1983 November 17

[MALACHTOS, DEMETRIADES AND SAVVIDES, JJ.]

1. THE ATTORNEY-GENERAL OF THE REPUBLIC OF CYPRUS,
2. THE MINISTER OF COMMERCE AND INDUSTRY,

Appellants-Defendants,

v.

GRECA SHOE INDUSTRY LTD.,

Respondents-Plaintiffs.

(*Civil Appeal No.* 5997).

Findings of trial Court—Guarantee—Under export credit insurance service—Court of Appeal not satisfied that the finding of trial Court that respondents not in breach of the guarantee as to be disentitled to recove their claim was wrong.

This litigation arose out of a guarantee given by appellant 2 to the respondents under an export credit insurance service scheme for payment of 90 per cent of any loss that the respondents would have to sustain in connection with the export of shoes from Cyprus. The respondents as members of the scheme claimed certain amounts from the appellants as compensation under the said guarantee. These amounts were not disputed by the appellants and their only defence was that the respondents were not entitled to any compensation as they were in breach of the terms of the guarantee.

The trial Court came to the conclusion that on the facts of the case and the evidence before it, the respondents were not in breach of any conditions of the Comprehensive Guarantee which would disentitle them from claiming compensation. Hence this appeal which turned mainly on the above finding of the trial Court.

Held, that this Court has not been satisfied that the finding of the trial Court that the respondents were not in breach of the guarantee as to be disentitled to recover their claim was wrong; accordingly the appeal must fail.

Appeal dismissed.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J. and Stavrinides, Ag. D.J.) dated the 30th June, 1979 (Action No. 709/78) whereby they were adjudged to pay to the plaintiffs the sum of £9,211.– due as a guarantee under an export credit insurance scheme.

A. Frangos, Senior Counsel of the Republic, for the appellants.

R. Stavrakis, for the respondents.

Cur. adv. vult.

MALACHTOS, J.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES, J.: This is an appeal against the judgment of the Full District Court of Nicosia, whereby the appellants were adjudged to pay to the respondents the sum of £9,211.–, plus interest on £8,700.– at 8 per cent per annum as from 16.12.1977 and costs. Appellant 1 is the Attorney–General of the Republic of Cyprus, representing the Government of the Republic of Cyprus and appellant 2 is the Minister of Commerce and Industry. The respondents are a shoe manufacturing industry of Nicosia. The cause of action arose out of a guarantee given by appellant 2 to the respondents under an export credit insurance service scheme for payment of 90 per cent of any loss that the respondents would have to sustain in connection with the export of shoes from Cyprus.

The facts of the case are briefly as follows:

Appellant 2 for the purpose of encouraging and assisting manufacturers of goods in Cyprus to export their goods abroad, established in 1975 an export credit insurance service whereby in consideration of a premium paid on the value of goods exported, a guarantee was given to an exporter joining the scheme for any loss up to 90 per cent which such exporter might have sustained by the failure of the buyer to pay the value of the goods supplied to him.

The respondents on the 8th December, 1975, submitted their proposal for joining the scheme as from the 1st January, 1976. An offer was made by appellant 2 on the 13th December, 1975, which was accepted by the respondents and as a result of the payment of the agreed premium by the respondents, appellant

gave to the respondents a guarantee whereby he agreed and undertook to pay to respondents 90 per cent of any loss being not less than £25.- with a maximum liability of £75,000.-, which respondents might sustain in connection with the export from Cyprus of shoes manufactured by them in Cyprus. The agreed premium was as follows:

Initial premium £150.-. Premium rate per hundred Pounds: In case of cash against documents, 300 mils, in case of credit not exceeding 90 days, 500 mils and in case of credit not exceeding 180 days 700 mils.

