

1988 May 27

(A LOIZOU, P., SAVVIDES, KOURRIS, JJ)

ANDREAS CHRISTODOULOU,

Appellant-Plaintiff,

v

COSTAS KAZAFANIOTIS,

Respondent-Defendant

(Civil Appeal No 7160)

Sale of goods—Damages for non acceptance—The Sale of Goods Law, Cap 267, section 56—Measure of such damages—Governed by section 73 of the Contract Law, Cap 149—No duty cast on seller to sell the goods by public auction

5 The facts of the case sufficiently appear in the judgment of the Court

Appeal dismissed with costs

Cases referred to

Shacolas v Michaelides and Another (1967) 1 C L R 290;

10 *Anastasiou v Stylianou* (1974) 1 C L R 62

Appeal.

15 Appeal by plaintiff against the judgment of the District Court of Nicosia (Kramvis, D J) dated the 31st March, 1986 (Action No. 10376/84) whereby the plaintiff was ordered to pay to the defendant the sum of £200 - as damage for breach of contract

M Charalambides, for the appellant.

N Papaefstathiou, for the respondent.

20 A LOIZOU P gave the following judgment of the Court On the 23rd June, 1984, the parties to these proceedings entered into an oral agreement by virtue of which the appellant agreed to purchase from the respondent one-thousand okes of broad-beans

at the price of 675 mils per oke which he would take delivery of from the premises of the respondent at Peristerona village eight days from the date of the agreement. The appellant paid thereupon one-hundred pounds as down payment and the balance was to be paid on the date of delivery. The appellant failed to take delivery of the goods at the agreed date and failed also to pay the balance of their price. 5

Fifteen days after the agreement was concluded, the respondent met the appellant at Peristerona village and inquired with him when he would come to take delivery of the goods. The appellant assured the respondent that he would do so the following Thursday but again he did not turn up. 10

On the 11th August 1984, the respondent gave twenty-four hours time to the appellant to go and take delivery of the broad-beans otherwise he would sell them to a third person. The appellant did not take delivery of the goods within that period nor until the 18th October 1984, on which date the respondent sold them to a third person at the price of 475 mils per oke which was the market price on the said date. 15

These were the facts as accepted by the learned trial Judge on the evidence adduced before him, having preferred to that of the appellant, the testimony of the respondent and his witnesses as being reasonable and consistent with the true facts. Thereupon the learned trial Judge dismissed the appellant's claim for the refund of the one-hundred pounds and gave judgment on the counterclaim in favour of the respondent for £200 damages for breach of contract, and costs. 20 25

The learned trial Judge relied for that purpose on the provisions of section 56 of the Sale of Goods Law, Cap. 267 which provides:

«Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance». 30

This section corresponds to section 50 subsection 1 of the English Sale of Goods Act 1893, which, however, has two more subsections that deal with the normal measure of damages for non-acceptance in general and the measure of damages where there is an available market. These two subsections have been omitted from our section. We have therefore to fall back on the general method of computing the loss directly and naturally arising 35

from the buyer's breach, as provided by Section 73 of our Contract Law, Cap. 149 and to our Case Law to which the principles governing the measure of damages in cases of contract for the sale of goods have been settled.

- 5 In the case of *Shacolas v. Michaelides and Another* (1967) 1 C.L.R. 290, it was held that the measure of damages for non-acceptance of goods sold, is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract. In *Spyros Anastasiou v. Apostolis*
10 *Stylianou* (1974) 1 C.L.R. 62 it was held that the «compensation which must be paid to him should be measured by ascertaining the difference between the contract and the market price on the date when payment was made, subject of course to the limitation that the Law imposes a duty upon the plaintiff to take all reasonable
15 steps to mitigate his loss caused by the breach of contract and debars him from claiming compensation for any part of the damages which is due to his neglect to do so.»

20 It may usefully be added here that if the seller retains the goods after the breach, he cannot recover from the buyer any further loss if the market falls.

25 The learned trial Judge indeed went into this aspect of the case and observed that though the sale of goods was effected at some unreasonable, as one might say, time from the date of the breach, there was no evidence adduced before him that there was any difference in the market price of the goods between the date that the appellant failed to take delivery of the goods, that is the date of the breach and the date they were sold to the third person and he assessed the damages on the basis of the difference between the agreed price and the price at which they were so sold at two-
30 hundred pounds, being the damage suffered by the respondent as a result of the breach and which he awarded to him by way of damages with his judgment.

35 It was argued before us that the respondent had a duty to sell them by auction and also to give notice to the appellant of the date and place of such sale. We have not been able to find in the authorities such a duty cast on the seller in circumstances like those of the present case. Needless to say, however, that the respondents duly informed the appellant of his intention to sell

the goods to third parties in case the latter failed to take delivery of the goods in question within the time specified for the purpose.

For all the above reasons the appeal is dismissed with costs.

Appeal dismissed with costs.