1982 February 26

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

A.D. HOTEL & CATERING LTD.,
*Appellant-Defendant,*

*v.*

TAKIS PILAVA,
*Respondent-Plaintiff,*

*(Civil Appeal No.* 5782).

*Principal and agent—Agent acting within scope of his usual authority binds the principal—Company directors liable whenever agents are liable—Revocation or termination of agency—Does not affect third parties so long as agent is acting in authorised or apparently authorised manner, unless and until third party has notice of the revocation or termination of the agency—Section* 168 *of the contract Law, Cap.* 149.– *Company director with authority to make purchases on behalf of company—His authority ceasing but third parties having no notice of this fact—Acts of director subsequent to the ceasing of authority bind the company.*

*Civil Procedure—Pleadings—Trial of a case has to proceed on the pleadings—Main object of the pleadings to narrow the issues between the parties and clarify what is in issue—Fraud—Full particulars thereof should be stated in the pleadings—Party not alleging fraud in the pleadings—He cannot rely on fraud on appeal without having ever applied to have his pleading amended accordingly.*

The respondent-plaintiff, the owner of a grocery shop, sued the appellant-defendant, a company limited by shares, claiming an amount of £193 as money due on an account stated for the balance of goods sold and delivered by him to the appellant Company during the period 2.10.1970 to 14.2.1974. The account was stated between the respondent and one of the Directors of the Company namely, Joseph Pavlou who used to purchase the goods for the hotel of the Company, and a balance of £193 was found to be due by the Company to the

respondent, which was acknowledged in writing by the said Joseph Pavlou on behalf of the Company. The Company admitted that Joseph Pavlou was one of the Directors, who was authorised to purchase goods for the hotel but his authority in the present case, was disputed as he had ceased to be a Director, a few days prior to the date referred to in the written acknowledgment of the account and in consequence, at the material time he was lacking of any authority to bind the Company. The Company, also, admitted that it was never brought to the notice of the respondent or to anybody else, by publication or otherwise, that Joseph Pavlou was not binding the defendant Company any more. The respondent came to know about this, for the first time, after the account was stated and signed by Joseph Pavlou but at no time earlier.

The trial Judge found for the respondent and adjudged the Company to pay the sum of £108.085 mils; hence this appeal. One of the grounds of appeal was that respondent conspired with Joseph Pavlou to defraud the Company but there was no allegation in the pleadings for any lack of authority on the part of Joseph Pavlou to bind the Company or any allegation of fraud or conspirancy between respondent and Joseph Pavlou to defraud the Company.

*Held*, (1) that an agent acting within the scope of his usual authority and transacting business with third parties is binding the principal; that directors of a Company are merely agents of a Company and whenever an agent is liable the directors would be liable; that since there was no allegation that Joseph Pavlou as a Director of the appellant Company was acting in excess of his authority or that his acts were ultra vires and not within the usual or implied authority of such Director acting as agent of the Company, he was binding the Company for purchases made for the account of the Company.

(2) That at common law unilateral revocation or termination of agency by the principal will not affect third parties as long as the agent is acting in authorised or apparently authorised manner, unless and until the third party has notice of the fact that the agent's authority has been terminated (see, also, section 168 of the Contract Law, Cap. 149); that since in this case the third party, the respondent, had no notice of the fact that the

authority of the Director, Joseph Pavlou, has been terminated the Director could bind the Company; accordingly the appeal should fail.

*Held*, further, that when fraud is alleged it has to be pleaded and full particulars thereof should be stated in the pleadings (see rule 5 of Order 19 of the Civil Procedure Rules); that since the appellant Company has not made any allegation of fraud in its pleadings it cannot rely on such ground on an appeal without having ever applied during the trial to have the pleadings amended accordingly, because the trial of a case has to proceed on the pleadings whose main object is to narrow the issues between the parties and clarify what is in issue.

*Appeal dismissed.*

Cases referred to:

*Ferguson* v. *Wilson* [1866] L.R. 2 Ch. 77 at p. 89;

*Hely Hutchinson* v. *Brayhead Ltd. and Another* [1967] 3 All E.R. 98 at pp. 101, 102;

*Trueman* v. *Loder* [1840] 11A & E 589; 9 L.J. Q.B. 165;

*Morgan* v. *Lifetime Building Supplies Ltd.* [1967] 61 D.L.R. 178;

*Curlewis* v. *Birkbeck* [1863] 3 F. & F. 894;

*Watteau* v. *Fenwick* [1893] 1 Q.B.D. 346;

*Courtis and Others* v. *Iasonides* (1970) 1 C.L.R. 180 at pp. 182 and 183.

