CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE ASSIZE COURTS AND DISTRICT COURTS.

[GRIFFITH WILLIAMS AND HALID, JJ.]

CYPRUS TRADING CORPORATION LTD., *Appellants*,

v.

MICHAEL SOFOCLEOUS KOUKKI AND ANOTHER, *Respondents*.

(*Civil Appeal No.* 3689.)

1941
Feb. 1

CYPRUS TRADING CORPORATION LTD. *v.* MICHAEL SOFOCLEOUS KOUKKI AND ANOTHER.

Agricultural Debtors Relief Law, 1940—Hire Purchase agreement—Agreement for sale—Right of owner to terminate agreement in default and retake possession.

The plaintiffs sued the defendants for, *inter alia*, the return of a motor lorry, their property, which they had agreed to sell to the defendant 1, payment to be by instalments and the property to pass to the defendant 1, on payment of the last instalment. It was a term of the agreement that plaintiffs could retake possession on default by defendants in payment of instalments. When the time for payment of the last instalment had gone by, and there were four instalments unpaid, the plaintiffs demanded the return of their lorry. The defendant 1 in the meantime had applied to the Debt Settlement Board under the Agricultural Debtors Relief Law, 1940, to have his debts settled, and included in his application the debt he owed the plaintiffs. The plaintiffs then brought this action. On notice from the Debt Settlement Board under section 31 (1) of the Agricultural Debtors Relief Law purporting to stay the action, the President, District Court, adjourned the case pending the decision of the Debt Settlement Board, as to whether defendant 1 was a debtor within the meaning of section 22 of the Agricultural Debtors Relief Law. Then, in order that this case might be considered on appeal, the District Court made an order staying the action.

Held: The action being in tort for return of property wrongfully detained, it did not come within the class of actions included in section 30 of the Agricultural Debtors Relief Law, and the Debt Settlement Board had exceeded their powers by giving notice to stay under section 31 (1) of the Law.

Appeal from an order of the District Court of Limassol.

J. Clerides (with *M. Houry* and *J. Eliades*) for the appellants.

Ch. P. Mitsides for the respondents.

The facts are set forth in the judgment of the Court which was delivered by:

GRIFFITH WILLIAMS, J.: This is an appeal from an order of the District Court of Limassol staying an action by the plaintiff company brought for the return of a motor lorry, the property of the company, held by the defendants under a written agreement dated 25th February, 1937, which agreement the plaintiff company purported to terminate by letter of 17th August, 1940, in exercise of a right under the said agreement.

The facts shortly were as follows:—On the 25th February, 1937, the company purported to let to defendant 1 on hire purchase agreement a "Fargo" motor lorry for the term of 32 months for the sum of £244. The sum of £244 was payable as to £48 by allowance on a second hand car handed over to the plaintiffs at the time of signing the agreement, and as to the balance by monthly instalments in respect of which the defendants signed interest bearing bonds, the last bond being payable on 25th October, 1939.

It was a term of the agreement that if the hirer made default in payment of any of the bonds beyond 15 days from maturity the company might terminate the hire and retake possession of the lorry. But if the hirer fully paid all the bonds either before or at the expiration of the hire, the company was bound to transfer the lorry to the hirer without further consideration.

On 17th August, 1940, the defendants still owed to the plaintiff company payment on the last four bonds, amounting in all to the sum of £45. 11*s*. 8*p*.; and so the plaintiff company gave written notice by letter of that date to terminate the hire under clause 4 of the agreement. By the same notice the plaintiffs requested the defendants to return to them their lorry, and demanded payment of the overdue instalments together with interest thereon. Meanwhile on the 8th August, 1940, the defendant 1 made an application to the Debt Settlement Board under section 9 of the Agricultural Debtors Relief Law 12 of 1940, and in this application he included the debt of £45. 11*s*. 8*p*. to the plaintiff company.

Having received no response to their letter of the 17th August, the plaintiff company on the 5th September, 1940, commenced this action against the defendants in the District Court, Limassol, claiming the return of their motor lorry. On the same day they made an application to the Court, and obtained an interim order *ex parte* directing the defendants to deliver up possession of the said lorry to the Mukhtar of Arsos for safe custody until further order, the order to be returnable on 14th September.

