[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

TAKIS GRIVAS,

Appellant-Defendant,

v.

HEINAMI DISTRIBUTORS,

Respondents-Plaintiffs,

(*Civil Appeal No.* 4440)

Contract—Supervening illegality of performance—Effect of—The Contract Law, Cap. 149, *section* 56 (2)—" *Slot machines* "—*Contract for the hire-purchase of* " *slot machines* " *perfectly lawful at the time it was entered into—Subsequent Order of the Council of Ministers of the* 4*th September*, 1961, *made under section* 6 (2) *of the Betting Houses, gaming Houses and gambling Prevention Law, Cap.* 151—*Affecting the legality of the possession and operation of* " *gaming machines* " *such as the aforesaid* " *slot machines* "—*Effect of that Order on the further performance of the contract on the part of the purchaser, consisting in the payment of certain amounts still due by him under that contract.*

Gambling—Gaming machines such as the " *slot machines* " *in question—Cap.* 151, *section* 6 (1) (2) *and* (3) (supra)—*The Order of the Council of Ministers of the* 4th *September*, 1961, *made under section* 6 (2) *of Cap.* 151 (supra)—*Published in the Official Gazette of the Republic, Third Annex, No.* 87 *of the* 4*th September*, 1961, *p.* 317, *under the title* " *The Gambling* (*Gaming Machines*) *Order*, 1961 " " Τὸ περὶ Κυβείας Μηχαναὶ Τυχηρῶν Παιγνίων) Διάταγμα, 1961."

Section 6 of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151, reads as follows :—

" 6. (1) Any person, wherever found, playing at any of the games commonly known as ' cholo ', ' kazandi ', ' zari ' or ' roulette ' or any other similar game which in the opinion of the Court trying the offence is a variation of any of such games or assembled together for the purpose of playing at any such game or any variation thereof as hereinbefore provided, shall be guilty of an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

(2) The Governor-in-Council (editor's note : now the Council of Ministers) may, by Order, declare any game to be a game for the purposes of sub-section (1) of this

section in addition to the games specified therein and thereupon the provisions of sub-section (1) of this section shall apply to such game as they apply to the games specified in such sub-section.

(3) Any person who, in any street, club, coffee-shop, hotel or khan or a place licensed for the sale of intoxicating liquors by retail or a place of public resort or public entertainment, is in possession of any instruments or appliances used or appearing or intended to be used or to have been used for the playing of any of the games to which this section applies, shall be guilty of an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine."

On the 4th of September, 1961, there was published the aforesaid Order of the Council of Ministers (*supra*), made under sub-section (2) of section 6 of Cap. 151 (*supra*), whereby the handling and operation of any gaming machine ("μηχανὴ τυχηροῦ παιγνίου") as defined therein, including the "slot machines" involved in the instant case, constitutes a "game" for the purposes of sub-section (1) of Cap. 151 (*supra*), in addition to the games of chance mentioned in that sub-section.

Section 56 (2) of the Contract Law, Cap. 149, provides that :—

"A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful."

The respondents-plaintiffs entered into three contracts with the appellant-defendant prior to the 4th September, 1961, by which they agreed to sell to the appellant-defendant certain "slot machines" on terms of hire-purchase. The appellant-defendant fell into arrears with certain payments and the respondents-plaintiffs obtained judgment in the District Court of Nicosia for the sum of £1,055.000 mils against the appellant-defendant.

On the 4th September, 1961, the Council of Ministers made the aforesaid Order under the provisions of section 6 (2) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151, which affected the legality of the possession and

use of such machines. On the contention by the appellant-defendant that this order rendered further performance of the contracts illegal and the payments due under the contract unenforceable, the High Court :—

Held, (1) we are unanimously of the opinion that the rights of the parties under the contracts in question crystallized before the Order of the Council of Ministers of the 4th September, 1961, to such an extent that the claim of the plaintiffs for the amounts remaining unpaid were still not affected by that Order.

(2) JOSEPHIDES, J. after agreeing that the rights of the parties crystallized before the Order of the Council of Ministers and that on that ground alone the appeal fails, went on to say as regards the question of illegality :

(*a*) The law applicable to this case is section 56 (2) of our Contract Law, Cap. 149 (*supra*).

