

1989 March 20

(SAVVIDES, KOURRIS, BOYADJIS, J J)

VIOFOODS FOOD & FRUIT PROCESSING INDUSTRY LTD.,

*Appellants-Defendants,*

v.

VORKAS TRADING CO LTD ,

*Respondents-Plaintiffs,*

AND

NICOS VASILIOU,

*Respondent-Third Party.*

*(Civil Appeal No. 7258).*

*Civil Procedure — Third party notice — Whether third party proceedings excluded by the very nature of summary proceedings envisaged by 0.65 of the Civil Procedure Rules — Question determined in the negative — 0.65 does not exclude an application in writing for leave to issue a third party notice — Agisilaou v. Savva (1987) 1 C.L.R. 445, adopted.*

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The principle emanating from this decision sufficiently appears from the above headnote. No summary of facts need be given.

*Appeal allowed. No order as to costs.*

Cases referred to:

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*Agisilaou v. Savva (1987) 1 C.L.R. 445.*

**Appeal.**

Appeal by defendants against the judgment of the District Court of Nicosia (Kallis, D.J.) dated the 31st October, 1986 (Action No. 1311/86) whereby an application for third party directions between the defendant and Nicos Vassiliou, the third party, was refused.

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*P. Kakopieros, for the appellants-defendants.*

*M. Kyprianou, for the respondent-third party.*

*Cur. adv. vult.* 20

SAVVIDES J. read the following judgment of the Court. This is an appeal from an order of a Judge of the District Court of Nicosia by which he refused an application of the appellants-defendants, in an action instituted under Order 65 of the Civil Procedure Rules, 5 for third party directions between the defendants and Nicos Vasiliou, the third party, respondent in this appeal from whom they were claiming contribution and or indemnity regarding the claim of the plaintiffs against them.

The facts of the case are briefly as follows:

10 The appellants, hereinafter to be called «the defendants», are the defendants in Civil Action No. 1311/86 which was instituted against them by Vorkas Trading Co. Ltd., the plaintiffs in the action, claiming against them £575.- balance of value of goods 15 sold and delivered. The proceedings were commenced in the summary procedure provided under Order 65 of the Civil Procedure Rules.

After service upon them of the writ of summons, the defendants filed an ex parte application for leave to issue and serve a Third Party notice on one Nicos Vasiliou, the respondent in this appeal, 20 hereafter to be called «The Third Party», claiming contribution and indemnity regarding plaintiffs' claim against them. Leave was granted accordingly by the Court. Subsequently the defendants made a written application by summons for third party directions which was served on the third party together with the third party 25 notice.

The third party opposed such application on the ground that third party proceedings are not possible under Order 65 of the Civil Procedure Rules. As the issue in question did not concern plaintiffs' claim against the defendants, the plaintiffs did not 30 participate in the dispute between the defendants and the third party on the validity of the proceedings.

The learned trial Judge having heard both counsel accepted the submission of counsel for the third party and ruled that third party 35 procedure is altogether foreign to the object and purpose of Order 65 and run quite contrary to what Order 65 aims to achieve and dismissed the application for third party directions with the result that the third party proceedings between the defendants and the third party were ended.

The question whether third party proceedings are outside the scope of Order 65 has been considered by this Court in *Agisilaou v. Savva* (1987) 1 C.L.R. 445. In that case the appeal was directed against an order of a Judge of the District Court of Limassol by which he refused the application of the appellants, defendants in the action, instituted under Order 65 of the Civil Procedure Rules, for leave to issue a third party notice. A. Loizou, J. (as he then was) in delivering the unanimous judgment of the Court had this to say: 5

«In our view this rule does not exclude an application in writing for leave to issue and serve before the hearing a third party notice which does not affect in essence the case between the plaintiff and the defendant but it aims at introducing in the proceedings a third party for indemnity of and contribution to the defendant. Moreover this rule has to be read subject to the general provision contained in rule 15 where in its concluding part it says that 'the Court shall have power to vary the procedure in any action to which this Order applies in such manner as it may think fit with a view to saving time and expense but so that no prejudice is caused to the parties concerned.' 10 15 20

We are of the opinion that within this provision the learned trial Judge had power to entertain the application for the issue of third party proceedings as no prejudice could be caused and considerable expense and time would be saved if the third party was properly brought before him at the hearing for the final determination of all issues raised in the proceedings. 25

No practical benefit could have been gained by anyone, to wait until the date of the hearing. After all a third party procedure aims at bringing in on the date of the hearing a third party against whom indemnity or contribution et cetera is claimed. 30

The whole tenor of order 65 is to simplify proceedings and to save expense and time but in no way that is to be achieved at the expense of the parties or to cause delay or multiplicity of proceedings or deprive a defendant of his right to indemnity and contribution that he may raise in third party proceedings and have the extent of the liability of a third party decided in them as well». 35

We agree with the above approach and we adopt for the purposes of this appeal the above dictum. Very rightly learned counsel for the respondent conceded that in the light of the aforesaid judgment he could not support the ruling of the learned trial Judge.

In the result the appeal is allowed and the sub judice order of the Court is hereby set aside with no order for costs as none have been claimed by counsel for appellants.

*Appeal allowed with  
no order as to costs.*

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