On 11th September the Court was served with a notice under section 31 (1) of the Agricultural Debtors Relief Law, 1940, purporting to stay this action. On 14th September the order returnable that day was adjourned for hearing to the 23rd September, and eventually was heard on 14th October. By consent of the parties, the action also was fixed for hearing the same afternoon, and was then heard accordingly. At the conclusion of the hearing the learned President, District Court, after expressing his opinion that it was for the Debt Settlement Board to decide under section 22 of Law 12/1940 whether the defendant 1 was a debtor or not, adjourned the case until evidence on this point was available from the Board under Rules of Court, Order 33, Rules 7 (*c*) and 11. Then, in order that the questions involved in this action might be decided by the Supreme Court on appeal, the District Court giving no judgment on the merits, unaccountably and with doubtful jurisdiction, made an order that the action should be stayed. It also incidentally ordered that in the meantime the interim order should remain in force.

The first point that struck us on perusing the agreement under which defendant 1 obtained possession of the lorry was that it was not a hire-purchase agreement at all, but an agreement for sale. This, however, does not mean, as Mr. Mitsides tried to argue, that it was in itself a sale, and that by it the property in the lorry passed to defendant 1. There is nothing in our law to prevent anyone entering into an executory agreement of sale, by which the property shall not pass until the happening of a contingency. And this is what was agreed in this case. The property in the lorry was to pass on payment by the defendants of the last bond; but until that bond has been paid the ownership of the lorry was to remain in the plaintiffs' company.

There are a number of questions which require consideration in this case, and particularly the interpretation of certain sections of the Agricultural Debtors Relief Law, 1940. It has been argued before us that the fact that there was a debt due by defendant 1 to the plaintiff company, and that the said debt was entered in defendant 1's application to the Debt Settlement Board, affected the whole transaction between Defendant 1 and the plaintiff company, and that the lorry was security for the debt and came under the control of the Debt Settlement Board. It was further argued that as the debt in respect of the lorry was entered in the debtor's application, then thereafter no action in respect of the lorry could be entertained against the debtor on account of the provisions of section 30 of the Agricultural Debtors Relief Law.

Now on 11th September, 1940, the Debt Settlement Board sent a notice in Form 52 to the Court as provided by section 31 (1) of the Agricultural Debtors Relief Law to stay this action; but the question of whether or not this notice was *ultra vires* has been raised. We cannot understand the view expressed by the District Judge in his judgment in the lower Court to the effect that the Court must not decide that the Board's action was *ultra vires*, because that would prevent the Board first deciding if there was a debt. The Board has primarily to decide questions of fact as to the existence of debts, but the question of whether the Board is exceeding or not the powers conferred on it by the Agricultural Debtors Relief Law, 1940, is one of Law and within the exclusive jurisdiction of the Courts. If the Courts decide that any action of the Board was *ultra vires* then that action is void and of no effect.

Now to consider section 31 with reference to this case. It has been argued (1) that this action is in tort and not in contract and consequently is not an action for debt, and (2) that there was no action pending on 8th August when application was made to the Board, and that for these two reasons the Board had no authority to send a notice to the Court under section 31 (1) staying this action. The said section is as follows:—

> "When an application under section 9 or a statement under section 15 (1) includes any debt in respect of which an action is pending before a Court of Law or an application has been made under section 1 of the Sale of Mortgaged Property Law, 1890, the Board shall give notice to the Court or the Principal Officer of Land Registration concerned, in the prescribed manner, and thereupon the action or application shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon, and if the Board includes any part of such debt under section 24 (1) (*e*) in the award or the Board decides that the debt does not exist the action or application shall abate so far as it relates to such debt."

It will be seen that the application to the Debt Settlement Board under section 9 must include a debt in respect of which an action is then pending, before the Board is required to give notice to a Court in respect of that action. In the present case this action was not started until 5th September, that is, almost a month after the application under section 9 was made, consequently it could not then have been pending. Further the action, on the face of it, is not in respect of a debt, but is in tort for the return of the plaintiffs' property that the debtor is alleged to be wrongfully

1941
Feb. 1

CYPRUS TRADING CORPORATION LTD. v. MICHAEL SOFOCLEOUS KOUKKI AND ANOTHER.

detaining. The notice therefore sent by the Board to the Court would seem to be *ultra vires* for both reasons, and consequently inoperative.

