

Greek Supreme Civil and Criminal Court Ruling on the Procedural Effects of a Merger by Absorption

Dr. Kanellos Klamaris, Senior Associate | 13 February 2025

Introduction

On 15 February 2024, the Supreme Civil and Criminal Court of Greece (*Areios Pagos*) issued the judgment 253/2024 in response to a notice of cassation filed against a ruling of the Court of Appeals of Athens.

Nature of the Dispute

The case concerned a claim for damages brought by the lessor against the defendant lessee, alleging that the lessee had unlawfully terminated a lease agreement. After the lessor had initiated legal proceedings, the lessee, a *société anonyme*, was absorbed by another *société anonyme*.

Legal Consequences of the Absorption

As a result of the lessee's absorption by the acquiring *société anonyme*:

- a) the lessee ceased to exist as a legal entity,
- b) the articles of association and legal name of the absorbing *société anonyme* were amended,
- c) the necessary registrations with the General Commercial Registry were made, including the removal of the lessee from the Registry.

During proceedings before the Court of First Instance, the claimant (lessor) became aware of the absorption. In the Court of Appeals, the claimant correctly named the absorbing entity (rather than the lessee) as the defendant. However, in the cassation proceedings before *Areios Pagos*, the notice of cassation erroneously named the lessee (the absorbed entity) as the defendant.

Areios Pagos' Ruling on the Notice of Cassation

Areios Pagos dismissed the notice of cassation as inadmissible on the grounds that naming the

lessee as the defendant in the cassation proceedings effectively meant filing the cassation against a non-existing entity.

Indeed, the lessee had at the time the notice of cassation was filed already been absorbed by another entity and therefore had ceased to exist, which had been officially recorded in the General Commercial Registry.

Legal Reasoning of the Court

Areios Pagos explained that the fundamental consequence of a corporate absorption is that the absorbed entity is dissolved without liquidation and that all its assets and obligations are transferred automatically by virtue of legal provisions (*ipso iure*) to the absorbing entity.

The judgment referred to previous case law, according to which addressing the notice of cassation to the absorbed – and henceforth, due to the absorption, non-existent – entity does not lead to the inadmissibility of the notice of cassation only:

- if the appellant was unaware of the absorption, or
- if the absorbing entity voluntarily presented itself before the court and declared that it assumes the defendant's position.

Application of the Legal Precedent

However, in the present case, *Areios Pagos* deemed that the appellant had full knowledge of the defendant's absorption by another entity. Furthermore, the absorbing entity did not submit any declaration assuming the role of the defendant in the proceedings.

Final Decision

Based on these grounds, *Areios Pagos* ruled that the notice of cassation was inadmissible and consequently refused to hear the case on its merits.

Key contacts



Dr. Dimitris Tsibanoulis
Senior & Managing Partner
d.tsibanoulis@tsibanoulis.gr



Dr. Kanellos Klamaris
Senior Associate
k.klamaris@tsibanoulis.gr

Tsibanoulis & Partners Law Firm

18 Omirou St.
106 72 Athens | Greece
T: +30 210 3675 100
W: tsibanoulis.gr



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