[VASSILIADES P. JOSEPHIDES & STAVRINIDES JJ.]

ROLANDIS, LOUCAS & SOTERIADES LTD.,

Appellants-Defendants.

v.

MICHAEL LANDAS,

Respondent-Plaintiff.

(*Civil Appeal No.* 4736).

Contract—Contract for work done or goods supplied—Agreement completely informal and vague—Lack of precision in the manufacture of goods—A matter beyond contemplation of the parties and outside their contract—Trial Court's findings that respondent has performed his part of the agreement, sustained.

The facts sufficiently appear in the judgment of the Court dismissing this appeal by the defendants in the action.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Mavrommatis & Stylianides D. JJ.) dated the 18th May, 1968, (Action No. 2243/67) whereby they were adjudged to pay the plaintiff the sum of £169.700 mils under a contract for work done.

A. Triantafyllides, for the appellants.

C. Myrianthis, for the respondent.

The following judgments were delivered by:

VASSILIADES, P.: This is an appeal by the defendants from the judgment of the District Court of Nicosia adjudging them to pay to the respondent-plaintiff, the sum of £169.700 mils, under a contract for work done. The appellants defended the claim on the ground that this was a contract for the supply of goods which in the end proved unfit for the purpose for which they were ordered by the buyers and supplied by the sellers.

The contract upon which the case was decided, both as regards the claim and the counterclaim, was found by the trial Court,

on the evidence before them; and is stated at page 5 of the judgment (page 27 of the record). The District Court say that the agreement was completely informal; and that it was made between a senior employee of the defendants who lacked scientific or specialised knowledge as regards this type of equipment and an artisan in charge of a local foundry similarly ignorant. It was to the effect that "the plaintiff was to manufacture at 17/- (seventeen shillings) per cup a number of cups for the defendants in all probability to renew the whole of the chain as hat appears, at least to have been the intention of the defendants". They speak of a carrier-chain of a bottle washing machine of the defendants, who are, *inter alia*, bottlers of soft drinks. "It should be borne in mind, the trial Court add, that our findings cannot be much clearer than this vague agreement. The exact time of delivery was not completely decided upon but it was expected of the plaintiff to deliver them (the cups) as soon as possible, within a reasonable time. Further, we have no evidence that either of the parties knew about the precision nature of the parts to be made, the effect of the lack of precision thereon and, finally, the possibility or impossibility of having such parts made locally. Therefore, there was no agreement whatsoever as regards the necessity for precision. In all the circumstances we take it that neither the defendants expected the precision which now appears to us to be essential to these parts, nor the plaintiff ever intended or offered to manufacture parts with such a precision. In other words, as this was beyond even their contemplation it was totally absent from their agreement."

These findings of the trial Court as regards the agreement between the parties have not been challenged in this appeal; and we think rightly so. This is the effect of the evidence before the Court; or, so much of it as the Court found acceptable. And, it is on this contract that the rights of the parties have to be determined.

The appeal is mainly based on the ground that this was a contract for the supply of goods. The appellants, counsel argued, made quite clear to the respondent the purpose for which they wanted the cups on the chain in question. Cups and chain were wanted to make an old machine for the washing of empty bottles, fit for its purpose. The goods supplied having proved eventually useless as unfit to serve the purpose for which they were required, they did not constitute the goods which the buyer ordered. And, he should not have to pay for them under the contract.

This, appears to be an attractive argument with good foundation in law. But in this case, the Court found that the reason why the parts supplied by the respondent proved unfit for the purpose for which they were acquired by the appellants, was the fact that they had to be made with such precision as was neither within the knowledge of the parties nor within their contract. In fact, the Court found that it was quite some time after the supply of the last lot of cups and several months after the supply of the first lot of 50 that a qualified mechanic of the appellants discovered the reason why the parts supplied did not serve their purpose; and that the reason was the lack of precision in the drilling of the joint holes. This elements of precision, in the cups ordered by the appellants and supplied by the respondent, was not covered by the parties' contract, the trial Court found; and so concluded that the appellants "got all that they bargained for", as the Court put it.

Learned counsel for the appellants ably argued their case before us and referred us to reported cases decided in England where the question turned on whether the essence of the contract lay in the workmanship in the goods supplied, or in other particulars of the goods themselves. Basing the case of the appellants on the basis that the purpose for which these cups were acquired by his clients and were supplied by the respondent being well known to both parties, the defect in the cups which proved them unfit for the purpose for which they were supplied, should lead to a decision against the suppliers; they failed to supply the goods agreed and, therefore, they could not claim their value under the contract.

As already pointed out, the trial Court found that at the time of the contract neither party knew of the importance of this precision-requirement in the goods ordered; nor was the supplier in fact capable to make them with the precision required. There is no evidence that he had ever made similar work before. We agree with the trial Court that this was a rare and peculiar contract; at least as far as such cases reach the Courts. We think that the trial Court found correctly the parties' contract and its effect; and rightly decided upon such contract, the claims made by each side. The appeal must, therefore, be dismissed.

JOSEPHIDES, J.: I agree. The whole trouble in this case is due to the lack of precision in the manufacture of the cups in question. The trial Court in making their findings of fact

accepted fully the evidence of a mechanic, who was subsequently employed by the appellants, and they found that the appellants' chain-drive in question, being a precision equipment which carries weight whilst in motion, should be precisely manufactured and that even a difference of a fraction of a millimetre multiplied by a number of cups may have an adverse effect on the working of the drive. The main fault, according to the evidence of the appellant's mechanic, was as regards the exact location of the hole drilled in the cups for the purpose of joining them together by means of a pin. Apparently the hole was not drilled at exactly the same place in every cup and there was a difference of about half a millimetre in a number of cups.

The Court in their judgment stated that they had no evidence that either of the parties knew about the precision nature of the parts to be made, and they held that there was no agreement whatsoever as regards the necessity of precision. The Court's finding is based on the reasoning that as this question of precision was beyond even the contemplation of the parties it was totally absent from their agreement.

On the evidence before the trial Court these findings were open to them and on these findings I am of the view that they rightly came to the conclusion that the respondent (plaintiff) had performed his part of the agreement and that, consequently, he was entitled to judgment, and that the appellants' counterclaim should be dismissed except as to a sum of £33 for delay. For these reasons I would dismiss the appeal.

STAVRINIDES, J.: I agree with the judgments already delivered and I have nothing to add.

VASSILIADES, P.: In the result, the appeal is dismissed with costs to be taxed at the minimum of the scale applicable to the claim.

Appeal dismissed with costs.