

## CASE TRANSLATION: GREECE

Case citation:  
**46/2014**

Name and level of the court:  
**Court of Appeals of Piraeus**

President of the court:  
**Mrs G. Sotiropoulou, Justice of the Court of Appeals**

Members of the court:  
**(Instructing Judge at the Court of Appeals) of the Court: Mrs Ang. Papavasileiou, Mr Ioannis Chronopoulos, Judge at the Court of Appeals**

### ***Greece; private documents; definition of electronic document; e-mail address; articles 443 – 444 Greek Civil Procedure Code; control of property; prerequisites; trespass***

#### **Summary**

Private documents. Electronic document and definition. E-mail address. Prerequisites of an e-mail address to come as a private document under the rules of articles 443 – 444 Greek Civil Procedure Code. The sender's will is identified with his electronic address when sending a message via an e-mail. Control<sup>1</sup> of property. Prerequisites. Trespass to possession over electronic files via dispossession. Meaning of 'dispossession'. Action for quiet possession.

Citation: DEE 2014/373, NOMOS database

Court of Appeals of Piraeus 46/2014

President of Court: Mrs G. Sotiropoulou, Justice of the Court of Appeals

Members of the Court: Mrs Ang. Papavasileiou, Mr Ioannis Chronopoulos

Lawyers: A. Zarakosta, G. Koutroumpousis

(Abstract.....)

During the proceedings the attorneys of the parties developed their allegations and asked for the acceptance of everything that is mentioned in their minutes and claims.

#### **After considering the pleadings**

##### **Based on the law**

1. The considered appeal is entered against decision nr. 4934/2010 of the multi-member Court of First Instance of Piraeus and will be judged under ordinary proceedings [...]
2. a/ A document is a movable object under the definition of law, according to article 947 of the Civil Code. An electronic document is defined as 'any data created on the magnetic disc of a computer, which, after having being processed by the computer system, can be printed by means of the computer program in a way that makes them readable by the human being, either on the computer screen or through the printer attached to the computer'. So, an electronic document does not constitute in reality the strict 'equivalent' of traditional paper-based documents, as they are described in the Civil Procedure Code, mainly because is not borne by a stable and durable medium, however it can be considered as an 'intermediate form', that is legally equivalent to 'private' documents, due to their proximity, according to the legislator.<sup>2</sup>

<sup>1</sup> The meaning of the Greek word 'nomi' (greek: νομή) in the Greek legal system means 'physical power over something as a reputed owner'. The English word 'control' is used in this translation to equate to this meaning.

<sup>2</sup> S. Kousoulis, Contemporary forms of paper transaction (Sygchrones morfes eggrafis synallagis), 1992, pp. 138-142.

According to common experience (common usages and practices), for the operation of e-mail as a means of communication over the Internet, besides the connection with an Internet Service Provider (the ISP provides this service via a special software permanently installed by the user in his computer), the use of a specific password is also required, in order for each user to be identified in the system, either as a sender or a receiver of electronic messages. This password is, in fact, the user's electronic address (e-mail), as it is originally chosen by the user himself in such a way that the specific combination of letters, numbers or symbols (the password) with the symbol '@' only reflects to the user that has chosen it, and cannot be legally used by anyone else.

The representation of the sender's address in the message makes his identity specific for the recipient of the message, so he cannot be confused with any other user of the same system, while his congruency with the content of the message is indisputable. For electronic mail to come under the rules of articles 443 and 444 of the Civil Procedure Code,<sup>3</sup> it is necessary to understand how it works, because this is not simply an electronic document that is saved in the software of a personal computer, or of a document that its representation is transferred by means of wireless or otherwise (e.g. facsimile transmission).

<sup>3</sup> Article 443 of the Civil Procedure Code: Elements of private documents. 'A private document has conclusive power only when it has the manuscript signature of its editor or, instead of a signature, a mark that he (the editor) drew on the document and is verified by a notary or any other public authority, which confirms that the mark is placed instead of the signature and that the editor declared that he cannot sign'.

Article 444 of the Civil Procedure Code: Official books of merchants and other professionals. '1. The definition of private documents also contain

- a) the books that merchants and professionals are obliged to keep under commercial law or other statutes
- b) the books that lawyers, notaries, doctors, pharmacists and nurses are obliged to keep under current statutes
- c) photographic and cinematic representations, recordings and any other mechanical representation.

NOTE: A second paragraph was added in article 444, in an attempt to define the term mechanical representation. According to this, 'Mechanical representation, under the meaning of paragraph 1, is any means that is used by a computer or a computer's memory in an electronic, magnetic or any other means, for recording, storage, production or reproduction of evidence that cannot be read directly, as well as any magnetic, electronic or other material on which any information, image, symbol or sound can be recorded, individually or in combination, as long as these means and materials are legally capable of proving facts of legal importance'.