The said guarantee was subject to the terms set out in a comprehensive guarantee leaflet which formed part and parcel with the guarantee. After the said guarantee became effective, the respondents exported to their customers, namely Dical B.V. of Holland, shoes during the whole of 1976. Though the buyer was paying more or less regularly for exports to him, with the exception of some delay on certain occasions, he failed to pay the value in respect of goods shipped on the last six occasions out of more than thirty shipments, and the value of which was payable between the 16th December, 1976 and the 12th February, 1977. The value of goods which remained unpaid amounted to 103.345,97 D.M. but the balance of the amount which was claimed from the appellants, as appearing in the particulars of account attached to the Statement of Claim as exhibit 1, is as follows:

Unpaid Drafts by DICAL		103.345,97 D.M.
Less:		
1. Amount in respect of complaints	11.357,58 D.M.	
2. Difference of 3 styles	3.620	
3. 5 per cent commission on all exports	11.306	
4. Cheque paid on 29.12.77	25.000	51.283,58
	Balance	52.062,29 D.M.
equivalent to	C£8,700.-	
Plus interest charged by the Bank till 16.12.1977	1,535.-	
	C£10,235.-	

90 per cent of such balance payable by the defendant C£ 9,211.-

Plus interest at 8 per cent on C£8,700.- as from 16.12.77 to date of payment.

Declarations, that payment of the bills issued by the buyer in respect of such goods, was overdue, were submitted to the Ministry of Commerce and Industry on 26th January, 1978, informing them at the same time that they had asked the buyer by telex, for the reason of such delay.

The amounts claimed by the respondents were not disputed by the appellants, their only defence being that the respondents were not entitled to any compensation as they were in breach of the terms of the guarantee.

The trial Court having heard the evidence called by both sides, came to the conclusion that on the facts of the case and the evidence before it, the respondents were not in breach of any conditions of the Comprehensive Guarantee which would disentitle them from claiming compensation.

We shall refer to certain parts of the judgment concerning fiindings of fact and inferences drawn by the trial Court against which most of the grounds of appeal are directed.

The trial Court said the following concerning delays in the payments of bills.

> "It is clear that 24 Bills of Exchange were honoured by the buyers and there was little if any delay in payment of at least 24 of these Bills of Exchange. They were settled between 5 and 30 days after the due date. For the Bill of Exchange due on the 5th June, 1976 and 23.10.1976 there was a delay of 65 and 66 days in payment respectively.
>
> One must notice however that after the Bill of the 5.6.1976 four Bills were paid promptly. We use the word 'promptly' allowing a few days delay which is apparently customary in the trade and after the Bill of the 23.10.1976 another eight Bills of Exchange were promptly paid.

One other fact which is not also disputed is that whilst some of these Bills were due two shipments were sent to Dical to Holland.

Now we are asked to say whether in view of this behaviour of the purchaser and the non-disclosure of these facts by the plaintiff to the defendants amounts to a breach of article 4 of the Guarantee or any other articles of the Guarantee which Mr. Frangos has suggested.

Before we arrive at our conclusion we bear in mind two other facts:- One is that the Ministry of Commerce and Industry has supplied the insured with the form to be submitted to the Ministry in the end of each month stating therein all Bills which are overdue for over 30 days.

Reasonably one may infer that the Ministry would allow or would not be concerned or would not consider it as a risk to allow a purchaser a delay of payment of upto 59 days.

The other fact which we have in mind is the evidence of Mr. Anatolitis who seems to be very well conversant with the trading practices and who on being asked of his opinion about Dical and how he would consider him, a good or a bad client he said that having in mind the payments, he would consider him as a good client.

We have given careful consideration to all the facts of the case. We have gone through all the evidence repeatedly and all the documents before us and we have in mind the restrictions and conditions imposed by the Guarantee and the Proposal Form.

On the facts of this case we are of the opinion that the plaintiff is not in breach of any conditions which would disentitle him from compensation".

The above findings of the trial Court were contested by the appellants and the following grounds of appeal have been advanced and argued by learned counsel on their behalf in his effort to prove that the trial Court was wrong in finding that the respondents were not in breach of any condition which would disentitle them to recover:

"1. The trial Court did not give any reasons for its findings and decision which, in any event, were not warranted by the evidence.

