

1988 September 30

(MALACHTOS, PIKIS, HADJITSANGARIS, JJ.)

M. CONSTANTINIDES FURNISHING LTD.,

Appellants-Defendants,

v.

PAVLOS MODINOS.

Respondent-Plaintiff.

(Civil Appeal No. 7111).

Bill of Exchange — Consideration — Services rendered by respondent in connection with importation of goods — Deal failed through no fault of respondent — The bill cannot be faulted for absence of consideration.

- 5 The facts of this case sufficiently appear in the judgment of the Court.

Appeal dismissed with costs.

Appeal.

- 10 Appeal by defendants against the judgment of the District Court of Nicosia (Kramvis, D.J.) dated the 10th January, 1986 (Action No. 2139/83) whereby they were adjudged to pay to the plaintiff the sum of £400.- upon a bill of exchange drawn by defendants to a certain company who endorsed it in favour of the plaintiff.

- 15 A. Danos, for the appellants.
E. Efstathiou, for the respondent.

Cur. adv. vult.

MALACHTOS J.: The judgment of the Court will be delivered by Mr. Justice Chr. Hadjitsangaris.

- 20 HADJITSANGARIS J.: This is an appeal from the judgment of the District Court of Nicosia awarding the plaintiff £400.- upon a

bill of exchange drawn by the defendants to a certain company named Porphyrios and Violans Ltd who endorsed it in favour of the plaintiff. The bill represented remuneration of the respondent by way of commission or for services rendered by respondent to appellants in connection with the importation of furniture from Italy 5

The main argument of counsel for the appellants was that the consideration failed as the order for the furniture did not lead to a concluded transaction, because the goods in question did not correspond in material quality to those ordered 10

The trial judge rejected this argument accepting the evidence on behalf of the plaintiff to the effect that there was no term in the agreement as to the quality of the material of the furniture as alleged by the defendants

The version of the plaintiff which was accepted by the trial judge was to the effect that the defendants were in default due to their inability to provide the necessary finance for the order of the furniture. We have no reason to disagree with the findings of the trial judge resting in the credibility of witnesses. The crucial issue was indeed whether the agreement as found by the trial judge was bad for failure or lack of consideration. On examination of the judgment of the trial court it emerges that the consideration provided by the plaintiff was the one ordinarily given for the rendering of services. The bill was given immediately upon conclusion of the agreement, a fact supporting the view that appellant had done his part and earned the money represented by the bill in question 15
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Consequently in so far as the bill cannot be faulted for absence of consideration, the deal having failed for no fault of the respondent, the appeal must be dismissed 30

In the result the appeal is dismissed with costs

Appeal dismissed with costs