

1987 June 25

(TRIANAFYLIDIS P DEMETRIADES SAVVIDES
PIKIS KOURRIS JJ)

PASTELLA MARINE CO LTD

Appellants - Defendants,

v

NATIONAL IRANIAN TANKER CO LTD ,

Respondents - Plaintiffs

(Civil Appeal No 7380)

Appeal — Practice — Grounds of Appeal — The Civil Procedure Rules, Order 35, rule 4 — The test in order to determine the question whether a ground of appeal complies with the requirements of the said rule

On the day, when this appeal was fixed for hearing, counsel for the respondent raised an objection that grounds 1, 6 and 7 in the notice of appeal do not comply with Order 35, rule 4 of the Civil Procedure Rules

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As counsel for the appellants admitted that ground 1 was an introductory ground, which would not be argued separately, the Court concerned itself with grounds 6 and 7 of the notice of appeal

Held, *dismissing the objection* (1) In order to decide whether a ground of appeal complies with the said rule, it must not be looked at in isolation, but in conjunction with the remaining grounds of appeal and in correlation with the judgment appealed from. In the light of this principle grounds 6 and 7 satisfy the requirements of Order 35, r 4

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(2) In any event the objection was raised too belatedly, and moreover, counsel for the respondent could have applied for particulars of the said grounds of appeal

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Order accordingly

Cases referred to

Papadopoulou v Polykarpou (1968) 1 C L R 352,

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Michael v Kyriakou (1968) 1 C L R 405,

Kyriakides v Kynakides (1969) 1 C L R 373,

1 C.L.R. Pastella Marine Co. v. Nat. Iranian Tanker Co.

Attorney General v Adamsa Ltd (1974) 1 C L R 165

Mouzoun v Makns (1976) 1 C L R 329

Objection.

5 Objection by counsel for the respondents that grounds 1, 6 and 7 in the notice of appeal do not comply with Order 35, rule 4 of the Civil Procedure Rules

P Sarris with P Gross, for the appellants

L Papaphilippou, for the respondents

10 *TRIANTAFYLLIDES P* read the following decision of the Court: This is an appeal against an interlocutory injunction granted by a Judge of the Supreme Court in Admiralty Action No. 212/86 and prohibiting the appellants from selling, mortgaging or otherwise alienating the Cyprus ship «Bummpac Bahamas»

15 Today, when the hearing of the present appeal was about to commence, counsel for the respondents sought to object that grounds 1, 6 and 7 in the notice of appeal do not comply with rule 4 of Order 35 of the Civil Procedure Rules, the relevant part of which provides as follows

20 «The notice shall also state all the grounds of appeal and set forth fully the reasons relied upon for the grounds stated »

25 Counsel for the respondents has argued that the aforesaid three grounds of appeal, 1, 6 and 7, do not set forth fully the reasons relied upon in support of them and has submitted that counsel for the appellants should apply for leave to amend them in order to secure their compliance with rule 4 of Order 35 of the Civil Procedure Rules, if he is to be allowed to be heard in support of them, and counsel for the respondents has referred to *Papadopoulou v Polykarpou*, (1968) 1 C L R 352, *Michael v Kynakou*, (1968) 1 C L R. 405 and *Kynakides v Kynakides*, 30 (1969) 1 C L.R 373

35 Counsel for the appellants has rightly conceded that ground 1 (that the trial Judge «erred in law and/or fact and/or principle in granting the interlocutory injunction») - is nothing more than an introductory «ground» which will not be argued as a separate ground of appeal and we, therefore, need not concern ourselves any further with such ground.

In addition to the case-law cited, as above, by counsel for the respondents, useful reference may also be made, regarding rule 4 of Order 35 of the Civil Procedure Rules, to, inter alia, the cases of *Attorney-General of the Republic v. Adamsa Ltd.*, (1974) 1 C.L.R. 165. and *Mouzouri v. Makris*, (1976) 1 C.L.R. 329.

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In order to decide whether a ground of appeal complies with the requirements of the said rule 4 it must not be looked at in isolation but in conjunction with the remaining grounds in the notice of appeal and in correlation to the judgment appealed from; and having thus considered grounds of appeal 6 and 7 in the present case we think that they are drafted in a manner which suffices to satisfy the requirements of rule 4 of Order 35. By means of such grounds it is clearly contended, respectively, that in granting the interlocutory injunction the trial Judge interpreted and applied wrongly section 32 of the Courts of Justice Law, 1960 (Law 14/60) and that, having regard to the circumstances of this case and the principles governing the making of injunctions under the said section 32, an interlocutory injunction should not have been granted on this occasion.

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In any event we would like to point out that the objection of counsel for the respondents was raised too belatedly, just before the commencement of the hearing of this appeal, about which notice has been given to him as from 19 May 1987.

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Moreover, counsel for the respondents could have applied in due time for particulars of grounds of appeal 6 and 7 but he has not done so

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In the result we cannot uphold the contention of counsel for the respondents regarding grounds of appeal 6 and 7, and we shall hear argument on these grounds as they have been framed without any amendment of such grounds being necessary.

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Order accordingly.