

1980 May 17

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

PETROS PETRIDES,

Appellant-Plaintiff,

v.

PANAYIOTIS IOANNOU,

Respondent-Defendant.

(Civil Appeal No. 6025).

Civil Procedure—Practice—Summary procedure—Claim not exceeding £100—Order 65 of the Civil Procedure Rules—Defence not filed up to the day of appearance before the Court—Defendant disputing claim—Plaintiff applying for summary judgment—
5 *Trial Judge fixing action for hearing and allowing defence to be filed within twenty days by relying on the practice of the Courts—Whereas he had to deal with, and dispose of, the application for summary judgment before proceeding as he did—A practice cannot override express provisions of rules 14 and 15 of the above*
10 *Order.*

The appellant-plaintiff instituted proceedings, under Order 65 of the Civil Procedure Rules, for the recovery of the sum of C£63, as special damages which he suffered in a traffic collision with a car driven by the respondent. The writ of summons was
15 filed on September 15, 1979 and the case was, by virtue of rule 2(2)* of the above Order, fixed for the parties to appear before the Court, on November 6, 1979. The writ of summons was served on the respondent on September 21, 1979, and by means of an indorsement on the writ he was informed that, if he intended
20 to dispute the claim of the appellant, he ought to file a defence within ten days from the service on him of the writ. The respondent failed to file a defence within the said period of ten days; and when the parties appeared before the Court on November 6, 1979 the respondent disputed the claim and the
25 appellant applied for summary judgment, under rule 14(3)**

* Quoted at p. 321 *post*.

** Quoted at p. 321 *post*.

of the above Order, as no defence has been filed. The trial Judge fixed the case for hearing on March 18, 1980 and directed that the defence should be filed within twenty days, relying* on "the practice followed by the Courts on first appearance".

Upon appeal by the plaintiff:

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Held, that a practice, however well established, cannot override the express provisions of rules of Court, such as rules 14 and 15 of Order 65, and any discretion with which a Judge is vested, by means of such rules, has to be exercised judicially; that once no defence had been filed up to November 6, 1979, and counsel for the appellant had applied for summary judgment on that date, the trial Judge had to deal with, and dispose of, the application for summary judgment, in the light, of course, of the nature of the claim, and of the fact that it was being disputed, before proceeding to fix the action for hearing and to allow a defence to be filed within twenty days; that as this was not done the order which was made as aforesaid, on November 6, 1979 will be set aside and the trial judge has now to deal, first, with the application for summary judgment before other proceedings take place in the action in question; and that, accordingly, the appeal must be allowed.

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Appeal allowed.

Observations with regard to the need of dealing with cases of this nature as quickly as reasonably possible.

Appeal.

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Appeal by plaintiff against the judgment of the District Court of Limassol (Artemis, D.J.) dated the 6th November, 1979 (Action No. 2458/79) whereby the defendant was allowed to file his defence within twenty days and the hearing of the action was adjourned to 18th March, 1980.

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C. Tsirides with Chr. Pourgourides, for the appellant.

S. Patsalides, for the respondent.

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment of the Court. This is a case in which the appellant, as a plaintiff, instituted proceedings for the sum of C£63, as special damages which he

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* See the relevant record at. p. 322 *post*.

suffered in a traffic collision with a car driven by the respondent. The proceedings were instituted under Order 65 of the Civil Procedure Rules, which lays down special rules applicable to actions relating to claims not exceeding C£100.

- 5 It is convenient to quote, first, some rules in Order 65, above, which are relevant to the issues arising in the present appeal:

Rule 2(2) reads as follows:-

10 “(2) The writ of summons shall call upon the defendant to appear before the Court, at the time and place therein named, and inform him that if he intends to dispute the plaintiff’s claim he must, within ten days after service of the writ of summons, deliver his defence in writing to the plaintiff or at his address for service, and give a duplicate thereof or send the same by registered post to the Registrar”.

