

1982 November 19

[HADJIANASTASSIOU, DEMETRIADES, PIKIS, JJ.]

ANDREAS MICHAEL TSIAOS TREASURER OF THE
IRRIGATION DIVISION "KATZILOS",
OF PERISTERONA,

Appellant-Plaintiff,

v.

CHARALAMBOS KYPRIANOU TREASURER
OF THE IRRIGATION DIVISION "KATZILOS 2",
OF PERISTERONA,

Respondent-Defendant.

(Civil Appeal No. 6269).

Water Supply (Special Measures) Law, 1964 (Law 32/64)—Does not create any rights at Civil Law in favour of anyone affected as a result of sinking illegally a borehole—Only law that confers such a right is the Wells Law, Cap. 351, sections 7 and 8.

- 5 *Injunction—Interlocutory injunction—Possibility of success in the action remote—Application for injunction rightly refused.*

10 The trial Court dismissed plaintiff's application for an interim injunction restraining defendant from pumping any water from a borehole of his, pending the final determination of the action mainly on the ground that defendant's borehole was constructed at a distance of at least 790 feet from plaintiff's borehole and section 7* of Cap. 351 prohibited the sinking of a borehole at a distance of six hundred feet of any other borehole. Upon appeal by the plaintiff the sole issue for consideration was whether the
15 Water Supply (Special Measures) Law, 1964 (Law 32/64) conferred a civil law remedy on a party aggrieved from the unlawful sinking of a borehole within a controlled area:

Held, that Law 32/64 is designed to impose further limitations and restrictions upon the grant of a permit for the sinking of a

* Section 7 is quoted at p. 841 post.

borehole or well within a water reserve area; that it does not create any rights at civil law in favour of anyone affected as a result of sinking illegally a borehole.

Held, further, that the only law that confers a right in law upon owners of wells prejudicially affected from the sinking of a borehole or a well, is Cap 351, sections 7 and 8 in particular; that notwithstanding the provisions of Article 23.1 of the Constitution and those of Cap. 341, the owner of a source of water, as defined in s.7 of Cap. 351, is entitled to the remedies set out in s.8 of the same Law, where the supply of water diminishes as a result of the construction of another well, within a distance of 600 feet or less; that here, the distance that separated the two wells was not less than 790 feet; therefore, no actionable right vested in the appellants; that, consequently, the possibility of success was remote, and in the light of this reality the learned trial Judge was perfectly right to refuse to make an interim injunction permanent and discharge it instead; accordingly the appeal must be dismissed.

Appeal dismissed.

Appeal.

Appeal by plaintiff against the order of the District Court of Nicosia (Papadopoulos, P.D.C.) dated the 16th May, 1982 (Action No. 4852/80) whereby the interim order issued on 30.10.1980 on an ex parte application ordering the defendant not to pump water from borehole "Katzilos 2" at Peristerona village was dismissed.

E. Vrahimi (Mrs.), for the appellant.

A. Haviaras, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment of the Court. The appellant, Andreas Michael Tsiaos treasurer of the irrigation division "Katzilos", sued the treasurer of "Katzilos 2" and claimed an order of the Court that the members of "Katzilos 2" should be ordered not to pump any water from the borehole belonging to them. An ex parte application was filed for an interim injunction against the defendant no to pump any water from the said borehole pending the final determination of his action. Indeed in the affidavit in support of that application it was stated that the borehole of "Katzilos 2" was illegal and

that the water of "Katzilos" was seriously affecting the pumping of "Katzilos 2". The interim order was granted and was made returnable at a later date and although many efforts were made for the settlement of that case, eventually it came up for hearing
5 before the learned trial Judge.

The learned Judge having dealt with the provisions of section 32 of Law 14/60 and having quoted a number of cases to the effect that an applicant seeking an injunction must show that there is a serious question to be tried, proceeded to add that
10 although the case was long and bitterly contested there are two points which are undisputed. The first point is that the borehole of "Katzilos 2" has been constructed at a distance of at least 790 feet from "Katzilos" and the second one is that this action has been filed without a written consent of the District Officer.
15 As to the first point section 7 of Cap. 351 reads:

"Notwithstanding that a permit may have been granted by the Commissioner under s. 3 or 15 of this Law no well shall be sunk or constructed within a distance of six hundred feet of any point of any chain or system of wells whereby
20 underground water flows to the surface or of any spring or source of any water which flows naturally to the surface or within eighty feet of any other well from which water is raised to the surface by any means whatsoever if, by the sinking or the construction of any such well, the amount
25 of water in any such chain or system of wells or spring or source or other well is or is likely to be substantially diminished".

