

1989 August 11

(DEMETRIADES, J)

IN THE MATTER OF AN APPLICATION BY (1) CHRISTOFOROS PELAKANOS, (2) GEORGHIOS PELEKANOS, (3) C. & A. PELEKANOS ASSOCIATES LTD. AND (4) CHRISTOFOROS PELEKANOS LTD., FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI,

AND

IN THE MATTER OF AN INTERIM ORDER GRANTED BY THE DISTRICT COURT OF NICOSIA IN ACTION NO. 377/88 ON 18.1.88.

(Application No. 46/88).

Injunctions — Interlocutory injunction — Anton Piller Order — It is not restricted to cases of copyright — It will be refused, if what the plaintiff seeks, is evidence, on which to base the action.

5 *Prerogative Orders — Certiorari — Ambit of — Application for certiorari quashing an interlocutory injunction in the form of an Anton Piller Order — Though there may be good grounds for appealing, the application should be dismissed, because applicant did not put forward grounds that the lower Court had no jurisdiction to issue the interlocutory injunction.*

10 The principles applied by the Court in dismissing the application for certiorari sufficiently appear in the hereinabove headnote.

*Application dismissed.
No order as to costs.*

Cases referred to:

15 *In re Kakos* (1985) 1 C.L.R. 250;
Anton Piller K.G. v. Manufacturing Processes Ltd. [1976] Ch. 55;
Yousif v. Salama [1980] 1 W.L.R. 1540;
Emanuel v. Emanuel [1982] 1 W.L.R. 669;
20 *Distributori Automatici Italia Spa v. Holford General Trading Co. Ltd.* [1985] 1 W.L.R. 1066.

Application.

Application for an order of certiorari to remove into the Supreme Court and quash the interim order granted by the District

Court of Nicosia on the 18th January, 1988 in Action No. 377/88.

K. Michaelides with M. Georghiou, for the applicants.

L. Papaphilippou, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following ruling. This is an application by which the applicants apply for an order of certiorari to remove into the Supreme Court, for the purpose of its being quashed, the interim order which was granted by the District Court of Nicosia on the 18th January, 1988, in Action No. 377/88. 5

The facts that led to these proceedings arose as a result of an interim order in the form of an Anton Piller one, by which an order was granted by the District Court of Nicosia and which prohibited the applicants from - 10

(a) parting or disposing of the books, receipts contracts, documents and correspondence of applicant No. 3, 15

(b) altering or destroying the books, receipts, contracts, documents and correspondence of applicant No. 3.

(c) using machinery, tools, building material, labourers and personnel of applicant No. 3 for the purpose of erecting the blocks of flats under the names Pelekanos Court No. 10 and Pelekanos Court No. 11 situated at Nicosia and which belong to applicant No. 4. 20

The plaintiffs in that action claimed for -

(A) Injunctions restraining defendants 1, 2 and 4 personally, their servants and agents, from - 25

(i) using and/or exploiting machinery, tools, materials and labourers belonging to defendant No. 3 for the construction of two blocks of flats at Nicosia,

(ii) altering or destroying the books, receipts, contracts, documents and correspondence of defendant No. 3 and/or of falsifying the entries in their books and files. 30

(B) An order directing the defendants to give on oath detailed accounts and explanations relating to machinery, materials and labour which were used from the property of defendant No. 3 for the construction of the two blocks of flats under the names of 35

«PELEKANOS COURT NO. 10» and «PELEKANOS COURT NO. 11» situated at Nicosia, in the name and/or on account of defendant No. 4.

5 (C) Declaration by the Court that the blocks of flats which are being constructed under the characteristics or names of «PELEKANOS COURT NO. 10» and «PELEKANOS COURT NO. 11» in Nicosia in the name of defendant No. 4 and/or all profits which will be made out of them, belong and form part of the property of defendant No. 3.

10 (D) Damages as a result of breach of duty and/or dishonesty and/or trust and/or fraud etc.

(E) Damages against defendant No. 3 amounting to £95,820.- plus interest at 9% p.a. as from 1.1.1980.

15 (F) Order that defendant No. 1 gives on oath full particulars of all dealings that he carried out as the agent of the plaintiff.

(G) Judgment against defendant No. 1 for all amounts of money that he had collected and withholds by virtue of the power of Attorney dated the 7th November, 1979, which was given by the plaintiff to defendant No. 1.

20 Leave was granted by this Court to the applicants to file the present proceedings.

25 Certiorari is a prerogative order which this Court is vested with exclusive jurisdiction by virtue of the provisions of the Constitution of the Republic, and its purpose is to control all inferior Tribunals not in an appellate capacity but in a supervising one. This control extends not only to seeing that the inferior Tribunals keep within their jurisdiction, but also to seeing that they observe the law.

30 As it has been held in *Re Kakos*, (1985) 1 C.L.R. 250, certiorari lies where it appears, on the face of the record, that the decision was erroneous in point of law and that the absence of competence, if any, must be apparent on the record of the proceedings, as well as the illegality, manifest, as alleged.

In the present case, the issue that I have to decide is whether the District Judge, who made the order, had jurisdiction to make it.

