

## CASE TRANSLATION: GREECE

Case citation:  
**32/2011**

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

President of the Court:  
**Mrs. K. Theodoropoulou, Justice of the Court of Appeals**

Members (Instructing Judge at the Court of Appeals) of the Court:  
**Mr. Th. Tzanakis, Judge at the Court of Appeals**

### ***Greece; assignment; validity; status of electronic document; e-mail address; evidential weight***

#### **Summary**

Assignment of agreement of claim. The assignee is the beneficiary of the claim. Collateralization of the claim for a stock company assurance of credit from an open current account. Assignment of the claim to the creditor. Collection of claim from the assignee and rendering to the depositor of the remaining balance, if any. The assignment requires the claim to be valid. In the different case, the assignee does not obtain the claim legally. Electronic document. Legally equivalent to a private document. E-mail address. Prerequisites of an e-mail address's evidential weight.

Citation: DEE 2011/591, EPOLD 2011/756, E7 2012/1135, NOMOS database

Court of Appeals of Athens 32/2011

President of Court: Mrs. K. Theodoropoulou

Members of the Court: Mr. Th. Tzanakis, Mrs. G. Alexopoulou

Lawyers: A. Tataraki, P. Papataxiarchis

I. [...] According to the provisions of articles 455, 460 – 467 of the Civil Code, a creditor can transfer his or her claim by agreement to a third party without the debtor's consent, but the assignee does not obtain any rights against the debtor before they or the assignor notifies the debtor of the assignment agreement.

After the notice of assignment, any binding of the debtor to the assignor is terminated and the claim is obtained by the assignee, who is the sole beneficiary

of the assigned claim and has the legal right to collect the claim and to legally pursue the claim's collection from the debtor.

The debtor is obliged to pay his debt to the beneficiary of the claim only, as the only entitled person, and not to the assignor. According to article 459 of the Civil Code, after the assignment of the main claim, if not differently agreed, the claim for any interest due is also assigned. The same provision also applies to the non-accrued interest, which follow the assigned main claim, if there is no other opposite agreement (ΑΠ 1463/1998 Nomos).

According to the provisions of articles 35, 36, 39, 44 and 47 of legislative decree 17.7.1923, in case of the collateralization of the claim for a stock company assurance of credit from an open current account, this claim is assigned to the creditor, who as assignee has the legal right to collect the claim and render the remaining balance, if any, to the depositor. The service of the assignment agreement to the third party produces the results of the assignment, and as result, after the notice of assignment to the debtor, any binding of the debtor to the assignor is terminated, the assignor is totally isolated and does not have any rights to the claim. Thenceforward, the creditor stock company (the assignee) obtains the claim, and it is the only party that has the right to institute proceedings to collect the claim for the discharge of the money due and render the remaining balance, if any, to the depositor (ΑΠ 108/1997 Ελληνική 1998,107, ΑΠ 1669/1995 Ελληνική 1998,378, ΕφαΘ 4510/1998 Ελληνική 1998,1657, ΕφαΘ 1112/2004 Nomos).

If the creditor's claim is not valid, then the assignment does not produce any legal result in the relationships between the assignee and the debtor, following the general provision that no party can transfer a right he does not possess, because the bona fides (for the assignee) acquisition of claims from a third party is

not predicted in Greek Civil Code.<sup>1</sup> Moreover, according to the provisions of article 463 of the Civil Code, the debtor can oppose any pleas against the assignee even after the notice of the assignment, providing they are founded on facts that already existed during the time of the notice. Lastly, the relationship between the assignor and the assignee are arranged by the provisions of article 467 of the Civil Code, which applies. [...]

II. 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 programme 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>

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 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

<sup>1</sup> On the contrary, it is predicted for the transfer of movables in article 1036 Civil Code (See Stathopoulos, *General Contract Law*, 2004, page 1381.

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

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).

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.

So, the determination of the electronic address in a unique manner from the user himself and its representation in every electronic message sent, serves as proof of the editor’s identity and, pro rata with what is defined as the traditional document in article 443 of the Civil Procedure Code, its mechanical representation in a document, in accordance with article 444 case c of the Civil Procedure Code, can be defined as a private document, with a conclusive power against its editor (combination of articles 443,

<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”.

444, 445 Civil Procedure Code), because each user electronic address is unique, in that it is chosen by the sender himself, and has the characteristic of a manuscript signature, even though it does not have the traditional form of a signature.<sup>4</sup> The above-mentioned determinations are valid regardless of where the sender's electronic address appears in relation to the text that it accompanies when it appears on the screen of the computer, or its mechanical representation on paper; this follows because it is necessary to take into consideration that the authentication of the sender and the binding to his will of the content that is included in the electronic message are accomplished through the process previously described. This means that any text sent as an electronic message can only be accompanied with a specific electronic address in its entirety, no matter how the form is represented in a mechanical way and where it substantially differs from the traditional meaning of a document.<sup>5</sup>

Thus, the legally attested copy of an electronically sent message, which exists in the hard disc of the recipient, is a full proof that its contents come from its editor-sender, according to in the provisions of article 445 of the Civil Procedure Code.<sup>6</sup>

According to the above-mentioned discussion, the incidental contention by the intervener that an e-mail address is not a document and does not have full evidential weight is groundless.

[*The appeal is sustained...*]

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Michael G. Rachavelias is a member of the editorial board.

## Commentary

There are some observations that can be made regarding to this case and the Court of Appeal's thinking.

First, it accepts that an e-mail address is legally equivalent to a manuscript signature, a fact that has been well established in Greek case law. Indeed, an e-mail address can be correctly classified as a simple electronic signature. According to this decision, such electronic documents have the same evidential weight with other private documents, under the requirements of articles 443 and 445 Code of Civil Procedure, and despite the fact that the evidential weight of an email's address as equivalent to a manuscript signature is not directly predicted in law. Besides, the second article that was added in article 444 of the Civil Procedure Code (see n. 3 above) after the amendment of article in 2011 (law 3994/2011) is properly directed.

Secondly, the case also accepts that the printed copy of an e-mail is a legally attested copy providing a full evidential weight, an observation that agrees with previous decisions (Payment order 1327/2001, 1963/2004, 6302/2004 etc, all translated into English and published in previous issues of the journal). However, in Greek case law, it has also been held that a printed e-mail is an original document and not a copy. It is more correct to say that a printed copy of an e-mail, in order to provide full evidential weight, is not a legally attested copy, but an accurate printing of the created and stored in the computer electronic document.

<sup>4</sup> This has also been held in Payment Order 1327/2001 Court of First instance of Athens, DEE 2001, p. 377, for a translation into English, see Case No. 1327/2001 – Payment Order, *Digital Evidence and Electronic Signature Law Review*, 3 (2006) 104 – 107; for a note, see Case note of Case number 1327/2001 – Payment Order from the Court of first instance of Athens, *Digital Evidence and Electronic Signature Law Review* 1 (2004) 83 – 86. See also Payment Order 1932/2011 Court of First instance of Athens, published in legal database NOMOS and EPOLD 4/2011 p. 482; for a translation into English and a commentary, see Payment Order 1932/2011, *Digital Evidence and Electronic Signature Law Review*, 10 (2013) 198 – 200.

<sup>5</sup> See n. 3 above

<sup>6</sup> Payment Order 1327/2001 Court of First instance of Athens; Court Of First Instance of Athens 6302/2004; Payment Order 1932/2011 Court of First Instance of Athens.