

1972  
April 14

[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

MEHMET  
ERMIYA  
AS ADMINIS-  
TRATOR OF  
THE ESTATE  
OF ERMIYA  
TURGUT  
v.  
MUSTAFA  
OSMAN

MEHMET ERMIYA, AS ADMINISTRATOR OF THE ESTATE  
OF ERMIYA TURGUT, DECEASED,

*Appellant-Defendant,*

v.

MUSTAFA OSMAN,

*Respondent-Plaintiff.*

(Civil Appeal No. 5001).

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*Contract—Bond—Not in customary form—Consideration—Furnished by an earlier transaction—Whether consideration required for earlier transaction—Genuineness of debtor's signature—Established by plaintiff's evidence and expert evidence.*

*Bond—Not in customary form—See under "Contract" above.*

*Consideration—Bond not in customary form—See, under "Contract" above.*

Cases referred to :

*Ioannidou v. Antoniou* (1969) 4 J.S.C. 561.

### **Appeal.**

Appeal by defendant against the judgment of the District Court of Limassol (Vassiliades and Loris, D. JJ.) dated the 29th June, 1971, (Action No. 2797/68) whereby he was adjudged to pay to the plaintiff the sum of £7,896 due under a bond.

*S. McBride* with *E. Avdjioglou*, for the appellant.

*R. Michaelides*, for the respondent.

The facts sufficiently appear in the judgment of the Court delivered by :—

TRIANTAFYLLIDES, P. : The appellant who is the administrator of the estate of the deceased Ermiya Turgut, late of Limassol—who was originally the defendant in the proceedings before the trial Court and to whom we shall refer in this

judgment as the “defendant”—has appealed from a judgment given by the Limassol District Court in favour of the respondent (the plaintiff before the trial Court) for the sum of £7,896, plus 9% interest thereon as from the 10th February, 1968, till final payment, and costs, on the basis of a bond dated 10th February, 1968.

As in every civil appeal the burden of satisfying this Court that the judgment appealed from is erroneous lies on the appellant (see, *inter alia*, *Ioannidou v. Antoniou* (1969) 4 J.S.C. 561).

The trial Court had before it the two main parties to the transaction concerned, the plaintiff and the defendant, and it is clear from its judgment that, on the whole, it preferred the evidence of the plaintiff.

The main issues which had to be decided by the trial Court were (a) what was the consideration given in relation to the aforesaid bond of the 10th February, 1968—once it was held by such Court that it was not a bond in customary form—and (b) whether the signature of the defendant appearing on that bond was in fact his signature.

Regarding the issue of the genuineness of the signature the trial Court based itself not only on the evidence of the plaintiff, who saw the defendant sign, but also on expert evidence to the effect that it was the signature of the defendant. We see no reason to disturb the finding of the trial Court on this point.

In relation to the issue of the consideration there was produced before the trial Court an earlier document dated 21st December, 1967, by which it was acknowledged that the defendant owed to the plaintiff £5,786 ; and, according to the plaintiff’s evidence, which is consistent with the wording of the bond of the 10th February, 1968, on which the action was brought, the said bond was executed in relation to the indebtedness of the defendant which was acknowledged on the 21st December, 1967, as above, and in relation to financial obligations of the son of the defendant—the present appellant—to the plaintiff, which had been guaranteed by the defendant.

It has been argued on appellant’s behalf that the document of the 21st December, 1967, should not have been relied on as being genuine, so as to be proof of consideration for the bond of the 10th February, 1968, because the defendant denied signing such document ; in the same way as he

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denied signing the bond of the 10th February, 1968 : But the trial Court had, in this respect, before it, not only the evidence of the plaintiff to the effect that the defendant had signed the document in question, but, in addition, the evidence of an expert witness that the signature of the defendant on this document was a genuine one and the evidence of a policeman to whom the defendant admitted the genuineness of his signature on such document. Thus, we find no merit in this argument of appellant's counsel.

It has been, also, contended by counsel for the appellant that, as the earlier document of the 21st December, 1967, was not a bond in customary form or a bond of any other kind, the trial Court had to be satisfied *also* about the existence of consideration in connection with the signing of that document. We cannot agree with this contention, because what was only in issue was the existence of consideration for the bond of the 10th February, 1968, on which the action was brought ; and the consideration for a bond which is not in customary form, such as the said bond of the 10th February, 1968, can be established in any way which sufficiently proves it ; in this case the document of the 21st December, 1967, in conjunction with the wording of the bond of the 10th February, 1968, and with the evidence of the plaintiff, sufficiently establish that there was consideration for the bond of the 10th February, 1968.

In the light of the above reasons this appeal fails and is dismissed, with costs against the appellant.

*Appeal dismissed with costs.*