**Appeal.**

Appeal by defendants against the judgment of the District Court of Nicosia (A. Ioannides, D.J.) dated the 21st November 1977 (Action No. 1078/76) whereby they were adjudged to pay to the plaintiff the sum of £108.085 mils for money due on an account stated for the balance of goods sold and delivered.

*E. Vrahimi (Mrs.)*, for the appellant.

*P. Papageorghiou*, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: This is an appeal against the judgment of a Judge of the District Court of Nicosia, whereby the appellant Company was adjudged to pay a sum of £108.085 mils with

costs on a claim by the respondent-plaintiff for money due on an account stated for the balance of goods sold and delivered by him to the appellant Company during the period 2.10.1970 to 14.2.1974.

The appellant is a company limited by shares and runs a hotel in Nicosia known as "Piza Tower Hotel". The respondent -plaintiff was, at the material time, the owner of a grocery shop in Nicosia, under the name "New Nicosia".

It was the allegation of the plaintiff that during the period between 2.10.1970 to 14.2.1974 the defendant Company used to buy for the needs of its hotel various goods from his shop on credit and an account was kept for such sales. On the 14.2.1974 the account was stated between the plaintiff and one of the Directors of the defendant Company, namely, Joseph Pavlou who used to purchase goods for the hotel of the defendant Company, and a balance of £193.—was found to be due by the defendant to the plaintiff which was acknowledged in writing by the said Joseph Pavlou on behalf of the defendant Company.

By its statement of defence the defendant Company denied any dealings between the Company and the plaintiff at any time between 2.10.1970 and 15.2.1974 and alleged that any transactions prior to 14.2.1974 were carried out by two of the Directors of their Company, Doros Ioannides and Joseph Pavlou, personally and for their own account for the Roof Garden of the hotel which was operated by them personally and not for the account of the defendant Company. Therefore, any account stated on which the action was based, was an account stated between the said Doros Ioannides and Joseph Pavlou in their personal capacity and not for the defendant Company.

The Court heard the evidence of two witnesses, one called for the plaintiff, plaintiff himself, and one called for the defendant, namely, Doros Vrahimis, one of the Directors of the defendant Company. The plaintiff admitted that in the said account there was an invoice for £84.915 mils which was issued in the name of the Roof Garden and not in the name of the defendant Company and that this was done at the request of Joseph Pavlou, Director of the Company, notwithstanding that the Roof Garden had no separate account with his shop

and that all goods which were sold by him were sold and delivered to the defendant Company and payments were effected against such goods by and for the account of the defendant Company. Plaintiff also in his evidence mentioned that for the first time he was informed by Joseph Pavlou that he was withdrawing from the Company and he was not going to act for the Company any longer after the account was stated and the balance was acknowledged in writing.

Doros Vrahimis in giving evidence for the defendant, admitted that Joseph Pavlou was one of the co-directors of the Company, but alleged that he ceased to be a director as from 2.2.1974 when he resigned from such post. He also admitted that the defendant Company had transactions with the plaintiff connected with the purchase of goods, a fact which was expressly denied in the statement of defence, and that certain payments by cheque were made till 10.10.1971, the last one of which was for £50 on 10.10.1971, leaving a balance of £100 which, according to his allegation, was paid in 1972. He also stated in his evidence that as from 13.2.1971 till the 2nd February, 1974, he was Co-Director with Joseph Pavlou and that Joseph Pavlou was the one responsible for all purchases, whereas, the cheques had to be signed by both of them. He produced the invoice for £84.915 mils which, as he said, he found in various documents which Joseph Pavlou left behind before leaving for England after he had withdrawn from the Company.

The trial Judge in considering the evidence before him, accepted the evidence of the plaintiff, save as to the amount of £84.915 mils in respect of which the invoice was issued for the Roof Garden and not for the Piza Tower Hotel, and rejected that of the defendant and he gave the following reasons for doing so.

