

CHRISTODOULOS PAPANFORGHIOU,  
*Appellant-Defendant.*

CHRISTODOULOS  
PAPANFORGHIOU  
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ADONIS  
CHARALAMBOUS

ADONIS CHARALAMBOUS  
*Respondent-Plaintiff*

(Civil Appeal No. 4558).

*Contract Bond in customary form The Contract Law Cap 149 section 98 and the Limitation of Actions Law Cap 15 section 3 (1) (9) Guarantee of the debt under the said Bond Guarantor's claim against the debtor of a sum paid by him (guarantor) to the creditor in settlement of the aforesaid guaranteed debt Section 98 of the Contract Law Cap 149 Whether this claim by the guarantor has been statute-barred by virtue of the provisions of sections 5 and 10 (d) of the Limitation of Actions Law, Cap 15 Or whether the provisions applicable are those of section 3 (1) (a) of the said Law Cap 15 in which case the claim is not statute-barred See, also heretofore*

*Limitation of actions Bond in customary form Period of Limitation fifteen years Section 3 (1) (a) of Cap 15 (supra) Guarantee of the debt under a bond in customary form Payment of the debt by the Guarantor Upon such payment to the creditor, the guarantor, by operation of section 98 of the Contract Law Cap 149 is invested *inter alia*, with the right to bring an action against the debtor to recover the debt, stepping thus into the shoes of the creditor It follows that such claim of the guarantor is subject to the provisions of section 3 (1) (a), just in the same way as the creditor's claim would have been - Therefore, in the present case the guarantor's claim is not statute-barred, the action having been instituted within the fifteen years period prescribed by the said section 3 (1) (a), even though after the expiry of the shorter periods prescribed by sections 5 and 10 (d) of the same Law, i.e. the Limitation of Actions Law, Cap 15*

*Bond in customary form Period of limitation fifteen years under section 3 (1) (a) of Cap. 15 supra Guarantee of the debt under such bond The said period of prescription and not*

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*the shorter ones provided in sections 5 and 10 (d) of the Law is applicable also to the claim of the guarantor against the debtor in the case where the former paid off the said debt—See also, above.*

*Guarantee -- Payment of the debt by the guarantor—Claims and rights of the guarantor against the debtor—Section 98 of the Contract Law, Cap. 149—Period of limitation of such claim is that prescribed with regard to the creditor's claim—See, also, above.*

*Surety--Payment of debt by the surety—claim by the latter against the debtor—Period of limitation—See above.*

The respondent-plaintiff by an action brought on the 16th November, 1964 sued the appellant-defendant for £75.- being the sum paid by him (respondent) on the 22.1.55 as the surety of the appellant-defendant on a bond in customary form, dated 31.10.53, which had matured on the 1.11.53.

The appellant-defendant contended that the action was statute-barred by virtue of the provisions of sections 5 and 10 (d) of the Limitation of Actions Law Cap. 15. The trial Court found that by virtue of section 98 of the Contract Law, Cap. 149, the relevant provisions of the Limitation of Actions Law, Cap. 15 which applied were not sections 5 and 10 (d) but were the provisions of section 3 (1) (a) and, therefore, the action was not statute-barred and thus gave judgment for the respondent-plaintiff. The relevant legislative provisions are fully set out in the judgment of the Court, *post*.

The Supreme Court in dismissing the appeal held per Munir, J., Vassiliades & Josephides, JJ. concurring :

*Held.* (1) we have given careful consideration to the submissions made by learned counsel for appellant-defendant but we cannot agree with him that it is section 5 of Cap. 15 which is the section which is applicable to this case.

(2) Clearly, one of the rights with which the surety, "upon payment or performance of all that he is liable for", is invested under the said section 98, is the right to bring an action to recover the debt and we are, therefore, of the opinion that, by virtue of the operation of section 98 of the Contract Law, Cap. 149, the guarantor stepping, as he did, into the shoes of the creditor, is entitled to have the benefit of the provisions of section 3 (1) (a) of the Limitation of

Actions Law Cap 15 just in the same way as the creditor would have had, and that it is the provisions of section 3 (1) (a) which are applicable to this case and not sections 5 and 10 (d) thereof

*Appeal dismissed with costs*

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### Appeal.