2. The judgment of the trial Court is wrong in law in that it ignored and/or overlooked and/or did not take into consideration and/or did not give due weight to substantial provisions of the Comprehensive Guarantee and/or the Proposal for Comprehensive Guarantee.

3(a) The approach to and the principle followed by the trial Court on the issue of delay and the length thereof was wrong and/or contrary to and/or inconsistent with plaintiffs' obligations under the Comprehensive Guarantee and/or the Proposal for Comprehensive Guarantee.

(b) The trial Court failed to assess and/or calculate the delay before plaintiff came to know about the payment of the bills, the crux of the matter being the delay to the knowledge of the plaintiff.

4. The trial Court wrongly inferred that the Ministry would allow or would not be concerned or would not consider it as a risk to allow a purchaser a delay of payment of up to 59 days.

5(a) The trial Court wrongly found that after the bill of the 5.6.1976 four bills were paid promptly.

(b) Even if the said four bills were paid promptly, a fact which was denied, it is immaterial to the delay in the payment of the aforesaid bill of the 5.6.1976 and its non-disclosure viewing the provisions of the Comprehensive Guarantee and/or the Proposal for Comprehensive Guarantee".

The judgment of the trial Court then goes on as follows:

"We do not agree with Mr. Frangos that there was a duty imposed on the plaintiff of immediate notification to the Ministry of any delay in the Bills nor do we agree that in the prevailing circumstances the plaintiff has taken unreasonable risks.

It appears that there is in the trade business a custom of leaving some Bills delayed for short times and it appears that it was the policy of the Ministry of Commerce and Industry to let things in the customary course with the sole aim of promoting and encouraging sales.

What in our opinion would be a demand by the Ministry of the exporters would be reasonable diligence and care in the exportation of their goods without taking too many risks but apparently export has certain risks and these risks are exactly those which the Ministry wanted to abolish in order to encourage exports by providing the Export Insurance Scheme.

We are sure that it would not be the policy of the Ministry to order stoppage of further shipments to Dical nor could we say that the Ministry would immediately cancel the insurance of the plaintiff. It is not so much the letter of the insurance policy which must be examined but the spirit coupled with the custom. In fact we dare say that there is no strict literally prohibition of any of the acts which the plaintiff did in his export business.

On reading article 4 of the Comprehensive Guarantee or article 13 of the Proposal Forms one may see that there is a reasonable latitude given to the insured in complying with the terms of the insurance".

Counsel for appellants contests the above findings, contending under grounds 6, 7 and 8 of this appeal that:

"6(a) The trial Court was wrongly influenced by the evidence of witness 2 for plaintiff, wrongly relied on his evidence, and/or wrongly found that he was well conversant with trading practices.

(b) The trial Court wrongly found that 'a few days delay is apparently customary in the trade'.

(c) There was no evidence and/or satisfactory evidence of any custom in the trade in which the trial Court could safely rely.

(d) In any event the Comprehensive Guarantee and/or the Proposal for Comprehensive Guarantee leave no

room for custom or trade practice, the issue thereunder being strict performance and observance of the stipulations contained therein.

7. The trial Court totally disregarded the contents of exhibit 7 in which the plaintiff himself speaks about Dical and of his delays of which he never informed defendant.

8. The trial Court wrongly took certain matters for granted, e.g. 'that there is in the trade business a custom of leaving some bills delayed for short times', that it was the policy of the defendant 'to let things in the customary course with the sole aim of promotion and encouraging sales', that 'it would not be the policy of defendant to order stoppage of further shipments or immediately cancel the insurance of the plaintiff' ".

Learned counsel for the appellants in his long and able address before us, tried to base his case on the terms of the comprehensive guarantee contending that the respondents were in breach of the terms of such guarantee which terms were a condition precedent to the contract of suretyship and as a result the respondents were disentitled to raise any claim for loss.

