

1982 June 3

[HADJIANASTASSIOU, LORIS AND PIKIS, JJ.]

DEMETRIS IOANNOU KOKONI,

Appellant-Plaintiff,

v.

NATIONAL BANK OF GREECE,

Respondent-Defendant.

(Civil Appeal No. 6101).

5 *Bank—Banker and Customer—Customer’s claim for a declaration that he is not owing any amount of money to bank—Customer not succeeding to prove that he was not owing any amount of money—Bank proving to the satisfaction of the Court that customer still indebted to the Bank—Claim rightly dismissed.*

10 The appellant-plaintiff brought an action against the respondent bank for a declaration that he was not indebted to the bank and for an order directing the bank to free his mortgaged lands from the mortgage in favour of the bank. The trial Court dismissed the action because the plaintiff failed to prove that he did not owe any amount of money to the bank and because the bank, through one of its employees, proved that the plaintiff still owed an amount of £498.

Upon appeal by the plaintiff:

15 *Held*, that there was sufficient evidence before the trial Court to find that the plaintiff still appeared in the account books of the bank as a debtor and for these reasons it rightly dismissed the action; accordingly the appeal should fail.

Appeal dismissed.

20 **Appeal.**

Appeal by plaintiff against the judgment of the District Court of Limassol (Pitsillides, S.D.J.) dated the 13th March, 1980, (Action No. 1996/79) whereby plaintiff’s claim for a declaration the he does not own to the defendant bank any sum and that

the mortgage in favour of the bank deposited in the D.L.O. on 9.1.1971 be cancelled, was dismissed.

Appellant appeared in person.

D. Michaelidou (Mrs.) for *G. Cacoyannis*, for the respondent.

HADJIANASTASSIOU J. gave the following judgment of the Court. 5
In the present appeal, the appellant, 85 years of age, appeals from the judgment of the District Court of Limassol dated 13th March, 1980, alleging that the said Judge wrongly dismissed his claim against the Greek National Bank.

THE FACTS: 10

The plaintiff, Demetris Ioannou Kokoni, in giving evidence in Court admitted that because he was illiterate he was inquiring from the bank in question to let him know what was his actual debt and wanted them to prepare an account showing the balance of his debt. Indeed, questioned by Court, he made it clear 15 that if he owed and money he would be prepared to pay his debt. In cross-examination as to whether he was owing an amount to the bank, he said if I owe them I shall pay them. Questioned by Court whether he owes money to the bank or he does not, his reply was "I do not know if I owe any money, 20 indeed, I may have to receive money from the bank".

On the contrary, an employee of the bank, in giving evidence, told the Court that the debt relating to the mortgage shows that he owes an amount of £498.070 mils. He further added 25 that those accounts have been examined and found to be correct in the presence of the plaintiff. Questioned by counsel as to whether the bank was prepared to deduct the amount of £16 with which the appellant was debited, his answer was "yes". Indeed, the same reply was given regarding an amount of £10 30 regarding counsel appearing in this case.

FINDINGS OF FACT BY THE TRIAL COURT:

The trial Court, in dealing with the facts before it, stated that the plaintiff in giving evidence was not in a position to answer the question as to whether he owed money or not to the bank, and that the plaintiff did not produce any kind of evidence in 35 order to show that the allegations of the bank were not true and that he did not owe any money to the bank. On the

contrary, the Court went on to add that the said bank, through Mr. Demetrios Demetriou, an employee of the bank, produced exhibit 1 which showed that the plaintiff owed an amount of £490.070 mils in the mortgage account. Furthermore, the said witness produced exhibit 2, a letter from the plaintiff to the defendant bank dated 7th January, 1978, in which the plaintiff admitted that he owed a certain amount to the bank, but he was not in a position to fix such amount. Indeed, the trial Court went further and said that the act of the plaintiff amounts to an admission that he has not paid the amount to the defendant bank. In addition, the trial Court pointed out that the only question before it was as to whether the plaintiff has succeeded in proving that he does not owe any amount to the defendant bank. In the light of the evidence which was given on behalf of the plaintiff, as well as by the defendant bank, the Court added that that was sufficient to find that the plaintiff still appears in the account books of the bank as a debtor, and for those reasons the action should be dismissed with costs.

We have considered very carefully what was said by the appellant in the present case and regretfully, in spite of the fact that we have tried to assist the appellant, it was impossible for him to understand the proceedings, and he was trying to evade certain questions put to him. There is no doubt from the judgment of the trial Court that he was given every assistance, but appellant persistently refused to heed the observations of the Court and insisted on his unreasonable stand.

For all these reasons, we would dismiss the appeal, but in the particular circumstances of this case, and because counsel appearing on behalf of the bank asked for his costs, we have no alternative but to order that the appellant should pay the costs of today's hearing.

Appeal dismissed with costs.