

MARIA NEOKLI EROTOKRITOU,  
*Appellant (Defendant (No. 3.))*

v.

COSTAS N. XEROS,

*Plaintiff,*

*and*

NICOS COSTI SOUTSOS,

*Respondent (Third Party).*

*(Civil Appeal No. 4342).*

MARIA NEOKLI  
EROTOKRITOU  
v.  
COSTAS N. XEROS  
and  
NICOS COSTI  
SOUTSOS

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*Practice—Third-party procedure—Civil Procedure Rules, 0.10, r. 1—Scope of third-party procedure—The motive for the act done by the defendant and complained of by the plaintiff does not in itself amount to “a question or issue relating to or connected with the said subject matter” of the action within paragraph (c) of rule 1 of Order 10.*

The plaintiff brought an action against the defendant alleging trespass upon his property and claiming relief. The defendant put up a defence and counterclaimed for a declaration that she has a right to go there. She also applied to bring in a third party, alleging that she (the defendant), having been wrongfully obstructed by the third party from going over the latter's plot, was compelled to go over plaintiff's plot. Her application, based on the Civil Procedure Rules, 0.10, r.1, was dismissed by the trial Court.

*Held:* (1) What the defendant appellant claimed against the third party does not amount to either contribution or indemnity within paragraph (a) of rule 1 of Order 10.

(2) Under paragraph (b) of rule 1, of Order 10 the defendant - appellant had to show that she was entitled to relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff. The assertion of the defendant-appellant that she has suffered loss in that she was obstructed by the third party through being prevented from going through the third party's property, that is not relief relating to or connected with the original subject matter of plaintiff's action at all nor is it substantially the same relief as that claimed by the plaintiff.

(3) Under paragraph (c) of rule 1, of Order 10, the de-

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defendant-appellant had to show that her claim is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only between the plaintiff and the defendant but as between the plaintiff and the defendant and the third party or between any or either of them. The only "connection" between the two in this case is that the motive for the trespass, of which the plaintiff complains, on the part of the defendant is the alleged wrongful obstruction by the third party.

But the "connection" referred to in the rule must be taken as referring to a legal nexus not motive.

*Appeal dismissed.*

### **Appeal.**

Appeal against the order of the District Court of Kyrenia (Evangelides D.J.), dated the 16.5.61 (Action No. 478/60) dismissing an application for third party proceedings in an action for (a) an order restraining defendants from interfering with plaintiffs' land and (b) for an order that the defendants have no right of passage through plaintiff's land.

*S. Christis* for the appellant-defendant.

*A. Protopapas* for the plaintiff.

*Ch. Demetriades* for the respondent - third party.

The facts sufficiently appear in the judgment delivered by:

O' BRIAIN, P.: This matter comes before the Court by way of an appeal from an order made on the 16th May, 1961, by the District Judge of Kyrenia, and the relevant portions of that order are as follows:-

"This Court DOTH HEREBY ORDER that the said application BE AND IT IS HEREBY DISMISSED AND THIRD PARTY PROCEEDINGS BE TERMINATED".

A number of difficult questions have been raised by Mr. Christis to-day, some of them procedural and some of them going to the substance of this matter; but, in my view, it is not necessary, in order to deal with this appeal, to go into all or most of these. I am content to deal with this matter and to rule upon this appeal on the basis that Order 10, rule 1 of the Civil Procedure Rules defines completely and clearly the scope of third party procedure. It reads as follows:

“Where in any action a defendant claims as against any person not already a party to the action (in this Order called the “third party”)-

- (a) that he is entitled to contribution or indemnity, or
- (b) that he is entitled to any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or
- (c) that any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them, the Court or a Judge may give leave to the defendant to issue and serve a “third-party notice”.

In this case the plaintiff brings an action against, amongst others, the third defendant, who is the appellant here in this case, alleging wrongful trespass upon the plaintiff’s property at Ayios Georghios, and claiming relief. To that claim, a defence has been put on the files of the Court which I have read and which traverses almost every assertion of fact in the plaintiff’s statement of claim and asserts by way of defence the right to go there. This is followed by a counter-claim asking the Court to make a declaration to that effect. There is an allegation in the defence mentioning that the defendant had been obstructed from going over a neighbouring plot belonging to the third party in this case. Its relevancy escapes me.

Now Mr. Christis has put the case on this basis here today that the defendant having been obstructed from going over the third-party’s plot, she (defendant) was compelled to go over plaintiff’s plot, and that if she should lose the action against plaintiff and be ordered to pay costs and/or damages, she should be refunded or compensated by the third party in respect of such damages, costs and expenses. Mr. Christis agrees that he must bring himself within one or more of these paragraphs of (a) (b) or (c) of rule 1, Order 10, and I think I am correct in saying that he relies on (a) and (b). Taking (a) first, I have already described what is the action between the plaintiff and defendant. It relates to alleged trespass upon

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plaintiff's property by the defendant. Where in any action the defendant claims as against any person not already a party to the action (in the order called the third party), that she is entitled to contribution or indemnity from that person she may get leave to issue and serve a third party notice.

In my opinion what Mr. Christis asserted here does not amount to either contribution or indemnity at all as defined in law. Under clause (b) the defendant would have to show that she is entitled to relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff. I have considered the matter and it seems to me that where you have the plaintiff stating that he has been trespassed upon and that he has suffered damages thereby and claiming relief or remedy in respect of that and Mr. Christis's client saying that she has suffered loss in that she was obstructed by the third party through being prevented from going through third party's property that is not relief relating to or connected with the original subject matter of plaintiff's at all nor is it substantially the same relief as that claimed by plaintiff.

I do not think that Mr. Christis has brought himself within clause (c). There the defendant has to show that her claim is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only between the plaintiff and the defendant but as between the plaintiff and the defendant and the third party or between any or either of them. It seems to me that the only "connection" between the two is that the motive for the trespass, of which the plaintiff complains, on the part of the defendant is the alleged wrongful obstruction by the third party. That is the motive ; but I think that this rule when it speaks of connection must be taken as referring to a legal nexus not motive.

For these reasons it seems to me that defendant has failed to bring the case within any of the three paragraphs (a) (b) or (c) which define, as I read them, in a complete manner the only instances in which the third party procedure is applicable. For these reasons I would affirm the order of the trial Judge and would dismiss the appeal.

ZEKIA, J.: I am not also satisfied that the appellant in this case made or brought his case within Order 10, rule

1 (a) (b) or (c). Had the appellant made a defence in this case that he had an alternative claim about a right of way or right of passage, either through the field of the plaintiff or through the field of the third party, then there might be a common dispute, and in that case I would be prepared to say that he brought his case within (b) or (c) of that rule. But he does not say so. Neither was I able to make out from his defence and from the proceedings in the Court below that he meant to do so.

In the circumstances, I agree that the appeal should be dismissed.

VASSILIADES, J.: I agree that the appeal fails and should be dismissed. Before the order appealed against can be upset or altered, it must be shown that it is wrong in law or that there are sufficient reasons for interfering with it. Speaking for myself, I have not been made to see either.

As regards substance, as far as I have been able to understand the position, the right in dispute between the plaintiff and the defendant is a different right from that in dispute between defendant and the third party. The Judge, I think, rightly kept them apart.

JOSEPHIDES, J.: I concur that the appeal should be dismissed.

O' BRIAIN, P.: Appeal dismissed. We allow third party costs.

*Appeal dismissed.*

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