> " 'Εξετάζων τὴν ἐνώπιον μου μαρτυρίαν καὶ ἰδιαιτέρως τὴν μαρτυρίαν τοῦ Δώρου Βραχίμη βλέπω ὅτι ἡ μαρτυρία του ἐνώπιον τοῦ Δικαστηρίου δὲν ἀνταποκρίνεται μὲ τοὺς ἰσχυρισμοὺς τῆς ἐναγομένης ἑταιρείας μὲ τὴν ἔκθεσιν ὑπερασπίσεω,.
>
> Εἰς τὴν ὑπεράσπισιν ἰσχυρίζεται ἡ ἐναγομένη ἑταιρεία ὅτι ἄρχισε νὰ συναλλάττεται μετὰ τοῦ ἐνάγοντος ἀπὸ τῆς 15.2.1974 ἐνῶ εἰς τὴν μαρτυρίαν του ὁ Δῶρος Βραχίμης

παρεδέχθη τὸ μεγαλύτερον μέρος τόσον τῶν ἀγορῶν ὅσον τῶν πληρωμῶν τῆς ἐναγομένης ἑταιρείας.

Περαιτέρω δὲ ἰσχυρίζεται εἰς τὴν Ἔκθεσιν Ὑπερασπίσεως ὅτι ἡ συναλλαγὴ μέχρι τῆς 14.2.1974 ἐγένετο διὰ λογαριασμὸ τοῦ Δώρου Ἰωαννίδης καὶ Ἰωσὴφ Παύλου προσωπικῶς ἐνῶ εἰς τὴν μαρτυρία του ὁ Δῶρος Βραχίμης εἶπε ὅτι τόοον οὗτοι ὅσον καὶ ὁ ἴδιος ἦσαν διευθυνταὶ τῆς ἐναγομένης ἑταιρείας ἡ ὁποία παρεδέχθη ὅτι συναλλάττετο μὲ τὸν ἐνάγοντα μέχρι τῆς 10.10.1971 ὅτε ἐπλήρωσε ὁ ἴδιος £50.– ἔναντι τοῦ λογαριασμοῦ τῆς ἑταιρείας καὶ παρέμεινε ὑπόλοιπον ἐξ £100.– Αὐτὸ τὸ ὑπόλοιπον πράγματι συμφώνως τοῦ Τεκμ. I ὠφείλετο κατὰ τὴν 10.10.1971 ἂν καὶ δὲν φαίνεται εἰς τὸ Τεκμ. I ἐὰν εἶναι τὸ 71 ἢ ἄλλο ἔτος. Ἐν πάση περιπτώσει ὅτι ὠφείλετο αὐτὸ τὸ ποσὸ ἤτοι τῶν £100.– τὸ παρεδέχθη ὁ Δῶρος Βραχίμης ἰσχυρίσθη ὅμως ὅτι ἔχει πληρωθῆ μέχρι τὸ τέλος τοῦ 1972.

Ὡς ἔχω ἤδη ἀναφέρει ὑπάρχει διαφορὰ μεταξὺ τῶν ἰσχυρισμῶν τῆς ἐναγομένης ἑταιρείας εἰς τὴν Ἔκθεσιν Ὑπερασπίσεως καὶ τῆς μαρτυρίας τοῦ μάρτυρος ὑπερασπίσεως ἡ ὁποία μὲ δύο λόγια συνίσταται ὅτι ἐνῶ εἰς τὴν ὑπεράσπισιν ἰσχυρίζεται ὅτι οὐδεμία συναλλαγὴ ἔγινε μὲ τὴν ἐναγομένη ἑταιρεία εἰς τὴν μαρτυρίαν ἰσχυρίζεται καὶ συναλλαγὴ καὶ ἐξώφλησιν".

("Considering the evidence before me and particularly the evidence of Doros Vrahimis I see that his evidence before the Court does not correspond to the allegations of the defendant company in the statement of defence.

In the statement of defence the defendant company alleges that it started having dealings with the plaintiff as from 15.2.1974 whist in his evidence Doros Vrahimis admitted both the greatest part of the purchases and the payments of the defendant company.

Further it is alleged in the statement of defence that the dealings up to 14.2.1974 were carried out for the account of Doros Ioannides and Iosif Pavlou personally whilst in his evidence Doros Vrahimis said that they, as well as he himself, were directors of the defendant company which

he admitted was having dealings with the plaintiff until 10.10.1971 when he himself paid £50.—against the account of the company and there remained a balance of £100.—. This balance was actually due vide exhibit 1, on 10.10.1971 although it is not shown on exhibit 1 whether it is 1971 or another year. In any case, that this sum was due i.e. the sum of £100.—was admitted by Doros Vrahimis but he alleged that it had been paid by the end of 1972.

As I have already stated there is a difference between the allegations of the defendant company and the evidence of the defence witness which is in short to the effect that while in the statement of defence it is alleged that there were no dealings with the defendant company in the evidence both the dealings and payment are alleged").

