

(June 22, 1953)

ELENI ZENONOS AND OTHERS, *Appellants*,

v.

MICHAEL MYLONAS AND OTHERS, *Respondents*.

(*Civil Appeal No. 4004.*)

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AND OTHERS
v.
MICHAEL
MYLONAS
AND OTHERS.

Co-operative Societies Law (Cap. 198) s. 53—Meaning of “dispute”—Claim by members against committee—Obligation of committee in contract under rules—In tort for negligence.

The plaintiffs were a minority of the members of a co-operative savings bank and sued the defendants who were ex-members of the committee of the society. The society's treasurer had committed frauds on the society and the plaintiffs claimed that the defendants by failing to show “the prudence and diligence of ordinary men” as required by rule 10 of the society's rules were liable on these rules in contract and in tort for negligence. The trial Court held that this was a dispute within the meaning of section 53 of the Co-operative Societies Law (Cap. 198) which gave exclusive jurisdiction to the Registrar; the claim was therefore dismissed.

The plaintiff appealed.

Held on appeal: (1) The dispute did not concern the internal administration of the society and was not a dispute within section 53.

(2) Under rule 10, the contractual obligation of the committee was owed to the society as a corporate body and not to the individual members.

(3) Similarly the committee were only liable in negligence to the corporate body; and the plaintiff's action could only be sustained if the society was joined as a party. Since the Society had been dissolved, the action was unsustainable.

Appeal dismissed.

Appeal by plaintiffs from the judgment of the District Court of Limassol (Action No. 602/50).

L. Clerides with *Chr. Demetriades* for the appellants.

M. Houry for respondent 1.

Sir Panayiotis Cacoyannis for respondents 2 and 4.

Y. Potamitis for respondent 3.

The judgment of the Court was delivered by :

HALLINAN, C.J. : The nature of the claim of the plaintiff-appellants in this case is set out concisely in the first paragraph of the judgment of the Court below :—

“ This is an action by which 11 out of the 57 members of the New Amiandos Co-operative Savings Bank claim

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damage against the 4 defendants, all as ex-members of the Committee of the said Bank, for the loss that they, the plaintiffs, suffered from the fact that the secretary and treasurer of the Bank and the fifth member of the Committee, Mr. Fritz Reinhoffer, had committed frauds and forgeries and had appropriated the money of the Bank.”

The appellants' claim alleges that the loss which they suffered was the result of the negligence of the respondents and, in the alternative, was the result of a breach of contract by them.

The learned trial Judge does not appear to have made any findings on the claim based on a breach of contract, but he did find that the loss had been due to the negligence of the respondents. However, he considered that the dispute between the parties in this case was a dispute within the meaning of Section 53 of the Co-operative Societies Laws (Cap. 198), that it was within the exclusive jurisdiction of the Registrar, and that the Court had no power to adjudicate on the claim.

The principal matters argued on this appeal with which I propose to deal were three : first, whether the appellants' claim constitutes a dispute within the meaning of section 53 of the Co-operative Societies Law ; secondly, whether the rules of the New Amiandos Co-operative Savings Bank Ltd. established binding contractual relations between the parties to this appeal, and that the respondents have been guilty of a breach of contract ; and, thirdly, whether the respondents owe any statutory or legal duty to the appellants so as to make them liable in negligence.

As regards the first question, in a recent appeal No. 3993, *Hussein Shefik of Limassol v. The First Limassol Co-operative Savings Bank Ltd.*, of Limassol delivered on the 20th June, 1953, this Court has decided that a claim against an officer of the Co-operative Society in respect of an alleged tortuous act which is not a matter concerning the internal administration of the society's business is not a dispute within the meaning of section 53. For the reasons set out in that judgment I consider that the Court below in the present case was wrong in holding that its jurisdiction to hear the claim was excluded by section 53.

Before considering the second and third grounds of appeal it is necessary to remember that the Co-operative Society of which the parties in this case were members was dissolved by an order of the Registrar on the 7th February, 1949, and that the appellants did not bring their action until the 22nd April, 1950.

It is not easy to find authority as to the contractual rights and obligations which exist between the members of a co-operative society and their officers, such as the members of the committee in the present case. The rights of the

members of a company incorporated under the Company Acts is stated in 5 Halsbury, 1949 Edition, page 143, paragraph 257 :

“ The question how far the memorandum and articles constitute a binding contract between a company and its members on the one hand and between its members *inter se* on the other hand is one of great difficulty and is not altogether clear. It has however been held that the contractual force given to the articles of association is limited to those provisions which apply to the relationship of members in their capacity as members and does not extend to those provisions which govern the relationship of a company and its directors as such.”

And in *Beattie v. E. & F. Beattie, Ltd.*, (1938) 3, All England Law Reports, at page 214, it was held that :

“ The contractual force given to the articles of association by the Companies Act, 1929, section 20, was limited to those provisions of the articles that applied to the relationship of the members in their capacity as members, and did not extend to those provisions that applied to the relationship of the members and the directors as such.”

In the present case rule 10 of the Society's rules is as follows :—

“ In the management of the Savings Bank's affairs the members of the committee have to show prudence and diligence of ordinary men and are liable for any loss that may be occasioned as a result of their acts which are contrary to the law, the rules and regulations of the savings bank.”

I consider that the obligations of members of the committee under this rule are due not to each member of the society but to the society as a corporate body ; for undoubtedly any loss incurred by the committee would be a loss to the corporate body rather than to any individual member. In my view the contractual obligations of the committee were owed not to the individual members but to the corporate body and therefore the claim under contract by the appellants must fail.

As regards the claim founded on negligence, the question at once arises whether the respondents owed to the appellants any duty to take care or owed such duty only to the corporate body. It seems to me that the negligence of the committee was a tort or wrong done to the corporate body, not to the individual members. In *Buckley on the Companies Acts*, 12th Edition, pages 168-169, the question is discussed as to when individual members of a corporate body may sue for a wrong done to the corporation. I consider that the authorities cited by Buckley are sufficient to sustain an action for negligence taken by the appellants against the respondents if the co-operative society had

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been joined as a party to the action ; but I can find no authority where such proceedings could be maintained if the corporate body is not so joined. In the case of *Cox v. Gorst*, 60 Law Journal, Chancery Division, 502, an action was brought by the creditors of a company against the directors for a misfeasance after the company had been dissolved, and it was held that no action could lie. Chitty J. states at page 504 :

“ The plaintiff cannot sue without making the company a party, and, the existence of the company having been put an end to by the operation of a statute, he cannot sue at all.”

And in 5 Halsbury, 1949 Edition, p. 351, paragraph 574 it is stated :

“ The liability of a director is extinguished by the dissolution of the company, unless the dissolution is set aside by the Court.”

Where there has been misfeasance or breach of trust by the officers of a co-operative society and the society is being wound up, adequate powers are given to the Registrar under section 50 of the Co-operative Societies Law (Cap. 198) to require such officers to compensate the society and its members for the loss occasioned by them by their misfeasance or breach of trust.

By delaying the institution of proceedings until after the society had been dissolved the appellants in this case have in my view lost their remedy against the respondent members of the society's committee, and for this reason their claim must fail.

This appeal must therefore be dismissed with costs.

GRIFFITH WILLIAMS, J. : I concur.