35 The order that was made is known as an Action Piller Order and it took its name from the case of *Anton Piller K.G. v. Manufacturing Processes Ltd.*, [1976] Ch. 55, (also [1976] 1 All E.R. 779).

The Anton Piller case was concerned with copyright infringement and misuse of confidential information. The plaintiff company was a German manufacturer of electric motors and generators which had designed a frequency converter for the particular purpose of supplying power to computers produced by IBM. The defendants, an English company and their two directors, were the United Kingdom agents of the plaintiffs. The plaintiffs claimed that the defendants were in secret communication with other German manufacturers and were passing to them confidential information about the plaintiffs' power units and details of a new converter, the disclosure of which could be most damaging to the plaintiffs.

To prevent the destruction by the defendants of documents in their possession relating to the plaintiffs' machines or designs, the plaintiffs applied ex parte in the Chancery Division of the High Court for an order requiring the defendants to permit the plaintiffs to enter the defendant's premises in order to inspect all such documents and remove them into the custody of the plaintiffs' solicitors and for an interim injunction to restrain the defendants from infringing their copyrights and disclosing confidential information.

Lord Denning, M.R., in his judgment in the *Anton Piller Case* [1976] Ch. 55 at p. 60, had this to say:

«Let me say at once that no court in this land has any power to issue a search warrant to enter a man's house so as to see if there are papers or documents there which are of an incriminating nature, whether libels or infringements of copyright or anything else of the kind. No constable or bailiff can knock at the door and demand entry so as to inspect papers or documents. The householder can shut the door in his face and say 'Get out'. That was established in the leading case of *Entick v. Carrington* (1765) 2 Wils. K.B. 275. None of us would wish to whittle down that principle in the slightest. But the order sought in this case is not a search warrant. It does not authorise the plaintiffs' solicitors or anyone else to enter the defendants' premises against their will. It does not authorise the breaking down of any doors, not the slipping in by a back door, nor getting in by an open door or window. It only authorises entry and inspection by the permission of the defendants. The plaintiffs must get the defendants'

permission. but it does do this: It brings pressure on the defendants to give permission. It does more. It actually orders them to give permission - with, I suppose, the result that if they do not give permission, they are guilty of contempt of court.

5 This may seem to be a search warrant in disguise».

Lord Denning, M.R., after proceeding to say that the making of an Anton Piller Order is not covered by the Rules of the Supreme Court but that it was based on the inherent jurisdiction of the Court, asked himself when such an order could be made and at
10 page 61 of the report I read this:

«It seems to me that such an order can be made by a judge ex parte, but it should only be made where it is essential that the plaintiff should have inspection so that justice can be done between the parties: and when, if the defendant were
15 forewarned, there is a grave danger that vital evidence will be destroyed, that papers will be burnt or lost or hidden, or taken beyond the jurisdiction, and so the ends of justice be defeated: and when the inspection would do no real harm to the defendant or his case.

20 Nevertheless, in the enforcement of this order, the plaintiffs must act with due circumspection. On the service of it, the plaintiffs should be attended by their solicitor, who is an officer of the Court. They should give the defendants an opportunity of considering it and of consulting their own solicitor. If the
25 defendants wish to apply to discharge the order as having been improperly obtained, they must be allowed to do so. If the defendants refuse permission to enter or to inspect, the plaintiffs must not force their way in. They must accept the refusal, and bring it to the notice of the Court afterwards, if
30 need be on an application to commit».

And he pointed out (see p. 61 (E-F)) that the Court was prepared to sanction the continuance of the issue of an Anton Piller order but only in an extreme case where there is grave danger of property being smuggled away or of vital evidence being
35 destroyed.

In the same case Ormrod L.J., in delivering his judgment, summed up the principle at pp. 61-62 of the report. I am citing as follows:-

«The proposed order is at the extremity of this court's

powers. Such orders, therefore, will rarely be made, and only when there is no alternative way of ensuring that justice is done to the applicant.

There are three essential pre-conditions for the making of such an order, in my judgment. First, there must be an extremely strong prima facie case. Secondly, the damage, potential or actual, must be very serious for the applicant. Thirdly, there must be clear evidence that the defendants have in their possession incriminating documents or things, and that there is a real possibility that they may destroy such material before any application inter partes can be made».

Counsel for the applicants has in effect submitted that an Anton Piller order can only be made where there is an interference with copyrights. However, in the United Kingdom, such orders were made in actions concerning monies due under an agency agreement (*Yousif v. Salama*, [1980] 1 W.L.R. 1540), matrimonial cases (*Emanuel v. Emanuel*, [1982] 1 W.L.R. 669), in instances to assist in execution of a judgment (*Distributori Automatici Italia SpA v. Holford General Trading Co. Ltd.*, [1985] 1 W.L.R. 1066), but they have been refused where the plaintiffs sought evidence on which to base their action.

In the case before me and having read the arguments put forward by counsel for the applicants in his written address, I find that, although there may be good grounds for appealing against the reasons of the District Court for granting the order I have not been satisfied by the arguments put forward by the applicants that the District Judge had no jurisdiction, in the circumstances of the case, to make the order complained of and for this reason I dismiss the application but, in the circumstances, I make no order as to costs.

*Application dismissed
with no order as to costs.*