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[VASSILLIADES, P., TRIANTAFYLIDIS, LOIZOU, JJ.]

LIMASSOL WINE
ASSOCIATION LTD.

LIMASSOL WINE ASSOCIATION LTD.,

Appellants-Defendants,

v.

v.

BANK OF
CYPRUS LTD.
AND
VINE PRODUCTS
SCHEME

BANK OF CYPRUS LTD.,

Respondents-Plaintiffs,

and

VINE PRODUCTS SCHEME,

Garnishees.

(Civil Appeal No. 4601).

Judgment debt—Execution—Garnishee Order—Appeal against Order of trial Court directing that an amount due by Garnishees to Appellants be paid to Respondents—Towards a judgment debt due by Appellants to Respondents—Subsequent agreement—Not a novation doing away with the judgment debt—Perfectly open to Respondents to seek to enforce judgment debt by due process of execution—Likewise proper for the trial Court to make the Order appealed against.

The appellants in the instant appeal complain against an order of the Court below whereby it was directed that an amount of £1,447,388 mils, due by the Garnishees in these proceedings to the appellants, be paid to the respondents towards a judgment debt, due by the appellants to the respondents. Such judgment debt constituted part of the indebtedness of the appellants and another associate company of theirs as well as one of the Directors and shareholders of both companies, the late Cleanthis Christoforou.

Appellants contended that they had no liability towards the respondents in that they have duly performed their side of an oral agreement which provided that all relevant liabilities of the appellants towards the respondents including the judgment debt in question, would be deemed as having been discharged, upon the transfer of the property of the aforesaid Cleanthis Christoforou and of the two indebted Companies to the respondents. They moreover argued that the said agreement amounts to a novation as a result of which the judgment debt could no longer be executed as such. Respondents on the other

hand contended that that was not so because appellants ought to have transferred to them not only the immovables but also the movables under such agreement.

Held, (1) bearing in mind the cause for, and the circumstances in, which the relevant agreement was concluded, we take the view that it was properly open to the trial Court, on the material before it, not to treat the said agreement as a novation doing away with the judgment debt as such. It was indeed, nothing more than an agreement as to the mode of payment off of outstanding and impossible to settle otherwise liabilities, including the judgment debt in question; therefore, it was perfectly open to the respondents to seek to enforce the judgment debt by due process of execution and it was likewise proper for the trial Court to make the Order which has been appealed against.

(2) Nor could it be said that the said judgment debt had to be deemed as paid off, through due performance by the appellants of the agreement of the 18th May, 1964, because we do find ourselves unable to interfere with the conclusion reached by the trial Court to the effect that it was intended to transfer to respondents both the immovable and movable property of the two companies concerned and of Cleanthis Christoforou. Such conclusion was reached after hearing the evidence given by those involved on both sides and it was essentially a decision based on the trial Court's view of their credibility; it was the only reasonable one, too.

Appeal dismissed.

Appeal.

Appeal against an order made by the District Court of Limassol (Malachtos P.D.C. and Papadopoulos D.J.) dated the 25.6.66 whereby it was directed that an amount of £1,447.388 mils, due by the garnishees in these proceedings to the appellants, be paid to the respondents towards a judgment debt, in civil action No. 139/63 of the District Court Limassol, due by the appellants to the respondents.

J. Potamitis, for the appellants.

G. Cacoyiannis, for the respondents.

Garnishee not taking part in the appeal.

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VASSILIADES, P. : The Judgment of the Court will be delivered by Mr. Justice Triantafyllides.

TRIANAFYLLIDES, J. : The Appellants appeal against an Order made by the District Court of Limassol, on the 25th June, 1966, directing that an amount of £1,447.388 mils due by the Vine Products Scheme—the garnishees in these proceedings—to the Appellants be paid to the Respondents towards a judgment debt in civil action No. 139/63 of the District Court of Limassol, due by the Appellants to the Respondents.

The relevant facts are sufficiently set out in the judgment of the trial Court and they need only be summarized as follows :

The Appellants, are a limited company and along with an associate company of theirs, Cleanthis Christoforou and Bros. Ltd., and one of the directors and shareholders of both companies, the late Cleanthis Christoforou, were all heavily indebted to the Respondents; one of such liabilities was the aforesaid judgment debt.

On the 18th May, 1964, an oral agreement was reached in Nicosia between Zenon and Takis Christoforou—brothers of the deceased Cleanthis Christoforou and, also, directors and shareholders of the two companies concerned—and representatives of the Respondents, by virtue of which it was stipulated, in substance, that upon the transfer of the property of Cleanthis Christoforou and of the two indebted companies to the Respondents, all relevant liabilities, including the judgment debt in question, would be deemed as having been discharged; it is clear that the reason behind such agreement was the fact that there did not appear to exist readily available assets to meet the whole of the indebtedness concerned.

It is the contention of the Appellants that they have duly performed their side of the said agreement; on the other hand the Respondents contend that this is not so because the Appellants ought to have transferred to them not only the immovables, but also the movables, under such agreement.

Furthermore, the Appellants have argued that the agreement in question amounts to a novation as a result of which the judgment debt in civil action No. 139/63 could no longer be executed as such.

On this latter point the trial Court has found against the appellants. Bearing in mind the cause for, and the circumstances

in, which the relevant agreement was concluded, we take the view that it was properly open to the trial Court, on the material before it, not to treat the said agreement as a novation doing away with the judgment debt as such. It was indeed, nothing more than an agreement as to the mode of payment off of outstanding and impossible to settle otherwise liabilities, including the judgment debt in question; therefore, it was perfectly open to the Respondents to seek to enforce the judgment debt by due process of execution and it was likewise proper for the trial Court to make the Order which has been appealed against.

Nor could it be said that the said judgment debt had to be deemed as paid off, through due performance by the Appellants of the agreement of the 18th May, 1964, because we do find ourselves unable to interfere with the conclusion reached by the trial Court to the effect that it was intended to transfer to Respondents both the immovable and movable property of the two companies concerned and of Cleanthis Christoforou. Such conclusion was reached after hearing the evidence given by those involved on both sides and it was essentially a decision based on the trial Court's view of their credibility; it was the only reasonable one, too.

In the circumstances this appeal is dismissed with costs.

Appeal dismissed.

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