

1984 November 12

[TRIANAFYLIDES, P., HADJIANASTASSIOU AND DEMETRIADES, JJ.]

CHRISTOFIS PETROU CHARALAMBOUS,  
A MENTAL PATIENT THROUGH THE ADMINISTRATOR  
OF HIS PROPERTY ANDREAS PETROU CHARALAMBOUS,  
*Appellant-Defendant.*

v.

MICHALAKIS G. KRYSTALLIS,  
*Respondent-Plaintiff*

(Civil Appeal No. 5606).

*Contract—Mental patient—Order adjudicating him a mental patient in force—Only the District Court can make a valid disposition of his property—He cannot enter into a valid contract—Section 11(1) of the Contract Law, Cap. 149 and sections 6 and 27(1) of the Mental Patients Law, Cap. 252.*

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The sole issue in this appeal was whether, in view of the provisions of section 11(1)\* of the Contract Law, Cap. 149 and section 27(1)\*\* of the Mental Patients Law, Cap. 252, a contract entered into by appellant with the respondent was invalid because of the existence at the time of its making of a Court order adjudicating him a mental patient.

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It was in evidence that notwithstanding the temporary discharge of the appellant from the Patients Institute where he was confined the order of his adjudication as a mental patient remained in force. Under section 6\*\*\* of Cap. 252 an adjudication order remains in force until revoked by a subsequent Court order.

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*Held*, that since the order adjudicating the appellant a mental patient was not revoked the property he agreed to sell in this case was not in his custody and he had no control of it (see

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\* Section 11(1) is quoted at pp. 657–658 post.

\*\* Section 27(1) is quoted at pp. 658–659 post.

\*\*\* Section 6 is quoted at p. 659 post.

section 27 of Cap. 252); that only the District Court could sanction a valid disposition of the property; that the contract of sale entered into by the appellant was abortive and that no valid contract ever came into existence; accordingly the finding of the trial Court that there was a valid contract and the order of damages made thereupon must be reversed.

*Held*, further, that the non-appointment of an administrator does not render possible the transaction in question notwithstanding the provisions of section 27(1) of Cap. 252; and that as the property was within the provisions of section 27(1) it was not possible for the appellant to enter into a contract for the sale of his property.

*Appeal allowed.*

### Appeal

Appeal by defendant against the judgment of the District Court of Limassol (Stylianides, P.D.C. and Hadjitsangaris, S.D.J.) dated the 28th April, 1976 (Action No. 1039/73) whereby the appellant was adjudged to pay to plaintiff the sum of £3008.— as damages for breach of contract of sale of land.

*A. Neocleous*, for the appellant.

*L. Tsikkinis* with *S. Constantinides*, for the respondent.

*Cur. adv. vult.*

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: The grounds of appeal in the present case raise one issue only: Whether the contract made by the appellant with the respondent was invalid because of the existence at the time of its making, of a Court order adjudicating him a mental patient. The trial Court found on evidence before it, that notwithstanding the existence of the order, he was of sound mind when this contract was made. Consequently, the contract was valid and enforceable under the provisions of ss. 11 and 12 of the Law of Contract, Cap. 149, which reads as follows:—

“11.(1) Subject to the provisions of subsection (2), every person is competent to contract who—

- (a) is of sound mind; and  
 (b) is not disqualified from contracting by any Law.

(2) The law in force in England for the time being relating to contracts to which an infant is a party shall apply to contracts to which a person who has not attained the age of eighteen years is a party: 5

Provided that a married person shall not be deemed to be incompetent to contract merely because such person has not attained the age of eighteen years.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. 10

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. 15

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind".

Indeed, on a review of the record, it was open to the trial Court to find that the appellant was of sound mind when the contract was made. That much could not be disturbed on appeal. On the other hand, it does not solve the problem before us either. We are required to decide whether the subsistence of the order made it impossible for the appellant because of the provisions of s.27 of Cap. 252 to enter into a contractual arrangement disposing of his property. This section reads:- 20 25

"27.(1) The District Court having jurisdiction in the place where any mental patient or criminal mental patient usually resided before his confinement as a mental patient or a criminal mental patient (hereinafter referred to as the District Court) shall have the custody, control and management of the property of such mental patient or criminal mental patient. 30

Provided that if in any case there be any doubt as to the Court having jurisdiction, the powers conferred by 35

this Law upon the District Court may be exercised by the District Court of Nicosia”.

5 Section 11(1)(b) of Cap. 149 lays down the disqualifications from contracting by any law is an impediment to the formulation of a valid contract. Soundness of mind is not the only prerequisite.

Another essential prerequisite under section 11(1) is that the person who enters into a contract should not be “disqualified from contracting by any Law”.

10 Section 27 of Cap. 252 specifically lays down that custody, contract and management of the property of a mental patient vests in the District Court. In this case notwithstanding the temporary discharge of the appellant from the Patient Institute where he was confined, the order of his adjudication  
15 as a mental patient remained in force. In accordance with the provisions of s.6 of the same law, an order remains in force until revoked by a subsequent Court order. This section reads:—

20 “6(1) Where, upon such inquiry as is provided for by this Law, it appears to the Court that any person is a mental patient and a proper subject of confinement, and a certificate as by this Law is required of his unsoundness of mind has been given, the Court may adjudge such person to be a mental patient and a proper subject of confinement, and shall proceed to make an order according to this Law  
25 for the care and custody of such patient.

(2) Any Court may, upon the application of any person, upon being satisfied that a person who has been adjudged to be a mental patient and a proper subject of confinement is of sound mind or has regained his sanity, rescind such  
30 adjudication and shall thereupon revoke any such order made in consequence thereof”.

In accordance with the finding of the Court in this case it was not revoked. Consequently the property he agreed to sell in this case, was not in his custody and he had no control  
35 of it under s.27 of Cap. 252. Only the District Court could sanction a valid disposition of the property. His contract of sale was abortive. No valid contract ever came into existence. There is no alternative but to reverse the finding of the Court

that there was a valid contract and the order of damages made thereupon. The respondent is only entitled to a return of the money paid.

We disagree with the trial Court that the non appointment of an administrator renders possible the transaction is question notwithstanding the provisions of Cap. 252, s.27(1). As the property was within the provisions of s.27(1) it was not possible for the appellant to enter into a contract for the sale of his property.

The appeal will be allowed in that the judgment for the payment of £2,708 damages will be set aside and there will remain only the judgment for £300 already paid by the respondent to appellant with costs on that amount. In the light of all the circumstances of the case, we are not making an order as to the costs of the appeal.

*Appeal allowed.*