

1975
Oct. 27

CENTROMOR.
CENTRALA
MORSKA
IMPORTOWO
EKSPORTOWA

v.

ELMECO,
ELECTRICAL
& MECHANICAL
EQUIPMENT
SALES CO. LTD.

[TRIANTAFYLLIDES, P., STAVRINIDES, MALACHTOS, JJ.]
CENTROMOR, CENTRALA MORSKA IMPORTOWO
EKSPORTOWA,

Appellants-Defendants,

v.

ELMECO, ELECTRICAL & MECHANICAL
EQUIPMENT SALES CO. LTD.,

Respondents-Plaintiffs.

(Civil Appeal No. 5340).

Civil Procedure—Service out of the Jurisdiction—Agreement relating to commission—In the absence of any stipulation to the contrary such commission payable in Cyprus where place of business of plaintiffs is located—This factor sufficient to warrant service out of the jurisdiction —Order 6, rule 1(e) of the Civil Procedure Rules. 5

Conflict of Laws—“Principle of Effectiveness of Jurisdiction”.

Appeal.

Appeal by defendants against the order of the District Court of Nicosia (Stavrinakis, P.D.C.) dated the 20th September, 1974, (Action No. 7202/71) dismissing their application for setting aside an order made ex parte in relation to the sealing and issuing of the writ of summons in an action and the service abroad on the defendants of notice of such writ. 15

K. Talarides, for the appellants.

E. Lemonaris, for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court delivered by: 20

TRIANTAFYLLIDES, P.: The appellants—who were the defendants before the court below—attack a decision of such court dismissing an application by them, by means of which they sought the setting aside of an order which was made ex parte on December 4, 1971, in relation to the sealing and issuing of the writ of summons in 25

an action and the service abroad on the appellants of notice of such writ.

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5 This appeal has been argued mainly on the ground that the trial court appears to have assumed wrongly, for the purposes of rule 1(e) of Order 6 of the Civil Procedure Rules, than an agreement in relation to commission claimed by the respondents, as plaintiffs, from the appellants, as defendants, was entered into in Cyprus, whereas, as was submitted by counsel for the appellants, 10 such agreement was concluded outside Cyprus, by means of a cable sent from Poland.

15 Even assuming, without so deciding, that we could have upheld as correct this submission of counsel for the appellants, the fact remains that, as it is rightly stated in the decision of the court below, if any commission is found to be payable, such commission is, in the absence of any stipulation to the contrary, payable in Cyprus, where the place of business of the respondents is located, and that this factor is sufficient to warrant 20 service out of the jurisdiction, under Order 6, rule 1(e), of the Civil Procedure Rules.

25 The other issue, which was raised on behalf of the appellants, was that the trial court erred, in any event, in accepting jurisdiction in the present case, in that it approached wrongly the matter from the point of view of the "principle of effectiveness of jurisdiction", as it has developed in Private International Law. Nothing, however, has been placed before us, to show, in any way at all, that, in this respect, the relevant discretion 30 of the trial court was wrongly exercised, and we are, therefore, not prepared to allow this appeal on this ground; on the contrary, it appears from its judgment that it paid due regard to the correct legal principle, in this respect, and that it proceeded to apply it properly 35 to the facts of this case.

This appeal, therefore, has to be dismissed, with costs.

Appeal dismissed with costs.