The trial Judge further had this to say in his judgment:

"Εἶναι γνωστὸν ὅτι αἱ ὑποθέσεις ἐκδικάζονται καὶ τὰ Δικαστήρια ἀποφασίζουν ἐπὶ τῶν ἰσχυρισμῶν ποὺ περιέχονται εἰς τὰ pleadings καὶ ἐνῶ ἡ μαρτυρία τοῦ ἐνάγοντος εἶναι ἐν γενικαῖς γραμμὲς σύμφωνος μὲ τοὺς ἰσχυρισμούς του εἰς τὴν Ἔκθεσιν Ἀπαιτήσεως ἡ μαρτυρία τοῦ Δώρου Βραχίμη ὡς ἔχω ἤδη ἀναφέρει εἶναι ἀντίθετος μὲ τοὺς ἰσχυρισμοὺς ποὺ περιέχονται εἰς τὴν Ἔκθεσιν Ὑπερασπίσεως καὶ ἐφ' ὅσον οὐδεμία αἴτησις διὰ τροποποίησιν ἔχει γίνει καὶ οὐδεμία τροποποίησις ἐδόθη εἶναι ἀδύνατο ἡ ἐναγόμενη ἑταιρεία νὰ κερδίση ἐπὶ τῆς Ἐκθέσεως Ὑπερασπίσεως της".

("It is known that cases are tried and Courts decide on the allegations contained in the pleadings and while the testimony of the plaintiff is in general in agreement with his allegations in the statement of claim, the evidence of Doros Vrahimis, as I have already stated, is contrary to the allegations contained in the statement of defence and since no application for amendment has been filed and no amendment has been granted it is impossible for the defendant company to succeed on its statement of defence").

The grounds of appeal were:–

(1) That the Court wrongly interpreted the defence of the defendant.

(2) That the Court wrongly accepted the correctness of the account without the production of the invoices.

(3) That the Court did not give proper weight to the evidence adduced by the plaintiff in connection with the invoice, exhibit 3, which was sufficient evidence for dismissing the plaintiff's claim.

(4) That the Court wrongly decided that a Director of a Company who ceases as Director could bind the Company.

(5) That the Court did not take into consideration that on 14.2.1974 plaintiff conspired with Joseph Pavlou to defraud the defendant Company.

(6) That the Court did not take into consideration that the balance of £100 which was admitted by the defendant Company as due, was paid by the defendant and such payment was not recorded in the account.

In arguing the case before us, counsel for the appellant based her argument first, on the fact that Joseph Pavlou on the 14th February, 1974 was not a Director of the Company and, in consequence, he could not bind the Company. And, secondly, that the debt which Joseph Pavlou admitted, was not a debt due by the Company but a debt due by him personally and it was so admitted by him in his personal capacity. It was admitted, however, that no publication was made, that the said Joseph Pavlou ceased to be a Director of the Company and that he had no longer authority to bind the Company.

Counsel for the respondent, on the other hand, contended that the plaintiff was never informed that Joseph Pavlou ceased to be a Director of the Company and that respondent knew him as such during all the transactions because he was the person who was purchasing the goods for the defendant Company. Furthermore, he stressed the fact that the evidence of Doros Vrahimis was on an entirely different line than that in the statement of defence, in which the appellant Company denies any transactions during the material period with the plaintiff Company.

We have read the judgment of the trial Court and we have

considered carefully the arguments advanced by counsel before us. It was admitted by the appellants that Joseph Pavlou, the person who acknowledged the account was one of the Directors who was authorised to purchase goods for the hotel but his authority in the present case, is disputed as he had ceased to be a Director, a few days prior to the date referred to in the written acknowledgment of the account and in consequence, at the material time he was lacking of any authority to bind the Company. It has also been admitted that it was never brought to the notice of the plaintiff or to anybody else by publication or otherwise, that Joseph Pavlou was not binding the defendant Company any more. The plaintiff mentioned that he came to know about this, for the first time, after the account was stated and signed by Joseph Pavlou but at no time earlier.