Appeal against the judgment of the District Court of Nicosia (sitting at Morphou) (Pitsilides, DJ) dated the 8th December, 1965, (Action No 10 4/64) whereby the defendant was adjudged to pay to the plaintiff the sum of £75 being a sum paid by him as the surety of the defendant on a bond in customary form

*M Kyrianiou, for the appellant*

*L Odysseos, for the respondent*

VASSILIADIS J The first judgment will be delivered by Mr Justice MUNN

MUNN, J This is an appeal from a judgment of the District Court of Nicosia sitting at Morphou, which was delivered on the 8th December, 1965, and in which judgment was given for the respondent-plaintiff for the sum of £75 and £32 600 mils costs. The appellant-defendant has now appealed against the said judgment

The respondent-plaintiff by this action claimed from the appellant defendant the sum of £75, being the sum paid by the respondent-plaintiff as the surety of the appellant defendant on a bond in customary form, dated the 31st October, 1953, which had matured on the following day, the 1st of November, 1953

At the hearing of the action by the District Court counsel for the appellant-defendant had admitted that the respondent-plaintiff had paid to the creditor of the appellant-defendant, on the 22nd January, 1955, the sum of £75, in respect of the capital and interest on the said bond, together with costs. The only defence of the appellant-defendant at the hearing before the District Court was that the action was statute barred by virtue of the provisions of section 5 and 10 (d) of the Limitation of Actions Law, Cap 15 and the case was decided on this issue alone. The learned trial Judge came to the conclusion that, by virtue of section 92

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of the Contract Law, Cap 149, the relevant provisions of the Limitation of Actions Law, Cap 15, which applied were not sections 5 and 10 (d) as submitted by counsel for appellant-defendant, but were the provisions of section 3 (1) (a) and, therefore, found that the action was not statute-barred and gave judgment for the respondent-plaintiff. Counsel for appellant-defendant has again submitted, on appeal, that the section of the Limitation of Actions Law, Cap 15, which is applicable to the facts of this Case is section 5, which provides that—

“ No action shall be brought upon, for, or in respect of, any cause of action not expressly provided for in this Law, or expressly exempted from the operation of this Law, after the expiration of six years from the date when such cause of action accrued ”

He based his argument on the contention that the action has not been brought upon, for or in respect of, a bond in customary form, and that, therefore, the provisions of section 3 (1) (a) of Cap 15 did not apply.

We have given careful consideration to the submissions made by learned counsel for appellant-defendant but we cannot agree with him that it is section 5 of Cap 15 which is the section which is applicable to this case.

We did not consider it necessary to call upon counsel for respondent-plaintiff to address the Court, except to ask him whether he could cite any authorities on the point which might assist the Court in this case. He informed us that he was not aware of any Cyprus or other authority which would be of any assistance in deciding the issue now before the Court.

We are of the opinion that the way to approach this matter is to take as the starting point the provisions of section 98 of the Contract Law, Cap 149, which reads as follows:

“ Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor ”

Clearly, one of the rights with which the surety, “upon payment or performance of all that he is liable for”, is invested

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under the said section 98, is the right to bring an action to recover the debt and we are, therefore, of the opinion that, by virtue of the operation of section 98 of the Contract Law, Cap 149, the guarantor stepping, as he did, into the shoes of the creditor, is entitled to have the benefit of the provisions of section 3 (1) (a) of the Limitation of Actions Law (Cap 15, just in the same way as the creditor would have had and that it is the provisions of section 3 (1) (a) which are applicable to this case and not sections 5 and 10 (d) thereof

Section 3 (1) (a) of Cap 15 reads as follows

' Subject to the provisions of this Law, no action shall be brought upon, for or in respect of-

(a) any bond in customary form or any mortgage after the expiration of fifteen years from the date on which the cause of action accrued , "

We, therefore, agree with the conclusion reached by the trial Judge in his judgment that the action, which is the subject-matter of this appeal, is not statute-barred

This appeal cannot, therefore succeed and must be dismissed

VASSILIADIS, J I agree

JOSEPHIDES, J I also agree

VASSILIADIS, J In the result, the appeal fails and is dismissed with costs

*Appeal dismissed with costs*