It is common ground that the three contracts sued on were lawful contracts for a lawful consideration at their inception. The enactment which is alleged to have rendered the performance of these contracts unlawful is the Ministerial Order of 4th September, 1961, made under the provisions of section 6 (2) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151. That Order prohibits the handling or operation of any gaming machine. But it is further submitted that, by virtue of the provisions of section 6 (3) of Cap. 151, possession of these machines in a public place, cafe or bar, is also prohibited. Without deciding this point, I would observe that what is prohibited by the Ministerial Order is, to put it at its highest, the handling, operation and possession in places of public resort of gaming mahines. The sale of these machines is not expressly prohibited.

(*b*) In any event, in this particular case, there is evidence on the record, which stands uncontradicted, that the " slot machines " could be adjusted or turned into other lawful uses, *i.e.* into vending machines of sweets, etc. On the basis of the reasoning in *London and Northern Estates Company* v. *Schlesinger*, (1916) 1 K.B. 20, I come to the conclusion that, as these machines would also be put into lawful use, it cannot be held that the performance of the contracts became unlawful.

Appeal dismissed with costs.

Cases referred to :

London and Northern Estates Company v. *Schlesinger*, (1916) 1 K.B. 20 (*applied*).

Appeal.

Appeal against the judgment of the District Court of Nicosia (Evangelides and Ioannides, D.JJ.) dated the 4th April, 1963 (Action No. 3768/61) whereby judgment was given for the plaintiffs for £1,055.000 with costs being balance due by defendants to plaintiffs under contracts in writing for the hire purchase of certain slot machines.

Char. D. Ioannides for the appellant.

N. A. Rolandis for the respondents.

On the 10th December, 1963, the following judgments were read :-

WILSON, P. : This is an appeal from the judgment of the District Court of Nicosia against the appellant for £1,055.000 with interest as specified in the judgment, claimed by the respondents under contracts in writing for the hire purchase of certain slot machines.

The contention of the appellant is that in consequence of the publication of an Order of the Council of Ministers published on the 4th September 1961, affecting the possession and use of such machines, the contracts became illegal and, therefore, the further performance on his part consisting in the payment of certain amounts under the contract which were still unpaid became unenforceable. For a declaration to this effect the appellant filed a counterclaim which the District Court dismissed when they came to the conclusion that the contracts in question were still enforceable and that the appellant was liable for the amount in the judgment.

The case was argued at considerable length by learned counsel on both sides before the trial Court as well as in the appeal. But, it is now clear, that the rights of the parties in this action depend on the short question whether the Ministerial Order of the 4th September, 1961, rendered the payments of the amounts still due by the appellant, illegal.

We are unanimously of opinion that the rights of the parties under the contracts in question crystallized before the Ministerial Order to such an extent that the claim of the plaintiffs for the amounts remaining unpaid were still not affected by the Ministerial Order.

We are, therefore, of opinion that the appeal must fail with costs.

Judgment and Order accordingly.

ZEKIA, J : I agree.

VASSILIADES, J : I agree.

JOSEPHIDES, J : I agree that the rights of the parties crystallized before the Order of the Council of Ministers, which was published on the 4th September, 1961, came into operation, and on that ground alone the plaintiffs-respondents are entitled to judgment in this case.

As regards the question of illegality, I think that, putting it briefly, two main questions fall to be determined in this case: (a) Has the further performance of the contracts become unlawful by the operation of the Ministerial Order of the 4th September, 1961? and (b) if yes, then what is the effect of this supervening illegality?

The law applicable to this case is section 56 (2) of our Contract Law, Cap. 149, which provides that—

> " A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful." .

It is common ground that the three contracts were lawful contracts for a lawful consideration at their inception. The enactment which is alleged to have rendered the performance of these contracts unlawful is the Ministerial Order of 4th September, 1961, made under the provisions of section 6 (2) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151. That Order prohibits the handling or operation of any gaming machine. But it is further submitted that, by virtue of the provisions of section 6 (3) of Cap. 151, possession of these machines in a public place, cafè or bar, is also prohibited. Without deciding this point, I would observe that what is prohibited by the Ministerial Order is, to put it at its highest, the handling, operation and possession in places of public resort of gaming machines. The sale of these machines is not expressly prohibited. In any event, in this particular case, there is evidence on the record, which stands uncontradicted, that the " slot machines " could

be adjusted or turned into other lawful uses, *i.e.* into vending machines of sweets etc. On the basis of the reasoning in *London and Northern Estates Company* v. *Schlesinger*, (1916) 1 K.B.20, I come to the conclusion that, as these machines would also be put into lawful use, it cannot be held that the performance of the contracts became unlawful.

Having come to that conclusion, the second question, that is to say, what is the effect of the supervening illegality, does not arise in this case.

For these reasons I would dismiss the appeal.

Appeal dismissed with costs