1953
February 10

CHRISTODOULOS RODOSTHENOUS
v.
HARALAMBOS J. POLEMITES AND ANOTHER.

But in the present case two of the rooms are bedrooms, and if the interference of the appellant's building is allowed to continue it is difficult to see how the award of damages could compensate the respondents for such a gross interference with their enjoyment of these rooms. An injunction is a discretionary remedy, and we do not consider that a Court of Appeal should interfere with the exercise of that discretion unless the trial Court acted unreasonably or upon a wrong principle. We cannot say that in the present case the discretion was wrongly exercised.

In our opinion the findings of the trial Court, both on the law and on the facts, were correct and *this appeal should be dismissed with costs.*

1953
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CYPRUS MINERAL SPRINGS LTD.
v.
DEMETRIOS KOUVAS.

[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]

(February 10, 1953)

CYPRUS MINERAL SPRINGS LTD., *Appellants,*

v.

DEMETRIOS KOUVAS OF LIMASSOL, *Respondent.*

(*Civil Appeal No.* 3944.)

Limitation of Actions Law (*Cap.* 21) *sec.* 3 (1) (*f*)—*Action by company for unpaid balance on shares—Meaning of phrases "goods sold and delivered" and "book debts".*

In 1947 the defendant-respondent at his request was allotted 50 shares in the plaintiff-appellant company. The defendant paid in part and the plaintiff informed the defendant that "the balance of £200 is debited in your temporary account." In 1950 the plaintiff sued for the balance. The defendant pleaded as a defence section 3 (1) (*f*) of the Limitation of Actions Law (Cap. 21) which prescribes a period of limitation of 2 years (*inter alia*) for actions in respect of goods sold and delivered or of a book debt; the trial Court accepted this defence and dismissed the action.

Held: The allotment of shares is a chose in action and is not "goods sold and delivered" and the debt owed by the defendant was not a "book debt" within the meaning of these expressions in section 3 (1) (*f*) of Cap. 21. The appellant's action was, therefore, not statute barred.

Appeal allowed.

Appeal by plaintiffs from the judgment of the District Court of Limassol (Action No. 833/50).

Chr. Mitsides with *G. J. Pelaghias* for the appellants.

G. Cacoyiannis for the respondent.

The facts of the case sufficiently appear in the judgment of the Court which was delivered by:

HALLINAN, C.J.: The facts in this case are quite simple. The respondent applied to the appellant company in 1947 for 50 ordinary shares of £5 each. He only paid £50 and after some correspondence the company in December, 1947, issued to the respondent a certificate for the 50 shares and told the respondent that "the balance of £200 is debited to your temporary account." In 1948 the respondent became a director. In 1950 the company called on the respondent to pay the balance but he only paid another £31. On 31st May, 1950, the company commenced this action claiming £169, the balance then due on the shares. The respondent's defence is that the action is statute barred by the Limitation of Actions Law (Cap. 21), section 3 (1) (*f*), which provides (*inter alia*) that no action shall lie in respect of goods sold and delivered or of a book debt after the expiration of two years from the date on which the cause of action accrued.

The periods of limitation prescribed in section 3 (1) varies with the cause of action—for example under para. (*a*) the period of limitation for a bond in customary form or a mortgage is fifteen years, whereas actions on the matters mentioned in para. (*f*) must be brought within two years. These matters are specified as "any goods sold and delivered, shop bill, hotel bill, book debt (other than a book debt mentioned in paragraph (*d*) hereof), work and labour done, wages of artisans, labourers or servants .....". Section 5 of the Limitation of Actions Law prescribes a period of six years in respect of any cause of action not expressly provided for in the Law or expressly exempted from its operation.

On perusing section 3 (1) it would appear that the general considerations which make longer or shorter periods of limitation desirable are that where the transaction is recorded in durable form or gives rise to obligations which normally would not be discharged for a considerable time, the period of prescription is long; whereas such transactions as goods sold in the ordinary course of trade, a hotel bill, or the wages of a workman are every day matters where the debtor is normally expected to pay promptly, where accounts are often not kept in a durable form, or where in the interests of the person charged, creditors should not sleep on their rights.

