1987 May 16

[PIKIS J]

E PHILIPPOU LTD ,

Plaintiffs,

v

COMPASS INSURANCE CO LTD

Defendants

(Admiralty Action No 267/84)

Admiralty — Practice — Pleadings — Differences between rules of pleading in admiralty actions and those in other civil proceedings — Thing in common that pleaded facts should disclose a cause of action — Action on insurance policy for recovery of loss suffered from damage to goods — Failure to plead facts connecting damage with any of the risks insured — No cause of action disclosed — Gap, however, may be bridged by an amendment proposed by plaintiffs — The Admiralty Jurisdiction Order, Rules 38, 87, 89 and 90 — The old English Rules, Ord 19, r 4 — The Civil Procedure Rules, Ord 19, r 4

Relying on rule 89 of the Cyprus Admiralty Jurisdiction Order the defendants applied for an order setting aside the petition and/or striking out the action for failure to disclose a cause of action The writ of summons specifies the claim to be one for the recovery of loss suffered from damage to goods the subject of a specified policy issued by the defendants Counsel for the defendants submitted that, in the absence of an averment in the petition that the damage suffered was referable to one or more of the risks covered, the petition does not disclose on its face a cause of action

It must be noted that the defendants' application was examined in conjunction with an application by the plaintiffs for the amendment of the petition designed to right any failure or omission noticeable in it

Held (1) The rules of pleading in an admiralty action are not identical with those applicable in other civil proceedings Written pleadings in admiralty actions are not inevitable (Rule 38 of the Cyprus Admiralty Jurisdiction Order, 1893), but may be ordered by the Court after hearing the parties, moreover, comparison of rule 87 of the said Order with Ord 19, r 4 of the old English Rules or with Ord 19, r 4 of our Civil Procedure Rules, leads to the conclusion that rule 87 imposes more stringent requirements than either Ord 19, r 4 because Rule 87 requires the pleading of every fact « on which a

party relies .....», whereas, Ord. 19, r.4 limits the obligation to a statement of material facts. What the said rules have in common is that the statement of the plaintiff's case should disclose a cause of action.

(2) The pleaded facts must make up the component parts of an action entitling the party to relief. The facts are assessed at their face value. At this juncture what is at issue are the objective implications of the facts with a view to determining their effect in Law.

(3) Although the petition in this case highlights the cause which the plaintiffs wish to litigate, the facts disclosed fall short of fledging it into a cause of action known to the law. It omits to state the facts, establishing the breach of the policy, entitling prima facie the plaintiffs to the relief sought. The nexus between cause and damage is missing. The proposed amendment, however, bridges the gap, by specifying that it was an all risks policy naturally including loss or damage in transit.

Application for amendment granted with costs thrown away. Three fourths of the costs in respect of defendants' application against the plaintiffs.

Cases referred to:

Kittalas v. Frangoudis and Stephanou Ltd. (1986) 1 C.L.R. 359;

Shaw v. Shaw [1954] 2 All E.R. 638;

Alpan v. Nakufreight Ltd. (1978) 1 C.L.R. 582.

Application.

Application for an order setting aside the petition and/or striking out the action for failure to disclose a cause of action.

P. Anastassiades, for applicants - defendants.

P. Liveras, for respondents-plaintiffs.

Cur. adv. vult.

PIKIS J. read the following judgment. Provided pleadings are exchanged, as were in this case pursuant to an order of the Court, R.89 of the Cyprus Admiralty Jurisdiction Rules entitles either party to apply to the Court for immediate determination of any question of law or fact arising thereto. The present application of defendants is based on the aforementioned rule and an order is sought setting aside the petition and/or striking out the action fo:

failure to disclose a cause of action. Earlier defendants abandoned an application to strike out the writ of summons for similar failure.

Plaintiffs opposed the application and refuted the suggestion that the petition was defective for failure to disclose a cause of action or on any other account. Nevertheless, plaintiffs offered to amend their petition if that were to serve to convey a better indication to defendants of their cause and its implications. And an application followed for the amendment of the petition in an effort to put their case in a clearer perspective. The proposed amendment failed to remove the objections of plaintiffs, whereupon directions were given for the continuation of the hearing of the application of 22nd January, 1987, examined in conjunction with the application for amendment of the petition designed to right any failure or omission noticeable in the petition.

The writ of summons specifies the claim to be one for the recovery of loss suffered from damage to goods the subject of a specified policy issued by the defendants. Of course the claim must be of a species amenable to the Admiralty Jurisdiction of the Supreme Court, though the circumstances giving rise to jurisdiction need not be identified in the writ of summons*. In the petition reference is made to the goods allegedly the subject matter of the Insurance Policy, and the date of the agreement entered into between the parties for the insurance of the goods. But it does not specify the risks covered by the insurance and omits to correlate the damage sustained to that risk. In the submission of counsel for the applicants (defendants), the petition does not disclose an actionable cause in the absence of an averment that the damage suffered was referable to one or more of the risks covered; or put in another way, the petition failed to establish, on its face, liability of the defendants for breach of the contract of insurance.

