

1982 July 26

[A. LOIZOU, SAVVIDES, STYLIANIDES, JJ.]

CONSOLIDATED CONSTRUCTION CO. LTD.,
Appellants-Plaintiffs,

v.

KYPROS ECONOMIDES, TRADING UNDER THE
NAME ELECTROGRAFIKI KEEME,
Respondent-Defendant.

(Civil Appeal No. 6203).

Findings of fact made by trial Court—Based on the credibility of witnesses—Appeal—Principles on which Court of Appeal acts.

This appeal turned solely on the findings of fact made by the trial Court which were based on the credibility of witnesses.

Held, that having considered the totality of the evidence adduced, this Court is unable to interfere with the findings of fact made by the trial Judge and based on the credibility of witnesses; that the appellant has failed to satisfy this Court by discharging the onus cast upon him that this is one of the exceptional cases in which it should so interfere; that wide as they are the powers given to this Court by section 25 of the Courts of Justice Law 1960 (Law No. 14 of 1960), yet, as it has been repeatedly stated, it will do so very reluctantly and in cases where it is only a matter of justice and judicial obligation so to do (see *Christodoulou and Another v. Paphitis* (1981) 1 C.L.R. 535 at p. 538); accordingly the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

Christodoulou and Another v. Paphitis (1981) 1 C.L.R. 535 at p. 538.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Ioannides, D.J.) dated the 22nd November,

1980, (Action No. 2421/79) whereby plaintiffs' claim for damages for breach of contract was dismissed.

C. *Emilianides*, for the appellants.

Ch. *Mitsides*, for the respondent.

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Cur. adv. vult.

A. LOIZOU J. gave the following judgment of the Court. This is an appeal from the judgment of a judge of the District Court of Nicosia, by which the claim of the appellant company for damages for breach of contract of sale of a photocopy machine by the defendants claimed to be defective, was dismissed with costs.

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On the 2nd July 1977, the appellant Company purchased from the respondents a photocopy machine of the type "DEVELOP 444 Electrostatic No. GK 396" for the sum of £850.- in respect of which one year's full guarantee was given. In February 1978 the said machine started developing troubles by producing copies which had horizontal and vertical dark lines. The respondents were notified about it and they repaired it. Later in September 1978, it developed again similar defects and in respect of them the respondents wrote to the manufacturers the following:

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"We found ourselves in a dilemma over a default that has occurred with one of our Develop 444. machine. To give you an example, enclosed you will find nine specimens of different sizes and as you can see the black stripes appear after the 230mm. We traced all possible causes and changed the following parts:

1. Corona unit (complete).
2. High tension rectifier (complete).
- 30 3. Complete powder station, with pressure rolls.
4. Halogen lamp.
5. Paper and guillotine section (complete).
6. Control unit (complete).
7. Lens.
- 35 8. Checked and cleaned the mirrors and photographic compartment.
9. Checked the carriage.
10. Main Motor.

We will be very grateful if you would assist us in finding the remedy and the possible cause of the default. Awaiting your professional reply we remain”.

To this letter the manufacturers replied by letter dated 18th October, 1978, (exhibit 5), attributing thereby, “probably the problem which was occurring to asynchronous running of the main drive motor and the pressure roller motor” and adding that “in order to solve the problem, we are sending you, enclosed a gear (Z—26). Please attach this gear instead of gear (Z—25) at the main drive motor. Should this, however, be insufficient it would be necessary to change the complete motor”.

The defect was eventually repaired in February 1979 by the replacement of the spare parts sent by the manufacturers. During the period from September to February the machine was replaced by another one. In April 1979 a new problem arose, the respondents were notified about it and they sent their employee Kassinides, a technician for photocopying machines to look into the matter. He noticed that the problem of the machine was that it could not take through paper as two regulators had been tampered with and were not in position. He offered to repair it but the appellant Company made it clear that they were not prepared to pay for the repair and the repair was not carried out.

The trial Judge, having considered the evidence adduced before him concluded that the appellant Company had failed to prove that the photocopy machine in question had not been repaired and put into good condition. He believed the evidence of the respondents and their witnesses to the effect that the photocopy machine in question had been repaired duly and returned to the appellant Company in a working condition in February 1979 and he rejected the evidence of the appellant Company that the machine was delivered to them in February 1979 still not working. He reasoned that, had that been so they would not have used it to that extent after its repair judging from the great volume of copying paper purchased from the respondent. He further found that as the period of guarantee had lapsed there was no obligation on the part of the respondents to go on repairing the machine in question free of charge, particularly so when the problem developed in April 1979 was different

from that which had been repaired in February 1979 and which because it had first appeared before the lapse of the year's full guarantee he considered it as still covered by that guarantee.

5 Counsel for the appellant in inviting this Court to interfere with the findings of fact and the conclusions drawn thereon by the trial Judge, has argued that once the machine in question had unquestionably presented certain problems, it was not safe for him to infer that such defects were duly repaired and consequently this Court on appeal could interfere with such
10 findings and conclusions.

Having considered the totality of the evidence adduced, we find ourselves unable to interfere with the findings of fact made by the trial Judge and based on the credibility of witnesses. We are of the opinion that the appellant has failed to satisfy
15 us by discharging the onus cast upon him that this is one of the exceptional cases in which we should so interfere. Wide as they are the powers given to this Court by section 25 of the Courts of Justice Law 1960 (Law No. 14 of 1960), yet, as it has been repeatedly stated, it will do so very reluctantly and
20 in cases where it is only a matter of justice and judicial obligation so to do (see *Christodoulou & Another v. Paphitis* (1981) 1 C.L.R., p. 535, at p. 538).

For all the above reasons this appeal is dismissed with costs.

Appeal dismissed with costs.