We wish to point out that nothing is mentioned in the statement of defence that the appellants "have as a result of such breach been discharged from the said guarantee" but we shall consider such matter being in issue though alleged in an indirect way that the "respondents are disentitled to recover under the guarantee". Further, there is no allegation in the defence that as a result of the alleged breach of the terms of the guarantee appellant 2 had, at any time after he became aware of the alleged breach, given "a written notice to the INSURED terminating the guarantee" and indicating his intention "to retain any premium paid".

The terms of the Comprehensive Guarantee which are alleged as having been breached by the respondents, are Articles 4, 5, 6, 7 and 13 and, also, para. 13(a) and 15 of the proposal. Their respective provisions read as follows:

"Article 4. DISCLOSURE OF FACTS AND MINIMISING LOSS

Without prejudice to any rule of law, it is declared that this Guarantee is given on condition that—

a. the INSURED has at the date of this Guarantee disclosed and will at all times during the operation of this Guarantee promptly disclose all facts in any way affecting the risks guaranteed; and

b. the INSURED shall use all reasonable and usual care, skill and forethought and take all practicable measures, including any measures which may be required by the Minister (including if so required the institution of legal proceedings); to prevent or minimise loss; and

c. the INSURED shall notify the Minister in writing of the occurrence of any event likely to cause a loss within 30 days of becoming aware of any such occurrence; and

d. the INSURED shall upon request provide all such other information as the Minister may require.

Article 5. STATEMENTS IN PROPOSAL AND DECLARATION

The Proposal (including the Declaration therein) shall be incorporated with this Guarantee as its basis. If any of the statements contained in the Proposal is untrue or incorrect in any respect, this Guarantee shall, unless the Minister otherwise elects in writing, be void but the Minister may retain any premium that has been paid.

Article 6. OBSERVANCE OF STIPULATIONS

Due performance and observance of each and every stipulation contained in this Guarantee and in the Proposal shall be a condition precedent to any liability of the Minister hereunder.

Article 7. FAILURE TO COMPLY WITH CONDITIONS

No failure by the INSURED to comply with any of the conditions of this Guarantee shall be deemed to have been excused or accepted by the Minister unless the same is expressly so excused or accepted by the Minister in writing.

Article 13. DECLARATION

a. The INSURED shall make declarations to the

Minister in respect of all contracts to which this Guarantee applies and all amounts overdue for payment; such declarations shall be made by completing such forms as may be required by the Minister for that purpose and by returning the forms to the Minister by the time stated therein.

b. If the INSURED has no contract in respect of which a declaration is required to be made for any period stated in the declaration form, the INSURED shall make a declaration to that effect by completing such form as may be required by the Minister for that purpose and by returning the form to the Minister by the time stated therein.

c. Failure by the INSURED to make any declaration required by this Article within a period of 60 days from the time stated in the declaration form shall be deemed to be a breach of this Guarantee and the Minister shall after the expiry of that period be entitled to give written notice to the INSURED terminating this Guarantee and to retain any premium paid".

Para. 13 of the Proposal reads:

"We further agree that, unless otherwise agreed by you in writing, you will be under no liability in respect of a particular buyer in connection with—

a. any contract with that buyer having a Date of Contract after the date on which we have learnt that that buyer is in financial difficulties,

or

b. any amount owing by that buyer for goods despatched to him after the date on which we have learnt that the position of that buyer appears to be such as to make the despatch of goods to him undesirable".

Para. 15 of the Proposal:

"We undertake to carry on our business with due care in the making of contracts and the despatch (and delivery) of goods thereunder and in regard to the conditions of the contract and the trustworthiness of the buyer".

Counsel for appellants contended that the finding of the trial Court that the Ministry would allow or would not consider it as a risk to allow a delay of payment of upto 59 days is wrong as such finding is contrary to paragraph (c) of Article 4 of the Guarantee.