In support of his submission, counsel referred to the rules of pleading a claim, the subject of definition by Order 19, Rule 4, of the old rules of the English Supreme Court (to which O.19, r.4, of the Civil Procedure Rules corresponds) explained and analyzed in *Bullen and Leak***. Furthermore, he adverted to the elements or components of an action for recovery of loss covered by an

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* *Kittalas v. Frangoudis and Stephanou Ltd. (1986) 1 C.L.R. 359.*

** *12th Ed., pages 53 and 54.*

Insurance Policy* in order to demonstrate the failure of the plaintiffs to disclose such a cause in their petition. Adopting a statement from Ivamy he submitted that in order to succeed the insured must prove (a) a loss and (b) of a kind covered by the Policy. Counsel ended his arguments by recounting a statement from *Atkin*** that pleadings in admiralty actions especially should state facts in the most comprehensive manner. For his part counsel for the respondents (plaintiffs) reminded of the point made by Denning, L.J. as he then was in *Shaw v Shaw**** that what is relevant is the adequacy of the statement of facts, not the label attached to them. In *Alpan v Nakufreight Ltd* *****, A. Loizou, J., reiterated that in admiralty actions too there should be no pleading on the law or the evidence supporting the factual allegations made therein. In counsel's submission the complaint of plaintiffs in this case concerns an omission to plead evidence, whereas all facts material for the support of their case are averred, albeit briefly, in the petition.

Both counsel premised their submissions on the assumption that the rules of pleading in an admiralty action are identical to those applicable to other civil proceedings, that is, those contained in Ord. 19, r. 4, of the old English rules and Ord. 19, r. 4, of the Civil Procedure Rules. That is not an altogether accurate assessment.

To begin, written pleadings in admiralty actions are not the inevitable means of defining the case of the parties to the cause. Rule 38 of the Cyprus Admiralty Jurisdiction Rules makes provision for an oral statement of the facts and for their embodiment in a note of the Court. Exchange of pleadings may be ordered only if deemed necessary by the Court after hearing the parties, as happened in this case. Where pleadings are ordered they should conform to the provisions of R. 87 with regard to their content. As a comparison of the text of R. 87 and Ord. 19, r. 4, of the old rules of the Supreme Court confirms, the provisions of the two are not identical, on the contrary, there are noticeable differences between the two. At first blush, as I indicated to counsel in argument, R. 87 appeared to me to impose less stringent requirement of pleading compared to Ord. 19, r. 4. On reflection I think it is not so and that in fact the opposite is true.

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* *Ivamy, General Principles of Insurance Law 1st Ed. p. 343*

** *Atkin's Court Forms Vol. 1 pages 323 and 324*

*** *[1954] 2 All E.R. 638, 645*

**** *(1978) 1 C.L.R. 582*

Whereas Ord. 19. r.4 limits the obligation of the plaintiff to a statement of material facts, R.87 extends the obligation to every fact «... on which the party relies .....». Very probably R. 87 was fashioned to the practice of the Admiralty Division of the Supreme Court in England reflected in *Atkin* referred to by counsel for the defendants. What both rules have in common is that the statement of the plaintiffs' case should disclose a cause of action. Unless a cause known to the law is set forth as the subject of the proceedings, litigation would be futile. Rules 89 and 90 of the Cyprus Admiralty Rules confer discretion of the Court to deal with such failure or inadequacy in any manner it may deem conducive to the interest of justice.

The facts founding the claim of the plaintiff disclosed in the statement of his case (petition), must give rise to a cause of action known to the law or as stated in *Bullen* (supra), the facts must make up the components of an action entitling the party to relief. The facts are assessed on their face value and no inquiry is at this stage held into their validity. The trial is the forum for their elicitation. At this juncture what is at issue are the objective implications of the facts with a view to determining their effect in law, particularly whether they disclose a cause of action. Our next task is to apply this test in order to determine whether the petition fails to set forth a cause of action and if so whether the defect is remedied by the proposed amendment. Both issues can be gone into at the same time in view of the breath of the powers of the Court under Rules 89 and 90 and the need to provide a compendious solution to preliminary issues. Although the petition highlights the cause that plaintiff wishes to litigate, the facts disclosed fall short of fledging it into a cause of action known to the law. Evidently plaintiff complains of breach on the part of the defendants of the provisions of an insurance policy but this claim fails to disclose necessary facts giving rise to liability on the part of the defendants and in that way fall short of setting forth a litigable cause of action. As I read the petition, it does little more than provide the label of the cause while it omits to state the facts establishing the breach entitling prima facie the plaintiffs to the relief sought. The breach complained of is not correlated in any definite manner to the terms of the insurance policy and in that way fails to identify the most significant fact for success in an action for breach of contract; the nexus between the cause and the damage.

On the other hand the proposed amendment bridges the gap by

specifying that it was an all risks policy, naturally including loss or damage in transit Whether plaintiffs should condescend to more particulars, is a matter that need not concern us at this stage It suffices that the facts assuming they are accepted, give rise to a cause of action known to the law Therefore I shall allow the application for amendment coupled with the following directions

(a) Amended copy of the petition to be filed within seven days

(b) The defendants will be at liberty to answer the amended petition within three weeks

(c) Lastly, plaintiffs will be at liberty to reply within 15 days thereafter

It is manifest from the judgment of the Court that the application of defendants of 22nd January, 1987, was well founded, though not persistence in its prosecution after application for amendment A fair order for costs would be that defendant should be allowed three fourths of the costs of proceedings relevant to the application of 22nd January, 1987, and the application for amendment Furthermore defendants are entitled to the full costs thrown away in consequence of the amendment

The case is adjourned for further directions to 6th July, 1987, at 9 a m

Order accordingly