Now it is a common practice for companies to issue shares which, as in the present case, were partly paid up, and when a shareholder is allotted such shares it is in the contemplation of the parties that no call may be made on the contributory for many years. It is clearly not the

sort of transaction in respect of which one would expect the right of action to be barred in two years. Section 20 of the English Companies Act, 1948, makes a debt so arising to be in " the nature of a specialty debt." In Cyprus Law, now section 21 (2) of the Companies Law, 1951, this phrase is omitted—possibly because documents under seal are rare in Cyprus, the term " specialty " is avoided; nevertheless the liability of a contributory for unpaid shares is a debt under section 21 (2) of our Law and is not merely contractual.

The learned trial Judge held that book debts are " such debts as are commonly entered in books " and cites the case of *Shipley* v. *Marshall*, 14 C.B. (N.S.) 566; but what that case decided was that " such debts are those which accrue in the ordinary course of a man's trade and are usually entered in trade books." In this present case the debt of the respondent was not such as accrued in the ordinary course of the Company's trading and it would not be usual to enter the debt of a contributory for unpaid shares in the trade books of the company. The expression " book debts " as used in section 3 (1) (*f*) appears in association with every day transactions where the debtor is expected to pay promptly and the creditor is expected not to sleep on his rights; in our view it would be clearly wrong to extend the meaning of this expression to include a debt which commonly continues for many years and which has not accrued in the ordinary course of the Company's trading.

But the trial Court relied even more on its finding that the shares allotted to the respondent at his request were " goods sold and delivered " within the meaning of that expression in section 3 (1) (*f*) so that the appellants' right of action is statute barred. The Court found that the word " goods " includes shares in a company. In section 82 of the Contract Law the definition of goods includes movable property and shares are movable property; and the trial Court cited the case of *Evans* v. *Davies* (1893) 2 Ch. 216, where it was held that shares in a company are " goods " within the Rules of Supreme Court, 1883, Order L, rule 3.

In our view the expression " goods sold and delivered " in section 3 (1) (*f*) should be construed as a whole and not merely by taking the word " goods " in its most extended meaning. The common law action for goods sold and delivered is very old; after *Slades'* case (4 Rep. 92b) in 1602, this action could be brought without any new promise to pay the debt being needed to support it. The forms of personal action were abolished by the Common Law Procedure Act of 1852 but causes of action are still classified, and compendious expressions for indicating cause of action are used in the general indorsement on writs of summons. In *Odgers* on "Pleadings and Practice",

(13th Edition at p. 35) under the heading "general indorsement", it is said: "This is merely a label to show to what class of action the suit belongs. It is expressly provided that in such an indorsement it is not essential to set forth the precise ground of complaint or the precise remedy or relief . . . ." In modern practice one of the most common indorsements on a writ of summons is this: "The Plaintiff's claim is for the price of goods sold and delivered" (e.g. Bullen & Leake, 10th Edition, p. 240). This phrase both prior to the abolition of forms of action and also after their abolition has been used for centuries to describe a well-known class of common law action; but we have never heard of an action being taken for "goods sold and delivered" wherein the goods were not physical things but choses in action. Certainly neither lawyer nor layman on receiving a writ of summons generally indorsed with a money claim for "goods sold and delivered" would suspect that the cause of action was for the balance of money due by a shareholder on shares allotted to him. Not merely words but phrases also must be given their ordinary meaning unless the context requires otherwise. To describe the appellants' claim in the present case as one for "goods sold and delivered" is to use the expression in a manner contrary to its ordinary meaning.

Now when we turn to section 3 (1) (*f*) where the phrase occurs, it is clear that the context requires that the phrase be given its ordinary meaning; it appears, as has been said, in association with everyday transactions where the debtor is expected to pay promptly and the creditor is expected not to sleep on his rights. The action for "goods sold and delivered" is, in the ordinary meaning of that phrase, of a character similar to these everyday transactions, and, in our view, this phrase used in section 3 (1) (*f*) was never intended to include a claim by a company against a shareholder of the balance due on shares allotted to him.

For these reasons we consider that the appellants' claim in this case was neither for a "book-debt" nor "for goods sold and delivered" within the meaning of section 3 (1) (*f*) and it is therefore not statute barred. *This appeal must accordingly be allowed; the appellants are entitled to judgment for* £169 *claimed with their costs here and below.*