15 Rule 4(1) reads as follows:-

20 “4.-(1) The defendant may deliver his defence at any time before judgment. If he delivers it at any time after the time limited by the writ of summons for that purpose, he shall be ordered to pay any costs properly incurred by the plaintiff by reason of his failure to deliver his defence within the time limited by the writ.”

Rule 14(1) reads as follows:-

25 “14.-(1) If at that time both parties appear and the defendant disputes the claim, the Court shall fix a day for the hearing of the action”.

Rule 14(3) reads as follows:-

30 “14.-(1) If the defendant fails to deliver his defence within the time limited therefor by the writ of summons, the plaintiff may orally apply to the Court for summary judgment, and the Court may thereupon receive evidence from the parties and generally do whatever may be done under Order 18 upon an application for summary judgment.”

Rule 15 reads as follows:-

35 “15. Nothing contained in this Order shall be construed as curtailing the Court’s powers of adjournment or of varying under Order 57 the time appointed by any rule

of this present Order, or any other powers conferred on the Court by any law or rules. Further, the Court shall have power to vary the procedure in any action to which this Order applies in such manner as it may think fit with a view to saving time and expense but so that no prejudice is caused to the parties concerned.” 5

In the present instance the writ of summons was filed on September 15, 1979, and the case was fixed, for the parties to appear before the Court, on November 6, 1979.

The writ of summons was served on the respondent, as defendant, on September 21, 1979, and by means of an endorsement on the writ he was informed that, if he intended to dispute the claim of the appellant, he ought to file a defence within ten days from the service on him of the writ. 10

The respondent failed to file a defence within the said period of ten days, and the record of the Court for November 6, 1979, reads as follows:- 15

“6.11.79

For the Plaintiff:—Mr. Pourghourides.

For the Defendant:—Mr. Patsalides. 20

Claim disputed.

Pourghourides: No defence has been filed, I apply for summary judgment.

COURT:—This is the practice followed by the Courts on first appearance. Defence to be filed within 20 days. The action is fixed for hearing on 18.3.80”. 25

Before proceeding any further we would like to observe that we do appreciate that due to the heavy burden of work of the District Courts it may not be always possible to try cases instituted under Order 65 of the Civil Procedure Rules as expeditiously as they ought to be tried in view of their nature, but, nevertheless, we do regard the period of time which was allowed to intervene from the date when the writ of summons was filed on September 15, 1979, up to March 18, 1980, when, after the aforementioned developments had intervened, the case was fixed for hearing, as a rather long period which was not conducive to serve the purpose of a summary procedure such as that envisaged by Order 65. It is, indeed, desirable that every effort 30 35

should be made for cases of this nature to be dealt with as quickly as reasonably possible.

5 As it appears from the record of the Court for November 6, 1979—which has already been quoted in this judgment—though counsel for the appellant applied for summary judgment the trial Judge fixed the case for hearing on March 18, 1980, and directed that the defence should be filed within twenty days, relying, as he stated, on “the practice followed by the Courts on first appearance.”

10 In our view, a practice, however well established, cannot override the express provisions of rules of Court, such as rules 14 and 15 of Order 65, and any discretion with which a Judge is vested, by means of such rules, has to be exercised judicially.

15 In the present instance, once no defence had been filed up to November 6, 1979, and counsel for the appellant had applied for summary judgment on that date, the trial Judge had to deal with, and dispose of, the application for summary judgment, in the light, of course, of the nature of the claim, and of the fact that it was being disputed, before proceeding to fix the action for hearing and to allow a defence to be filed within twenty days.

As this was not done we have to set aside the order which was made, as aforesaid, on November 6, 1979, and the trial Judge has now to deal, first, with the application for summary judgment before other proceedings take place in the action in question.

25 This appeal is, therefore, allowed accordingly.

As both counsel appearing for the parties in this case have stated that they claim no costs regarding this appeal we shall make no order concerning its costs.

Appeal allowed. No order as to costs.