A comparison of section 31 of the Agricultural Debtors Relief Law with section 30 of that Law makes it even plainer that section 31 is intended only to affect such actions as have already been commenced. This can be seen from the fact that in cases of new actions for debt against a debtor it is the Court that is forbidden by section 30 to entertain them, if the debts are included in the debtor's application under section 9. No power to intervene is given to the Board.

In the present case section 30 appears to be the appropriate section rather than section 31, because the action against the debtor was started after his application under section 9 of the Agricultural Debtors Relief Law was made. Section 30 is as follows :—

"Except as provided in this Law, no Court of Law shall entertain any action against the debtor and no application made under section 1 of the Sale of Mortgaged Property Law, 1890, shall be entertained in respect of—

(*a*) any debt included in an application under section 9 or in a statement under section 15 (1), proceedings in connection with which are pending before the Board ; or

(*b*) any debt for which any amount is payable under an award ; or

(*c*) any debt regarding which an order has been passed by the Board under section 15 (2)."

As can be seen, the wording of this section appears to be ambiguous ; but to hold that the words "no Court of Law shall entertain any action against the debtor" are to be taken by themselves and not in conjunction with sub-sections (*a*), (*b*) and (*c*), which would qualify them, would, to our mind, be giving an interpretation much wider than the scope of the Law clearly intended.

Express, unambiguous language appears to be absolutely indispensable in statutes passed for altering the jurisdiction of Courts of Law—*Craies*, p. 105. Tindal, C.J. in *Albon* v. *Pyke* (1842,4 M. & G. 421) stated : "The general rule undoubtedly is that the jurisdiction of Superior Courts is not taken away except by express words or necessary implication". Where, therefore, a section of law, which takes away powers from the Court, contains any ambiguity, the Court will so construe the section as to affect as little as possible the Court's jurisdiction.

Lord Blackburn in *River Wear Co.* v. *Adamson*, 1872 (2) A.C. 743 said : "The true meaning of any passage is to be found not merely in the words of that passage but in comparing it with other parts of the Law; ascertaining also what were the circumstances with reference to which the words were used and what was the object appearing from those circumstances which the Legislature had in view".

It is quite obvious that the Legislature could not have intended to give a debtor, who made an application under section 9 of the Agricultural Debtors Relief Law, *carte blanche* to commit with impunity all the torts known to Cyprus Law. Such would be an absurdity and unthinkable. We must therefore conclude that the actions which the Court may not entertain, against a debtor who has made application to the Board, are actions in respect of debts of such kind as those specified in sub-sections (*a*), (*b*) and (*c*) of section 30,

It has been suggested that as the debtor's liability to the plaintiffs of £45. 11*s*. 8*p*. is included in his application to the Board, the lorry is in the nature of a security for the debt; and that consequently the present action for the return of the lorry should not be entertained by the Court. But it seems to us that it is impossible to regard the lorry as security for the debt. If it were a security, the ownership of it would be in defendant 1 while the possession would be in the plaintiffs, who would have a lien in respect of the balance of purchase price.

The agreement between the defendants and plaintiffs was that the ownership should remain in the plaintiffs; and only on the defendants paying the amount fixed in the agreement should the property pass. On the defendants breaking their agreement to pay the bills when due, the plaintiffs were entitled to retake possession of their property, the lorry, and deal with it in accordance with the later terms of the agreement, which were designed to meet such a contingency.

It is clear that the action, being rightly brought in tort for the return of property, cannot be included in those actions contemplated by section 30.

The definition of " debt " in section 2 of the Agricultural Debtors Relief Law has been referred to and it has been suggested that every form of agreement for the purchase of property whether movable or immovable which creates a liability is a debt within this definition. The definition is as follows :—

> " ' debt ' includes all liabilities of a debtor in money or in kind secured or unsecured, whether payable under a judgment or order of a Court of Law or under any agreement for the sale of immovable property or otherwise, and whether payable presently or in future, and all liabilities of a debtor arising out of any transaction which is, in the opinion of the Board, in substance a loan ; Provided that it shall not include the following :— etc..."

