

1983 February 3

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

THE APHRODITE MATCHES CO. LTD.,

Appellant-Third Party,

v.

SEFERIS & IOANNIDES LTD.,

Respondent-Defendant,

and

ALPHA TRADING AND SHIPPING AGENCIES LTD.,

Respondent-Plaintiff.

(Civil Appeal No. 5346).

Contract—Evidence—Contract for sale of goods—Based on documentary and oral evidence—Construction of the documents a question of Law—But where necessary to take into consideration the conduct, the course of business or oral communications of the parties, the oral evidence has to be weighed and there has to be decided what was the real intention and meaning of the parties.

5

One of the directors of the respondent-plaintiff met a director of the respondent-defendant and informed him that the plaintiff was interested to buy safety matches for a customer in Saudi Arabia. As a result the defendant supplied the plaintiff with samples of matches manufactured by the appellant-third party.

10

The defendant then contacted the appellant and made inquiries about the supply of 100,000 gross of matches; and the appellant furnished the defendant with a document worded as follows:

15

“OFFER OF SAFETY MATCHES

100,000 GROSS F.O.B. Famagusta 4/6 per Gross.

DELIVERY: 20.000 GROSS monthly.

FIRST LOT JULY 1970

20

PAYMENT: LETTER OF CREDIT”.

After an exchange of cables between the plaintiff and the defendant an agreement was reached for the supply by the defendant to the plaintiff of 100,000 gross of safety matches.

The plaintiff found a purchaser in Saudi Arabia and entered into an agreement for the supply to him of safety matches; and, as a result, the said purchaser made the necessary banking arrangements for an irrevocable letter of credit in favour of the defendant for the amount of 10,000 English pounds (£10,000).

Then, the defendant issued a "requisition" for 50,000 gross of safety matches addressed to the appellant and sent, also, a letter to the Bank of Cyprus Ltd. by which such bank was irrevocably authorized, in relation to the said letter of credit, to pay to the appellant the sum of 221 mils per gross of safety matches on the strength of documents to be presented to the Bank by the defendant. On the same day the Bank of Cyprus Ltd. acknowledged receipt of the authorization in question and undertook to act according to the defendant's instructions; and copies of all this correspondence were sent to the appellant.

The appellant failed to supply the safety matches which were ordered by means of the aforementioned requisition, or any other quantity of safety matches at all, and when the plaintiff sued the defendant for breach of contract the appellant was made a third party to the proceedings. The trial Court sustained the action and held that the defendant was entitled to receive, by way of indemnity, from the appellant the equivalent in Cyprus currency of £1,500 English pounds which the defendant was ordered to pay to the plaintiff. Hence this appeal by the appellant-third party.

The trial Court rejected the evidence adduced by the appellant and accepted the version of the defendant who stated that the appellant had accepted the requisition.

Counsel for the appellant mainly contended that there was not concluded in law and in fact by way of offer and acceptance a valid agreement for the sale of 100,000 gross of safety matches by the appellant to the defendant and the finding of the trial Court about the existence of such an agreement was erroneous.

Held, that when the legal effect of any transaction is to be ascertained from a number of documents the meaning and effect

of such documents are matters of law, but where it is, also, necessary to take into consideration the conduct, the course of business or oral communications of the parties, the oral evidence has to be weighed and there has to be decided what was the real intention and meaning of the parties (see, inter alia, Halsbury's
 5 Laws of England, 4th ed., vol.17, p.20, para. 25); and that in the light of the foregoing there was, indeed, entered into a valid and binding agreement, as alleged by the defendant and found by the trial Court, for the supply of safety matches by the appel-
 10 lant to the defendant; accordingly the appeal must fail.

Appeal dismissed.

Appeal.

Appeal by the third party against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C.) dated the 16th September,
 15 1974 (Action No. 4796/71) whereby it was decided that the defendant company was entitled to receive by way of indemnity from the third party the equivalent in Cyprus currency of £1,500.- (English pounds).

T. Papadopoulos with *P. Ioannides*, for the appellant.

20 *L. Papaphilippou*, for the respondent-defendant.

E. Lemonaris, for respondent plaintiff.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant company, which was a third party at the trial, has
 25 challenged by means of this appeal that part of the judgment of the trial Court by which it was decided that the respondent-defendant company (to be referred to hereinafter as the "defendant") was entitled to receive, by way of indemnity, from the appellant the equivalent in Cyprus currency of 1,500
 30 English pounds (£1,500), legal interest and costs, which the defendant was ordered to pay to the respondent-plaintiff company (to be referred to hereinafter as the "plaintiff").

The salient facts of this case, as found by the trial Court, are briefly as follows:

35 One of the directors of the plaintiff, Andreas Ellinas, met a director of the defendant, Andreas Ioannides, and informed

him that the plaintiff was interested to buy safety matches for a customer in Saudi Arabia. As a result the defendant supplied the plaintiff with samples of matches manufactured by the appellant.