The sending of the message leads to the congruency of the content of the message and of the sender, in such a way that the message cannot be transferable if it is not accompanied by the sender's electronic address and, of course, if there is no specific and existing receiver. The logical consequence is that in the sending of a message by way of electronic mail, the sender's will is identified with his electronic address, so it is technically possible for the recipient to receive it and, of course, the form or the layout of the mechanical representation of the content in the document are of less importance.

2.b.i/ According to the provisions of articles 974, 976, 979, 980, 983, 984, 987, 992 and 994 of the Civil Code, the prerequisites for the control of property are the will of the acquirer to have legal power upon the object as a freeholder, and physical ruling over the object.

The reputed ownership consists in the occupiers intention to possess and rule the property in a continuous, unlimited and exclusive manner and is expressed with actions appropriate for its owner over the object. If the spiritual element of control (will) is missing, then there is only possession.

2.b.ii/ According to the provision of article 976 section a of the Civil Code, when an object is in someone else's possession, its acquisition takes place after its delivery with the will of the possessor [...].

2.b.iii/ According to the provision of article 984 section a of the Civil Code, the control can be the subject of trespass with disturbance or dispossession of control, as long as it is illegal and without his or her will. Under the provision of article 987 of the Civil Code, the seizer who was illegally dispossessed, has the right to claim it back from the person who possessed it previously. Under this meaning, the dispossession is legally equivalent to the trespass to possession and, in the above mentioned conditions, the controller can file an action to quiet possession.

3. The plaintiffs (today the appellants) filed their lawsuit, dated 29-5-2007, at the Court of First Instance (file number .../2007) and they claimed that they are the exclusive owners of the files, documents

and correspondence (all in electronic forms) that are described in this lawsuit. The plaintiffs state that the defendants had illegally dispossessed them from these movable objects and they initiated their lawsuit for the return of their possession. The Court of First Instance dismissed the lawsuit and the appellants lodged an appeal against this decision [...]

4. From the depositions of the witnesses who were examined during the oral procedure in the Court of First Instance, and from the legal documents that are invoked, the court concludes, reliant on the above mentioned evidence, the following facts:

The plaintiffs (now appellants) were the shareholders (25 per cent each) of the defendant shipping company, which has its registered seat in Greece and does business in the management of merchant ships. For this business activity, the defendant company has offices in the city of Piraeus. Besides being shareholders, the two plaintiffs were also members of its Board of Directors, the first one as the President of the B.o.D. and the second one the corporation's treasurer and additionally the company's legal representative. The second defendant is a shareholder of the remaining 50 per cent of the defendant company.

The defendant company had all of its businesses carried out with the help of technology. So, in 2004, the company bought and used since that date a system of personal computers, which was installed in a place leased by it. This system comprised of two server units with the necessary supporting equipment for their functionality, including a processor, a monitor, voltage stabilizer, software, relevant archiving programs and licences for databases access. All the above movable items, when connected, comprise and sum up the electronic and software equipment of the defendant's company office in Greece. All data and information related to the operation of the defendant company, such as for example the correspondence, the professional and business elements of its clients and all information related to the main item of its corporate activity (ie the management of specific ships) are all stored in the afore-mentioned electronic equipment. The

defendant company own and retain the freehold title of the devices making up the equipment and including the documents that were stored in them in an electronic format.

The defendant company had leased an office space in the first floor of a building in Piraeus with the private lease agreement from 15-4-2005, for its offices in Greece [...]. The defendant shipping company installed the offices, its employees and the electronic equipment in this tenement. The tenancy was agreed for a period of one year and later it was renewed for another year, until 30.10.2006. When the lease expired, the defendant company did not leave the lease space and continued to pay the rent, and the landlord did not object. In the mean time, the defendant company developed a successful and broadening corporate activity in Greece and so the number of its employees was increased. As a result, the need to expand its professional premises appeared, because the premises that were leased were inadequate. For this reason on 30-10-2006, it leased another, bigger, office in an adjacent building.

The defendant company had the intention to move every corporate activity, employee and the necessary technical and electronic equipment into the new offices. It also agreed (with the memorandum of agreement dated 19-12-2006) with the landlords of the first leased space that its departure from the premises would not take place earlier than January 2007.

The plaintiffs' business activity in the past, before the acquisition of the defendant company's shares, involved other companies of their own. These companies had apparent maritime corporate activities and, undoubtedly, common activities with the defendant company. The plaintiffs claim that apart from the work executed on account of the defendant company, as its main shareholders, it executed other works too, that were related to their own-personal companies, and this is the reason why they were using the electronic equipment and software of the defendant company. For the electronic correspondence of the defendant company, the following email addresses were chosen: (1)

gdg@freeseas.gr, (2) sdg@freeseas.gr, (3) igv@freeseas.gr, (4) info@freeseas.gr, (5) freabulk@otenet.gr. Anything related to the corporate activity of the other two companies was also recorded in the above mentioned e-mail addresses. The data registration in the first two e-mails were personal to the plaintiffs and related to their own 'personal' corporate activity that was not authorized, since all the above mentioned e-mail addresses consisted of a name of the companies <...> and <...>, which was not the plaintiffs' 'private' or 'personal' company.