The words " or otherwise " in line 4 of the definition would be clearer if they were separated, as they should be, by the word " payable ". There seem to be two ways of enforcing a liability against a debtor, one through a Court of Law, and the other, in case of mortgages of immovable property, through the Land Registry Office. It would seem that when this definition was drafted, these two separate methods employed to collect debts were in the drafter's mind. The word " otherwise " must, according to the Interpretation Law, 1935, be used disjunctively " ; consequently it was not intended in this definition that its meaning should be " or any other kind of property " as if it attached only to the words immediately preceding it. The point stressed by the definition is that the liability must be payable ; and if not immediately, then in *futuro*.

It has been argued that this definition of " debt " includes all agreements through which a liability can be incurred ; that such an agreement is that between plaintiffs and defendants in this case ; and that being subject to the agreement the lorry becomes, so to speak, tainted with the debt, and thereby brought under the control of the Debt Settlement Board.

Taking the more reasonable view that " or otherwise " should read " or payable otherwise " it is apparent that the £45. 11*s*. 8*p*. due and payable on the bonds is a sum " payable otherwise ", and

1941
Feb. 1

CYPRUS TRADING CORPORATION LTD.
v.
MICHAEL SOFOCLEOUS KOUKKI AND ANOTHER.

so a debt within the definition. But this debt due by the defendants to plaintiffs in no way affects the ownership of the lorry—since the lorry is in no sense a liability payable by the Defendants, nor was it included in the application of defendant 1 to the Debt Settlement Board—and it would be most unfair if it did so.

Every man is entitled (save in case of national emergency where special legislation is enacted) to make his own bargain regarding the passing of his own property to someone else. If the true owner becomes entitled to immediate possession of his property, the mere fact that the man who has possession of the property makes an application under section 9 setting out that he is a debtor, cannot affect the owner's fundamental right to possession.

The Debt Settlement Board is a body whose primary function is to decide questions of fact; that is, as to the existence or not of a debt and whether or not a man is a debtor. Their powers are circumscribed by the Law which regulates their duties. If the Board fails to act within the limits of that law, its actions are subject to consideration by the Courts.

It was said by the District Court that it was for the Board to decide whether the defendant was a debtor or not, and that until the Board had decided the point no decision should be given in this action. In our judgment, whichever way the Board were to find on this point would be completely irrelevant to this action, which has no connection whatsoever with the Board's proper activities, or with those evils that the Board was created to remedy. And we cannot agree with the learned President, District Court, in his, opinion of the meaning and the effect of section 30 of the Agricultural Debtors Relief Law, 1940. Were it to bear the meaning he suggests and bar all civil actions against a debtor, it would give a debtor—provided the Board is pleased to find him a debtor—the privilege of being able to commit slander, private nuisance, trespass and all other torts known to Law with complete impunity—a result that could scarcely have been intended by the Legislature.

In this case the action did not come within the purview of sections 30 or 31 of the Agricultural Debtors Relief Law, 1940. It was not an action for debt, nor was it an action pending, and the Board had no authority to send a notice to the Court staying the action under section 31. Having sent this notice without authority the notice was *ultra vires* and void, and therefore the appeal will be allowed and the order staying proceedings set aside.

To consider the merits of the case, this action turns on the construction of the agreement of the 25th February, 1937, which we have held already to be an executory agreement for sale to take effect and pass the property in the lorry on the happening of a specified event—to wit, payment of the last bond before or at the expiration of the time fixed by the agreement. The last bond not having been paid and the property in the lorry not having passed, the plaintiffs are entitled to immediate possession of it in accordance with the terms of the agreement. Judgment will therefore be entered for the plaintiffs for a declaration that the plaintiffs are entitled to possession of "Fargo" motor lorry No. N2504 and to costs in this Court and in the Court below including the costs of the Interim Order.

Appeal allowed.