The defendant then contacted the appellant and made inquiries about the supply of 100,000 gross of matches; and the appellant furnished the defendant with a document worded as follows: 5

“OFFER OF SAFETY MATCHES

100,000 GROSS F.O.B. Famagusta 4/6 per Gross.

DELIVERY: 20,000 GROSS monthly. 10
FIRST LOT JULY 1970

PAYMENT: LETTER OF CREDIT”.

After an exchange of cables between the plaintiff and the defendant an agreement was reached for the supply by the defendant to the plaintiff of 100,000 gross of safety matches. 15

The plaintiff found a purchaser in Saudi Arabia and entered into an agreement for the supply to him of safety matches; and, as a result, the said purchaser made the necessary banking arrangements for an irrevocable letter of credit in favour of the defendant for the amount of 10,000 English pounds (£10,000). 20

Then, the defendant issued a “requisition” for 50,000 gross of safety matches addressed to the appellant and sent, also, a letter to the Bank of Cyprus Ltd. by which such bank was irrevocably authorized, in relation to the said letter of credit, to pay to the appellant the sum of 221 mils per gross of safety matches on the strength of documents to be presented to the Bank by the defendant. On the same day the Bank of Cyprus Ltd. acknowledged receipt of the authorization in question and undertook to act according to the defendant’s instructions; and copies of all this correspondence were sent to the appellant. 25
30

The appellant failed to supply the safety matches which were ordered by means of the aforementioned requisition, or any other quantity of safety matches at all, and when the plaintiff sued the defendant for breach of contract the appellant was made a third party to the proceedings. 35

The first main submission of counsel for the appellant has been that there was not concluded in law and in fact by way

of offer and acceptance a valid agreement for the sale of 100,000 gross of safety matches by the appellant to the defendant and that the finding of the trial Court about the existence of such an agreement is erroneous.

5 As it is clearly pointed out by the trial Court in its judgment the evidence which was placed before it in this respect was not only documentary, namely the aforementioned "offer of safety matches" by the appellant and "requisition" by the defendant, but, also, oral; and, in this respect, the trial Court,
10 rightly in our view, did not treat as reliable the denial of the managing director of the appellant, Takis Scarparis, that there was ever concluded a binding agreement, as aforesaid, between the appellant and the defendant. The trial Court found to be "more probably and down to earth" the opposite version of
15 the defendant. One of the directors of the defendant, Costas Seferis, whose evidence appears to have been believed by the trial Court, stated that Scarparis had accepted the "requisition"; and this witness went on to state that he had discussed on the telephone with Scarparis a price discount which Scarparis
20 accepted.

When the legal effect of any transaction is to be ascertained from a number of documents the meaning and effect of such documents are matters of law, but where it is, also, necessary to take into consideration the conduct, the course of business
25 or oral communications of the parties, the oral evidence has to be weighed and there has to be decided what was the real intention and meaning of the parties (see, in this respect, *inter alia*, Halsbury's Laws of England, 4th ed., vol. 17, p. 20, para. 25).

30 In the light of the foregoing we are of the opinion that there was, indeed, entered into a valid and binding agreement, as alleged by the defendant and found by the trial Court, for the supply of safety matches by the appellant to the defendant.

35 The other main submission of counsel for the appellant has been that the defendant failed to comply with the prerequisite of securing a letter of credit in favour of the appellant and that the finding to the contrary of the trial Court on this point is wrong.

The events which relate to the opening of the letter is credit—which was what is known in banking practice as a “revolving” one—have already been referred to in this judgment and need not be repeated.

As has already been stated copies of all the relevant correspondence between the defendant and the Bank of Cyprus Ltd. were sent to the appellant and so there was, as was found by the trial Court, at least tacit acceptance by the appellant of what had been arranged as regards the letter of credit by means of such correspondence. 5
10

Furthermore, there was evidence which was accepted by the trial Court and which shows that the appellant’s consent regarding the arrangements in relation to the letter of credit was not merely tacit but, also, express: Seferis, who, as stated earlier, was one of the directors of the defendant, testified that the said arrangements were agreed to between him and Scarparis, the managing director of the appellant; and the version of Seferis is confirmed, in this connection, by Andreas Ioannides, another one of the directors of the defendant; and moreover support for such version is found in the evidence of Sotiris Christofides, who at the material time was in charge of the Bank of Cyprus documentary credit department. 15
20

In the circumstances, we are of the opinion that there was correctly found by the trial Court that there was substantial compliance by the defendant with the requirement regarding the letter of credit and that the appellant was satisfied with such compliance; and, actually, there was never relied on by the appellant, as the reason for the failure of the appellant to supply the matches in question, any alleged default in connection with the arrangements for a letter of credit. 25
30

All along the appellant’s attitude has been to deny the existence of the relevant contract, which, however, was rightly found by the trial Court to have been concluded between the defendant and the appellant.

For all the reasons which have been set out in this judgment this appeal fails and is, therefore, dismissed with costs. 35

Appeal dismissed with costs.