

## Litigation - Cyprus

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### Court rules on clarity of pleadings in legal proceedings

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Under the Civil Procedure Rules, a claimant must deliver its statement of claim to the defendant, and of the relief or remedy to which it claims to be entitled. The defendant must deliver to the plaintiff his or her defence or counter-claim (if any).

Every pleading must contain a summary statement of the material facts on which the party pleading relies for its claim or defence, as the case may be, but not the evidence by which such facts are to be proved.

In a recent May 2011 decision (unreported), the Limassol District Court - with reference to the Supreme Court decision in *Cyprus Airways Ltd v Credit Libanais SAL* (1991) 1 CLR 649 - reconfirmed that pleadings must contain the necessary details to allow the other party to form a clear and precise picture of the nature and extent of the case that it will be facing at the hearing. When this rule is breached, the other party has the right to apply for an order requiring the provision of the necessary details. Indeed, the Civil Procedure Rules provide that:

*"A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just."*

The district court judge further referred to the following extract of Bullen and Leake's *Precedents of Pleadings* (12th edition) at pages 112 and 113:

*"The function of particulars operates in a variety of ways, and, indeed has been expressed in several ways, each of which emphasizes a particular aspect of such function, as follows:*

- (a) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;*
- (b) to prevent the other side being taken by surprise. As Cotton LJ stated, 'The object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense, and avoid allowing parties to be taken by surprise';*
- (c) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial. As Lord Radcliffe said, 'It seems to me that it is the purpose of such particulars that they should help to define the issues and to indicate to the party who asks for them how much of the range of his possible evidence will be relevant and how much irrelevant to those issues. Proper use of them shortens the hearing and reduces costs.*

*But if an appellate court is to treat reliance upon them as pedantry or mere formalism, I do not see what part they have to play in our trial system';*

*(d) to limit the generality of the pleadings or of the claim or the evidence;*

*(e) to limit and define the issues to be tried and as to which discovery is required; and*

*(f) to tie the hands of the party so that he cannot without leave go into any matter not fairly included therein, and conversely if a party should omit to request or apply for an order for particulars which ought to have been given, the opposing party will be entitled to give evidence at the trial of any fact which supports any material allegation in his pleading.*

*On the other hand, it is not the function of particulars to take the place of necessary averments in the pleading nor to state the material facts omitted in order, by filling the gaps, to make good an inherently bad pleading; nor is it the function of particulars to obtain information which can only be obtained by interrogatories and the court will not sanction any attempt to administer interrogatories in the guise of seeking particulars."*

The district court judge also stressed that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, full particulars of this must be stated in the pleading. In the case of fraud, the alleged fraudulent acts must be specifically set out and it must be averred that the acts were done fraudulently.

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