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IBRAHIM SHEVKET NAMY v. THEODOROS PHOTIADES.

[JACKSON, C.J., AND GRIFFITH WILLIAMS, J.]

(February 24, 1949)

IBRAHIM SHEVKET NAMY, *Appellant,*

v.

THEODOROS PHOTIADES, *Respondent.*

(*Civil Appeal No.* 3847.)

Architect's remuneration—Absence of special agreement—Scale of payments agreed upon by architects among themselves—Test is what is reasonable to pay.

At the request of the appellant, the respondent, who was an architect, prepared certain plans for the construction of a building. The respondent's remuneration was not agreed upon. The trial Court awarded an amount which was based upon the respondent's claim of 2½% on the estimated cost of the building.

Held, that, in the absence of special agreement, the Court was not bound by the scale of payments which architects in Cyprus appeared to have agreed upon among themselves, and that the sum which the appellant ought to pay as fee for the plans prepared by the respondent should be determined according to what was reasonable to pay in the circumstances.

Judgment of the District Court affirmed.

Appeal by the defendant from the judgment of the District Court of Nicosia (Action No. 1656/47) awarding a sum of £170 to the plaintiff.

Chr. Mitsides for the appellant.

E. Emilianides for the respondent.

The facts of the case are set forth in the judgment of the Court which was delivered by :

JACKSON, C.J. : This is an appeal against the decision of the District Judge of Nicosia awarding a sum of £170 to the plaintiff-respondent in respect of certain plans which he prepared for the appellant.

The amount in dispute appears to be £120, being the fee charged for certain plans prepared by the plaintiff-respondent for the construction of an elaborate building in a central position in Nicosia. The remaining part of the plaintiff-respondent's claim in the action, £25, does not appear to be in dispute, and in respect of that a sum of £5 has already been paid by the appellant.

It is clear from the evidence that the District Judge was of opinion that the plans which are the subject of the dispute were prepared by the respondent at the request of the appellant in conditions which obliged the appellant to pay for them. There was ample evidence upon which the Judge could have come to that conclusion if he believed it,

and it is evident that he did believe the evidence of the plaintiff in the action and disbelieved the evidence of the defendant who gave an entirely different account of the way in which these plans came to be prepared, an account which it was quite impossible to reconcile with the account given by the plaintiff.

The Judge rejected the defendant's account of how the plans came to be prepared and accepted the account given by the plaintiff. That being so, as the Judge had both witnesses before him, it is not possible for us to disregard his finding of fact in that respect, and we have to proceed, as Mr. Mitsides recognised, on the basis that the account given by the plaintiff in the action of how these plans came to be prepared, was true.

In these circumstances it seems to us that the District Judge was fully justified in holding that the defendant-appellant was liable to pay for them.

As to the amount which he should pay, the District Judge awarded the sum of £170 which was the full claim, less the £5 which the appellant-defendant had already paid. That is an amount which was based upon the plaintiff-respondent's claim of 2½% on the estimated cost of the building.

Mr. Mitsides has argued in this Court that the District Judge was not bound by the scale of payments which architects in Cyprus appear to have agreed upon among themselves, and that the sum which the appellant-defendant ought to pay for these plans should be determined according to what was reasonable. We must, I think, assume that the District Judge was aware of that fact. We think that Mr. Mitsides' argument is correct and that the test is what is reasonable to pay in the circumstances.

Our attention has been drawn to evidence given by the plaintiff-respondent in the action that he, at one time, agreed to receive £113 instead of his original total claim of £175. That, of course, may be so, but that does not necessarily show that his original claim was unreasonable, and there is no evidence on the record and nothing has been put before us to suggest that it is unreasonable in itself. And we feel that unless there is some reason to think that a different result might be arrived at if we return this case to the District Court and ask the Judge to assess the remuneration on a different basis, there would be insufficient reason for doing so.

On the whole, therefore, we are inclined to accept the award of the District Judge as being, at any rate, not unreasonable in this case, and we think, therefore, that we should leave it to stand and that this appeal should consequently be dismissed with costs.