The parties' professional collaboration was not successful and they decided to terminate it. For this reason, the plaintiffs and the second defendant, as the legal representative of the first defendant company, signed a 'memorandum of agreement' on 19-12-2006, by which they decided to transfer the sum of the claimants' shareholdings to the second defendant. In article 9 of the above mentioned agreement, it was stated: 'Any document related to ships, securities, accounts etc is considered property of the company'. Additionally, article 5 of the same agreement stated that in no more than ten (10) days, a distribution of all movable objects, such as furniture, equipment, systems and personal computers, would take place, although such a distribution did not take place.

Even without the invocation of article 173 and 200 of the Civil Code, the above mentioned agreement of the parties results that all movable objects remained in the freehold ownership, control and occupancy of the defendant company, since no distribution between the parties took place. The server, as a disputed object, in which all documents related to every aspect of the defendant company's corporate activity is stored in electronic format, also remains in its full ownership and control.

However, the defendant company was illegally dispossessed of the control of the server and all the electronic files stored in it. After the lease of the new offices, the defendant company gradually started to move its equipment to the new premises. While the relocation was in process, and before its completion,

the landlord illegally and without any notice replaced the door key of the office, where initially the defendant company had its office, and by this way the defendant company was dispossessed from the tenement and from the control of all movable things, including its electronic equipment, as the incomplete relocation mainly involved the electronic equipment and software. The defendant company expressed its protest in writing the same day, but the landlord did not reply. So, it filed its action and requested the restitution of possession, which was granted with decision number 78/2007 Magistrate's court of Piraeus. The company then tried to enforce the court judgment, but it was cancelled, because the landlord informed the bailiff that the space where the objects for restitution are was already leased to another company, which is legally represented by the second plaintiff. This fact proves that the second plaintiff (the brother of the first plaintiff), by renting the tenement where initially the office of the defendant company was, dispossessed the defendant company from the control of all its electronic equipment. The dispossession of the defendant company is also confirmed by a document that has no date, but is drafted before 12-1-2007, manually signed by the claimants and addressed to another company that specializes in electronic data processing, that clearly mentions that the database which includes all the specifically mentioned electronic files was delivered to this company for distribution on 12-1-2007, an order all files related to the corporate activity of the defendant company to be returned to the company and its legal representative (the second defendant). The fact that the claimants had in their occupancy this database is also proved by another document, similar to the above mentioned, which undoubtedly bears the manuscript signatures of the <.....>, which states: 'In 15-1-2007, time 12.00 pm, all the files specifically mentioned in this document and their contents were transferred from the servers in the building ..... to a portable disc drive'. Finally, there is an e-mail from the user with the user name <...> to the legal representative of the company <...>, which mentions that a transfer of the sum of electronic information related to the company ..... must take place, 'from the

**Translation © Michael G. Rachavelias, 2015**

Michael G. Rachavelias is a member of the Editorial Board

server which exists in the first floor of the building ..... in Piraeus to the new server of the company in the fourth floor of the building ..... in Piraeus in 15-1-2007'.

This e-mail was clearly sent before 15-1-2007, as it was printed on 14-1-2007 and the electronic transfer should have taken place on 15-1-2007. Additionally, the sender's user name is crucial, because the user ..... is undoubtedly ....., because the same person insists that this electronic address belongs to him. Since the defendant company was already dispossessed on 13-1-2007 by the landlord from the lease, where the server was located and all the electronic files stored in it, and definitely the disputed electronic files that the claimants ask for, the defendants do not have in their occupancy the disputed electronic files because they were unintentionally dispossessed from their control.

According to the above-mentioned discussion, the plaintiffs were never dispossessed from the control of the electronic files stated in their lawsuit, but on the contrary they are still in their possession, after the illegal dispossession of the defendant company from the tenement where the server is, as the defendant company did not have time to transfer all the electronic files related to its corporate activity to the new server. [...]

The Court of First Instance rejected the action as unfounded, because it granted that the electronic files that are included in the electronic addresses .... are property of the defendant company because they were stored in its server, and the company was illegally dispossessed from the control of this server, while the electronic files related to the plaintiffs' personal companies never came into the possession of the defendant company, because this company had no interest in them and had granted its consent to the plaintiffs to have power as absolute owners upon these files. [...]

As a result, the Court of First Instance correctly dismissed the lawsuit of the plaintiffs-appellants.

*[The appeal is rejected...]*