For the purpose of construing a provision of the Comprehensive Guarantee, we have to consider the Guarantee as a whole and, in particular, such provisions as are interrelated. Article 4(c) speaks of "events likely to cause a loss". What such events are? In answering this question, one has to look whether there is any provision in the Guarantee defining such events. Article 12 of the Guarantee under the heading "causes of loss" the events which shall be considered as constituting causes of loss for the purpose of the guarantee, are given as ten and are enumerated in Article 12 under paragraphs R.01 to R.10. The use of the letter "R" is not explained anywhere in the Guarantee, but, presumably, it may stand for the word "Risk". The material part of Article 12 for the purposes of this appeal, reads as follows:

> "For the purposes of this Guarantee (and to the extent to which they are applied by the relevant sections) the following shall constitute cause of loss—
>
> R.01. The Insolvency of the buyer;
>
> R.02. The failure of the buyer to pay to the INSURED within four months after the Due Date of Payment the amount owing in connection with goods delivered to and accepted by the buyer;
>
> .....".

Reading Article 4(c) in conjunction with Article 12, the inference we can draw is that "the occurrence of any event likely to cause a loss" under para. (c) of Article 4 must be such as to fall within the express provisions of Article 12. The duty, therefore, cast on the insured under para. (c) of Article 4 is as expressly stated therein to notify the Minister of such event within 30 days of becoming aware of it, that is, insolvency of the buyer, his failure to pay the insured within four months after the Due Date of Payment etc. As to what shall be deemed as amounting to "Insolvency" in the Interpretation clause of the Guarantee Article 9 it is stated under (j):

"j. 'Insolvency' shall be deemed to occur when—

i. the buyer is declared bankrupt; or

ii. if the buyer is a company, an order for winding up has been made on the grounds that the company is insolvent; or

iii. an order for administration of the buyer's affairs has been made by a Court for the benefit of his creditors; or

iv. in the course of execution of a judgment, the levy of execution has not satisfied the debt either in full or in part; or

v. the buyer has made a valid assignment, composition or other arrangement for the benefit of his creditors generally; or

vi. the INSURED shows, to the satisfaction of the Minister, that the financial state of the buyer is such that even partial payment is unlikely and that to enforce judgment or to request that the buyer be declared bankrupt or wound up would have no other foreseeable result than one out of proportion to the costs of the proceedings; or

vii. such conditions exist as are by any other system of law substantially equivalent in effect to any of the foregoing conditions".

In the present case, there is no allegation that any of the events set out in Article 12 has occurred casting upon the respondents the duty of notifying the Minister within 30 days from its occurrence, as contemplated by Article 4(c).

Counsel for appellant made also reference to paragraph (a) of Article 13 concerning the duty of the respondents to make declarations as to amounts overdue for payment. Such declarations, counsel said, are declarations on forms EC 137 provided by the Export Credit Insurance Section (E.C.I.S.) of the Ministry of Commerce and Industry which had to be submitted to such Ministry at the end of each month. Copies of such declarations are attached to the letter exhibit 2(5). It is stated in the printed part of such form as follows:

"DECLARATIONS OF PAYMENT MORE THAN 30 DAYS OVERDUE to be despatched to ECIS at the end of each month.

If the amount remains overdue should be made each month.

A separate form should be used for each buyer.

In cash against documents transactions due date is regarded as the date of arrival of the goods".

and under a foot note:

"Failure to declare may excuse the Minister from liability".

It is clear from the contents of such form that if at the end of the month a payment of a bill remained overdue for less that 30 days the insured need not make any declaration in respect of such overdue bill at the end of that particular month but at the end of the following month when such payment would have remained overdue for more than 30 days. Therefore the inferences of the trial Court that the Ministry would allow or would not consider it as a risk to allow a purchaser a delay of payment of upto 59 days, was correct and warranted by the evidence before it.

Counsel for the appellants further argued at some length that even a delay of payment of less than 30 days from the date when a bill was due for payment, and he enumerated a number of instances when this happened, was a fact which had to be brought to the knowledge of the Minister and that in any event the respondents should have discontinued sending goods after a bill remained unpaid beyond its due date for payment till payment of the overdue bill was settled. Such course would have been not only undesirable but also extremely dangerous and in breach of paragraph 13 of the Proposal resulting to the release of the Minister of any liability in respect of contracts entered after the respondents have learned that the buyer was in financial difficulties or in respect of goods despatched to the buyer after respondents have learned that the position of the buyer was such as to make despatch of goods to him undesirable, a fortiori, counsel contended that such duty existed in the case of two bills due for payment on the 5th June, 1976 and 23rd

October, 1976 and which were paid with a delay of 65 and 66 days respectively without the respondents having informed the Minister about such delay and without having discontinued to despatch goods to the buyer.

