

1988 May 26

(A LOIZOU P SAVVIDES KOURRIS JJ)

NEOPHYTOS LOIZOU,

Appellant-Plaintiff,

v

ANDREAS KARTSIOULIS,

Respondent-Defendant

(Civil Appeal No 7221)

Credibility of witnesses—Finding of fact as to—Interference by Court of Appeal—Principles applicable

Civil Procedure—Costs—The breadth of the discretion of a trial Court and how it must be exercised

Costs—Interference by Court of Appeal—Principles applicable 5

The appellant agreed to buy respondent's butcher business for £1,650 - He paid £150 as an advance The respondent broke the contract and, as a result, the appellant sued him for the return of the £150 and for £1,800 damages for breach of contract

The trial Judge awarded to the appellant (plaintiff) the £150 but found that the evidence as to the damages was not creditworthy and for this reason he awarded £10 nominal damages The Judge did not make any order as to costs 10

Hence this appeal

Held, dismissing the appeal (1) There is no reason to interfere with the findings of fact of the trial Judge as regards the credibility of witnesses 15

(2) The discretion of a trial Court as to costs is very wide, but it has to be exercised judicially in accordance with fixed principles Private opinion or benevolence have no place In this case the appellant had pursued an exorbitant claim for damages These circumstances constitute a ground for exercising the discretion in the way it was in fact exercised 20

Appeal dismissed with costs

Appeal.

Appeal by plaintiff against the judgments of the District Court of Nicosia (Laoutas, S.D.J.) dated the 24th June, 1986 (Action No. 2331/83) whereby the defendant was ordered to pay to him the
5 sum of £160.- damages in respect of an agreement entered between them for the sale of a butcher's business.

A. Papakokkinou (Miss), for the appellant.

St. Karydes, for the respondent.

A LOIZOU P. gave the following judgment of the Court. The
10 appellant in this appeal was successful before the District Court of Nicosia by having judgment given in his favour for the amount of £160.-, that is £150.- which he had given as advance payment for an agreement entered into between him and the respondent by
15 which he bought the butcher business of the latter, and £10.- nominal damages for breach of the said agreement, with no order as to costs.

The agreement in question, which was an oral one, was entered into between the parties to these proceedings on the 22nd
20 November, 1982, was one of sale of the butcher shop of the respondent to the appellant together with all the furniture and stock for the sum of £1650.- delivery to take place on the 27th
November, 1982. An amount of £150 was paid and the balance would be paid when a written contract was to be signed.

Five days later the said agreement was breached by the
25 respondent. The learned trial Judge then concluded that although there was a breach of the said agreement there was no credible evidence proving the damage claimed in the Statement of Claim which were £1,800, made up as follows:

(a) £160 on account of the shop remaining closed for two
30 weeks.

(b) £1,640 damages as for two months beginning the 15th
December 1982, he had no customers in view of the announcement made by him about the sale of the shop.

The first ground of law argued in this appeal is that the learned
35 trial Judge acted wrongly in not awarding damages to the appellant but only nominal ones. This ground turned on the findings of fact made by the learned trial Judge based on the credibility of the witnesses.

It has been said time and again that this Court will not interfere with the findings of fact based on the credibility of witnesses unless valid reasons exist for that purpose which have not, in our view, been put forward convincingly before us in this case. A perusal of the record shows that the learned trial Judge arrived at these findings as regards the issue of the alleged damage after evaluating the evidence, and preferred for good reasons the version of the respondent to that of the appellant whom he found to be an untruthful witness and his testimony fully contradictory. This ground of appeal therefore fails.

The second ground of appeal is against the order for costs. Costs are in the discretion of the Court and though such discretion is very wide, it has to be exercised judicially and must be exercised on fixed principles, that is according to rules of reason and justice, and not according to private opinion or even benevolence. As a matter of practice the costs follow the event and a successful party is entitled to his costs unless the Court in the exercise of its discretion otherwise directs, in the special circumstances of a particular case.

On appeal as to costs where the costs are in the discretion of the Judge, this Court will assume that the trial Judge exercised his discretion unless satisfied that he did not do so, and it will not interfere where the trial Judge assigns reasons therefore which are perfectly germane and not based on any false principle. Nor where there also other possible means for his discretion. (The Annual Practice 1958 p. 1834).

In this case a claim between one thousand and two thousand pounds was filed against the defendant who had admitted that he had received the £150.- and in respect of which amount the plaintiff could have obtained judgment. In such a case he would have been in all probability awarded his costs. Instead he pursued his claim for damages which we must say were exorbitant and could not be proved even if the totality of the evidence of the appellant aimed at proving the damages suffered was accepted. In the result he was awarded only ten pounds nominal damages.

These circumstances constitute the possible grounds for the learned trial Judge to have exercised his discretion judicially in the way he did and we see no reason to interfere with it.

The appeal is therefore dismissed with costs.

Appeal dismissed with costs.