As to the position of a Director vis-a-vis the Company, reading from Palmer's Company Law, 22nd Edition, Vol. 1, at p. 627, para 58-04, the following is stated under the heading, "Directors as agents of company":-

"*Contracts on behalf of company.*

Directors are, in the eyes of the law, agents of the company for which they act, and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors. This position has long been established and in *Ferguson* v. *Wilson* [1866] L.R. 2 Ch. 77, Cairns L.J. said (at p. 89):-

> 'What is the position of directors of a public company? They are merely agents of a company. The company itself cannot act in its own person, for it has no person, it can only act through directors, and the case is, as regards those directors, merely the ordinary case of principal and agent. Wherever an agent is liable those directors would be liable; where the liability would attach to the principal, and the principal only, the liability is the liability of the company'.

Hence, where directors make a contract in the name of or purporting to bind the company, it is the company—the principal—which is liable on it, not the directors; they are not personally liable unless it appears that they under-

took personal liability by contracting in their own names: but if they contract for the company without using the word 'limited' as part of the name they will incur personal liability (s. 108(4) ). Where directors contract in their own names but really on behalf of the company, the other party to the contract can, generally, on discovering that the company is the real principal, sue the company as undisclosed principal on the contract".

It is the general rule, under the law of agency, that an agent acting within the scope of his usual authority and transacting business with third parties is binding the principal. The law as to the authority of an agent to bind the principal including that of the Director of the Company to bind the Company in transactions with third parties has been summarised by Lord Denning, M.R. in *Hely Hutchinson* v. *Brayhead Ltd. and Another* [1967] 3 All E.R. 98 at pp. 101, 102.

"____I need not consider at length the law on the authority of an agent, actual, apparent or ostensible. That has been done in the judgments of this Court in the case of *Freeman & Lockyer* (a firm) v. *Buckhurst Park Properties (Mangal) Ltd.* It is there shown that actual authority may be express or implied. It is express when it is given by express words, such as when a board of directors pass a resolution which authorises two of their number to sign cheques. It is implied when it is inferred from the conduct of the parties and the circumstances of the case, such as when the board of directors appoint one of their number to be managing director. They thereby impliedly authorise him to do all such things as fall within the usual scope of that office. Actual authority, express or implied, is binding as between the company and others, whether they are within the company or outside it.

Ostensible or apparent authority is the authority of an agent as it appears to others. It often coincides with actual authority. Thus, when the board appoint one of their number to be managing director, they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the usual scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual autho-

rity of a managing director. But sometimes ostensible authority exceeds actual authority. For instance, when the board appoint the managing director, they may expressly limit his authority by saying he is not to order goods worth more than £500 without the sanction of the board. In that case his actual authority is subject to the £500 limitation, but his ostensible authority includes all the usual authority of a managing director. The company is bound by his ostensible authority in his dealings with those who do not know of the limitation. He may himself do the 'holding out'. Thus, if he orders goods worth £1.000 and signs himself 'Managing Director for and on behalf of the company', the company is bound to the other party who does not know of the £500 limitation (see *British Thomson-Houston Co. Ltd.* v. *Federal European Bank Ltd.* which was quoted for this purpose by Pearson L.J. in *Freeman & Lockyer* v. *Buckhurst Park Properties (Mangal) Ltd.*). Even if the other party happens himself to be a director of the company, nevertheless the company may be bound by the ostensible authority. Suppose the managing director orders £1.000 worth of goods from a new director who has just joined the company and does not know of the £500 limitation, not having studied the minute book, the company may yet be bound".

In the present case there is no allegation that Joseph Pavlou as a Director of the Company was acting in excess of his authority or that his acts were ultra vires and not within the usual or implied authority of such Director acting as agent of the Company. On the contrary, it is admitted in the evidence on behalf of the appellant, that Joseph Pavlou was responsible to purchase goods for the account of the Company. In consequence, once the said Joseph Pavlou was acting within the actual or apparent authority of the Company and within his powers as Director of the Company, he was binding the company for purchases made for the account of the company.

The next question to be considered is whether on the date when Joseph Pavlou acknowledged the account for the defendant he could bind the defendant, in view of the fact that he had resigned from being one of the Directors of the Company a few days earlier and in consequence his authority to act for the Company had been terminated.

Under our Law of Contract, Cap. 149, s. 168, provision is made as to the effect of the termination of agency on third persons as follows:

> "S. 168. The termination of the authority of an agent does not so far as regards the agent, take effect before it becomes known to him or, so far as regards third persons, before it becomes known to them".