In concluding on this point, counsel contended that the Court was wrong in finding that there was a trade custom justifying a delay of a few days and in any event such practice would not be applicable in the circumstances of this case.

Leaving aside, however, for a moment the existence or not of a trade custom and whether such custom is applicable where there is express provision in a guarantee to the contrary, we are going to examine whether it was within the contemplation of the parties that when bills were overdue for 30 days, such delay would have amounted to such an event as to lead the respondents to infer that the buyer was in financial difficulties as would render the further despatch of goods to him undesirable or dangerous and that they had to inform the Minister accordingly.

That such delay was not to be treated as amounting to such a risk can be clearly inferred from the terms of the Guarantee and the conditions set out in the declaration forms supplied by the Ministry of Commerce to the respondents and which had to be submitted at the end of each month in respect of payments overdue for more than 30 days. Therefore, as already explained, if a payment was due on the 1st or 2nd day of a particular month it need not be declared at the end of such month, as not being overdue for more than 30 days, but at the end of the following month that is whilst overdue for 58 or 59 days and this was tolerable and in fact was in compliance with the conditions of the Guarantee and the written instructions on the declaration form provided by the Ministry.

The finding, therefore, of the trial Court that it was customary in the trade to allow a delay of a few days is not in conflict with the provisions of the guarantee which as found above, allow more laxity than a few days delay. It was in evidence before the Court coming from the Managing Director of the respondents and corroborated by a responsible officer of the Central Bank of Cyprus that it is customary in the trade that bills may be paid with a delay of one month or more, without

this being an indication that the creditor is a bad one or in financial difficulties to face his responsibilities. Such evidence has not been contradicted by the witness called by the appellants who was the officer in charge of the scheme of insurance of exports. The finding, therefore, of the trial Court that there was a trade custom was open to it and warranted by the evidence. Counsel for the appellants, when arguing the case before us, conceded that even if payment of a bill by the buyer is effected on the date when the bill becomes due for payment, by the time the money comes to Cyprus and the respondents are notified, a period of up to 15 days and sometimes even longer may lapse.

We shall next come to consider whether the respondents were in breach of the Guarantee by despatching goods to the buyer after the two bills due for payment on 5th June, 1976 and 23rd October, 1976 remained overdue for 65 and 66 days respectively. The Managing Director of respondents gave evidence and explained the reasons why the despatch of goods was not considered by them as undesirable after such bills were overdue for such time and for their failure to make a declaration that they were overdue for more than 30 days. It is in evidence, and the trial Court so found, that after the bill of 5.6.1976 four bills were paid and after the bill of 23.10.1976 another eight bills were paid, facts which could reasonably lead the respondents to believe that there was no intention on the part of the buyer to refuse the payment of the said two bills, and that it was likely that payment was made and there was a delay in the transfer of the money by one Bank to the other. But having already found that a delay of upto 59 days was tolerable, was a delay of a few more days a fact that would have disentitled the respondents from collecting anything on their claim? Before answering this question, we have to examine what would have been the effect of failure of the insured to submit a declaration of overdue bills, at the end of a month. Under Article 13(c) such failure would have amounted to a breach of the Guarantee entitling the Minister to terminate the Guarantee by notice in writing if the insured failed "to make any declaration required by this Article within a period of 60 days from the time stated in the declaration form". According to the contents of the declaration form such declaration had to be made at the end of the month and only in case where a

payment was overdue for more than 30 days. Therefore, the insured would have committed a breach of Article 13 of the Guarantee if within a period of 60 days from the end of the month for which the declaration had to be made he failed to make such declation. This, however, was not the case in either of the two instances, because in the case of the first bill which was due for payment on the 5th of June, 1976 and for which a declaration that it was overdue for more than thirty days had to be made at the end of July, the bill was paid about the middle of August which was not outside the period of 60 days contemplated by Article 13(c) of the Comprehensive Guarantee. The same applies to the bill which was due on 23.10.1976 and was paid on 29.12.1976.

