. This was not done and they did not know what they had to meet in Court. As regards
15 the question why they have not resorted to particulars, the argument advanced is that this is not a case of further and better particulars, as the whole pleading is vitiated as far as they had to meet.

It is correct that where a party relies on foreign Law in support
20 of his claim or defence same must be specially pleaded and full particulars should be given of the precise statute or Law or Case Law relied on with the material sections and other provisions thereof. It has to be pleaded in the same way as any other fact.

Rule 27 of Order 19 has been described as a general provision for enforcing the preceding rules. In spite of its wide language its operation has been to some extent limited by Case Law. Under Order 25, rule 4 any pleading may be struck out which
25 discloses no reasonable cause of action or answer or only a frivolous or vexatious cause of action or defence. Where, however, a pleading is too general in its terms and this is obviously the character of the three paragraphs in the Statement of Claim complained of—and thus deprives the opponent of information to which he is entitled and without which he cannot properly
30 prepare for trial he should apply for particulars under Order 19, rule 7. (See the Annual Practice 1960 p. 477).
35

Moreover, where a pleading is defective only in not containing particulars to which the other side is entitled application should be made for “a further and better statement of the nature of

the claim or defence under rule 7 and not for an order to strike out the pleading under this rule". (The Annual Practice (supra) p. 479). Striking out is employed only in plain and obvious cases (See *Kemsley v. Foot and Ors* [1951] 2 K.B. 34 C.A.). It should be pointed out that in the House of Lords the same case which is reported in 1952 Appeal Cases 347, it was held that the relevant paragraph of the defence should not be struck out as there was a substratum of fact indicated in the words complained of sufficient to form a basis for the comment and to it was unnecessary for all the facts on which the comment was based to be stated in order to admit the defence of fair comment. Likewise in our case it may be said that there is a substratum of fact indicated in the paragraphs complained of and these paragraphs should not be struck out. The remedy of the applicants lies in an application for a further and better statement of the claim or for further and better particulars of the matters stated in the said paragraphs.

For all the above reasons these applications are dismissed with costs.

Applications dismissed with costs.