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Supreme Court revokes first-instance court's decision on statement of claim amendments



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Litigation, Cyprus

The Supreme Court recently overturned a first-instance court's decision to reject a request to amend a statement of claim under Rule 25 of the Civil Procedure Rules on the grounds that the amendment amounted to a new cause of action.**(1)**

In its judgment, the first-instance court found that:

in this case the proposed amendment seeks to document events which did not exist when the case was initially filed at the Court and to introduce treatment which is different from the original treatment sought which could not have been part of the remedies that the claimant has put before the Court from the outset of the case.

The Supreme Court rejected this finding, basing its reasoning on the differing cases of *Gaber Alian Al Somrani Alias Gaber Aliyan v The Cyprus Ship "Poseidonia"***(2)** and *Saba & Co (TMP) v TMP Agents***(3)**. In the first case, referring to the relevant English case law on the matter, the Supreme Court restated the principle that the amendment of a writ of summons refers to the time of registration of the initial writ of summons and that therefore no permission to amend the writ of summons may be granted to include a cause of action arising after the filing of the original writ of summons. In the second case, the Supreme Court found that the intended modification did not introduce a new cause of action, since it directly correlated with the central claim put forward from the outset. It did not radically change the nature of the initial claim, but merely introduced a new legal argument, which does not automatically lead to the rejection of the request for amendment.

Having considered these cases, the Supreme Court found that the proposed amendments merely referenced actions by the defendants which supported their existing claim and did not amount to a new cause of action. The court went on to say:

Just as in Saba & Co (T.M.P.) v. T.M.P. Agents, mentioned above, the amendment does not bring about a radical transformation of the nature of the claim, but merely introduces positions that were not previously specified in relation to the consequences of the transfer of the shares... If the present case is carefully

considered, it does not concern subsequent events that constitute a new basis of action, but later developments regarding the primary basis of action which broaden its scope and the range of remedies sought.

The Supreme Court concluded that, "It would indeed be ineffectual – for both parties – to divide their difference into two lawsuits, as suggested by the respondents. Certainly, there is no evidence of any harm to the respondents in the requested amendments."

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Endnotes

(1) Civil Appeal 43/2013 (judgment dated 6 November 2018).

(2) (1990) 1 AD 990.

(3) (1994) 1 AAD 426.

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