It may be observed that the footnote on each declaration form has a warning that if a declaration is not made for an overdue bill, the Minister may refuse to pay in respect of such bill. This, however, cannot be deemed as affecting the provisions of Article 13(c) of the Guarantee but clearly its object is that in addition to the powers under Article 13(c) the Minister may refuse payment of that particular bill in respect of which no declaration was made. This inference is supported by the evidence of the officer in charge of the scheme, who was called by the appellants and who in answering a question as to what would have happened if the insured did not submit form EC 137 at the end of a month in respect of bills overdue for more than 30 days his answer was, "if at the end the buyer does not pay, the Ministry will have no responsibility for those exports".

In the present case the respondents do not claim for instalments which were overdue for more than 60 days from the end of previous month as all six instances in respect of which the declarations were made and the claims arose were for bills due between 16.12.1976 and 12.1.1977 default of payment of which had to be declared for some of them by the end of January, 1977 and for the rest by the end by February, 1977. The declarations were submitted by the respondents in respect of all on the 28th January, 1977.

Under ground 7 of the appeal, counsel for appellants complains that the trial Court totally disregarded the contents of exhibit 7 in which the respondents themselves speak about

DICAL and all his delays of which he never informed that appellants. Such letter which in fact is attached to exhibit 2(6) is a letter sent by the respondents to the buyer DICAL on the 28th February, 1977, one month after they had submitted their declarations to the Ministry that payment of six bills was overdue and after they had discontinued despatching goods to the buyer. Copy of such letter was sent to appellant 2 by letter dated 1st March, 1977, together with photocopies of other letters sent to the buyer at different periods with a request that they contact the buyer and arrange a meeting in order to discuss the matter of paying money due. Counsel drew our attention to the respondents' admission in such letter that there were delays of payment on the part of the buyer and contended, that such delays should have been brought to the notice of the appellants in time Some of such extracts read as follows:

> "Another main reason for not making all your orders and which you know, as we already told you, is that you were delaying and we needed the money to go on ... We have emphassized to you that drafts should be paid on the exact dates, they were always delayed .....
>
> Every time we sent telexes or phoned you, you kept telling us that drafts were already paid to your Bank was giving a negative answer to our Bank.... During your visit last August you promised that as soon as you go back to Holland, you would pay all the drafts due ..."

All these extracts, counsel submitted, indicate that the buyer was not a good client and that from the moment the respondents found out that he was a bad client, they should have notified the appellants accordingly.

We find ourselves unable to agree with such contention. Neither by such letter nor in their evidence the respondents admitted that the buyer was a bad and unreliable client, a fact about which the appellants themselves were more conversant than the respondents, according to the evidence. In his evidence, the main witness for the appellants, said that before giving the guarantee to the respondents, they had information from the Banks and other sources that the buyer had no capital

of his own and was of no good financial standing and had no good recommendations. Nevertheless, having taken into consideration the considerable dealings which he had with the respondents during the previous years without any loss suffered by the respondents, they overlooked such information and gave the guarantee to the respondents.

Once the respondents, as already explained, have not committed any breach of express provisions in the guarantee, we see no reason that an additional duty was cast upon them to mention about delays which were settled by the buyer or infer from such delays that the buyer was insolvent in the sense contemplated by the comprehensive guarantee.

Having carefully considered all arguments advanced by learned counsel for the appellants, we have not been satisfied that the finding of the trial Court that the respondents were not in breach of the guarantee as to be disentitled to recover their claim, was wrong.

In the result, the appeal fails and is hereby dismissed with costs in favour of the respondents.

Appeal dismissed with costs.