At Common Law, unilateral revocation or termination of the agency by the principal will not affect third parties, as long as the agent is acting in authorised or apparently authorised manner, unless and until the third party has notice of the fact that the agent's authority has been terminated. Revocation of agency by the principal terminates immediately the agent's actual authority to act for him. However, the agent may still appear to third parties to be vested with authority to bind the principal. The fact that survival of apparent authority in the agent may mislead innocent third parties, has led to the Common Law rule, that if, after revocation a principal denies to hold out his agent as having authority to act for him, then the principal will be held liable to third parties on contracts concluded by his agent, provided that third parties have not had notice that the agent's authority has been terminated. It is not necessary for the principal to personally furnish third parties with notice of revocation. Provided that they learn of termination of the agent's authority from a trustworthy source they will be fixed with notice.

Thus, in *Trueman* v. *Loder* [1840] 11 A & E 589; 9 L.J.Q.B. 165, the principal was held liable for the price of goods supplied to his agent after the authority of such agent had been revoked. The defendant in that case had employed a certain agent for a number of years and it was common knowledge to the mercantile community that this agent acted on his behalf. The defendant revoked his authority. However, the agent then proceeded to enter into a contract for the sale of tallow to a third party. No tallow was delivered and Lord Denman, C.J. held that since the purchaser had no notice that the agent's authority had been revoked, the principal was liable to him for the non-delivery of the merchandise.

This decision was followed by the Appellate Division of the

Supreme Court of Alberta in *Morgan* v. *Lifetime Building Supplies Ltd.* (1967) 61 D.L.R. 178, where an agent after the termination of his authority, unknown to the third party, purported to cancel an instalment contract previously negotiated for the principal, substituting a cash contract and received the cash in his capacity as agent, thereupon fraudulently converting it to his own use. The principal was held liable to reimburse the third party.

In *Curlewis* v. *Birkbeck* [1863], 3 F & F 894, the principal gave the agent horses to sell for him. This was done and the third party who bought the horses paid the agent. Unknown to the third party, the agent's authority had been revoked before the sale. It was held that the payment was valid as against the principal.

The same principles were also followed in *Watteau* v. *Fenwick* [1893] 1 Q.B.D. 346, the facts of which were shortly as follows: The owner of a public house employed an agent to act as its Manager. The principal whose name did not appear in public, expressly prohibited his Manager from purchasing certain kinds of goods from third parties. The Manager, however, bought some cigars for the purpose of business and when later the principal was discovered and sued, it was held by the Court that the class of the act was one "usually confined to an agent of that contract" and that, therefore, the principal was liable for the purchase money.

Another material fact which the Court rightly took into consideration, is that though in the pleadings the defendant denied any transaction between the defendant Company and the plaintiff, D.W.1 in giving evidence for the defendant admitted such transaction and that a balance of £100 was due to the plaintiff in 1971 which, as he alleged, was paid during 1972. Furthermore, there is no allegation in the pleadings for any lack of authority on the part of Joseph Pavlou to bind the Company or any allegation of fraud or conspiracy between plaintiff and Joseph Pavlou to defraud the defendant Company (which is one of the allegations in ground 5 of this appeal). Under the Civil Procedure Rules, Order 19, rule 5, when fraud is alleged, it has to be pleaded and full particulars thereof shall be stated in the pleadings. Rule 5 reads as follows:

"In all cases in which the party pleading relies on any

misrepresentation, fraud, breach of trust, wilful default or undue influence, full particulars thereof shall be stated in the pleadings. In the case of fraud the alleged fraudulent acts must be specially set out and it must be averred that such acts were done fraudulently".

A party, therefore, who has not made such allegation in his pleadings cannot rely on such ground on an appeal without having ever applied during the trial to have his pleadings amended accordingly. The trial of a case has to proceed on the pleadings and the main object of the pleadings is to narrow the issues between the parties and clarify what is in issue. As it was held by Vassiliades, P. in *Courtis and Others* v. *Iasonides* (1970) 1 C.L.R. 180 at pages 182 and 183:-

"The pleadings in an action are the foundations of the litigation; they must be carefully prepared as the set of rails upon which the trial of the case will run. The Civil Procedure Rules (Or. 19 r. 4) are clear on the point; and daily practice lays stress on the need to apply strictly this rule. A case is decided on its pleaded facts to which the law must be applied. If in the course of the trial it appears that a party's pleading requires amendment, steps for that purpose must be taken as early as possible in order to give full opportunity to the parties affected by the amendment to meet the new situation; to run their case, so to speak, on the new rails".

In the case before us, the appellant has failed to persuade us that the judgment of the trial Court was wrong and, therefore, the appeal is dismissed with costs in favour of the respondent against the appellant.

*Appeal dismissed with costs.*