Section 8 of Cap. 351 reads:

(1) "If a person, beneficially interested in any chain
30 or system of wells or in any spring or source of water or in any other well, brings an action against any person who has sunk or constructed a well contrary to the provisions of s. 7 of this Law, the court may—

(a) make such order (including the filling in or closing
35 of such well) as may be required to prevent damage to the plaintiff and may award to the plaintiff such compensation as may appear reasonable and just:

Provided that the court shall not order the filling

in or closing of any such well, unless it is satisfied that there is a reasonable probability that its filling in or closing will prevent the continuation of the damage complained of;

- (b) order the person who has sunk or constructed the well to provide the plaintiff with such supply of water, continuous or periodical, as the Court may think reasonable and just. 5

(2) No action shall be brought under this section unless such action be commenced within two years of the completion of the sinking or construction of the well in respect of which the claim is made". 10

Section 3 of Cap. 341 reads:

(1) "Notwithstanding anything to the contrary contained in any other Law now in force in the Colony— 15

(a) all underground water (including second water) for which no measures have hitherto been taken enabling such water to be brought or raised to the surface or to run on the surface; and

(b) all water running to waste from any river, spring, stream or watercourse; and 20

(c) all other waste water, shall be deemed to be the absolute property of the Government, and no person shall take or utilize or take measures to utilize such water without the written permission of the Commissioner first obtained. 25

Provided that no permission under this subsection shall be required in respect of any water from any well or line of wells sunk or constructed in virtue of a permit of the Commissioner issued under the provisions of the Wells Law". 30

The trial Judge continued as follows:

"From the combined effect of the above cited authorities I find that the Republic has given a right to person who is beneficially interested in any chain or system of wells 35

or in any spring or source of water or in any well to seek a remedy against such persons who are in contravention of s. 7 of Law 351 i.e. a person who sunk or constructed a well at a distance of less than 600 feet at the maximum.
5 In essence I find that no remedy is offered against persons who have constructed or sunk wells etc. over a distance of 600 feet”.

Finally, the learned Judge concluded that in view of the provisions of section 32 of Law 14/60 the injunction cannot stand
10 and the interim order is dismissed with costs.

On appeal Mrs. Vrachimi in support of her grounds of law argued (a) that the trial Judge erroneously disregarded and/or did not give any weight to the fact that the area of the sub
15 justice borehole was declared as a “special reserve” under Law 32/64 and that such Law supersedes and renders Cap. 351 inapplicable in the present case; (b) that the trial Judge went wrong in relying on the provisions of Cap. 351 and holding that in essence no remedy is offered against persons who have constructed or sunk wells over a distance of 600 feet and that
20 such condition is not provided by Law 32/64.

We have carefully considered every aspect of the appeal. In the end the question turns on whether Law 32 /64 confers, as suggested on behalf of the appellants, a civil law remedy on a party aggrieved, from the unlawful sinking of a borehole
25 within a controlled area. The answer is in the negative. Law 32/64 is designed to impose further limitations and restriction upon the grant of a permit for the sinking of a borehole or well within a water reserve area. It does not create any rights at civil law in favour of anyone affected as a result of sinking
30 illegally a borehole. Not that this would help appellants for, at the time when proceedings were taken, a temporary permit was in existence that was made final, as we were informed on appeal.

The only law that confers a right in law upon owners of wells
35 prejudicially affected from the sinking of a borehole or a well, is Cap. 351, sections 7 and 8 in particular. Notwithstanding the provisions of Article 23.1 of the Constitution and those of Cap. 341, the owner of a source of water, as defined in s. 7,

Cap. 351, is entitled to the remedies set out in s. 8 of the same law, where the supply of water diminishes as a result of the construction of another well, within a distance of 600 feet or less. Here, the distance that separated the two wells was not less than 790 feet; therefore, no actionable right vested in the appellants. Consequently, the possibility of success was remote, and in the light of this reality the learned trial Judge was perfectly right to refuse to make an interim injunction permanent and discharge it instead. 5

In the result, the appeal is dismissed with costs. 10

Appeal dismissed with costs.