

TYSER, C.J.
&
BERTRAM,
J.

IN RE
LUKA A.
TALLIA-
DOROU

the existence of unpaid judgments against the debtor, but the character of the debts on which the judgments were based does not appear. The attention of the Court below does not seem to have been directed to the point, doubtless owing to the fact that Art. 147 is mis-translated in the Greek version of the Commercial Code. That version follows the text of the French Code, rather than that of the actual Turkish enactment, but even under French law jurisprudence has determined that insolvency can only be declared in respect of the non-payment of commercial debts. The matter is placed beyond all doubt by the Turkish text and the case of *In re Haji Fehmi Hassan*, 2 C.L.R., 84, above referred to.

Counsel for the petitioning creditor cited Art. 35 of the Appendix to the Commercial Code, and contended that the final paragraph of that article (which declares that a bill signed by a trader shall be presumed to be given in relation to mercantile business unless a non-mercantile object is therein stated), governed all proceedings under the Commercial Code, I think however that the presumption is limited to the proceedings referred to in the article itself, and does not extend to all proceedings under the Code. I agree therefore that the case must go back for further hearing on the question whether there has been a cessation of the debtor's commercial payments within the meaning of the first article.

Appeal allowed.

TYSER, C.J.
&
BERTRAM,
J.
1907
Dec. 31

[TYSER, C.J. AND BERTRAM, J.]

CHARILAOS IOANNIDES,

Plaintiff,

v.

CHARALAMPES HAJI GEORGIU,

Defendant.

PRINCIPAL AND AGENT—RATIFICATION—MEJELLE, ARTS. 1453 AND 1485.

T. T., acting as agent for the Plaintiff bought in the name of the Plaintiff at an auction sale certain water rights on terms which were admitted to be a departure from his instructions. The Plaintiff took possession of the property purchased, but disputed his liability to indemnify the agent to the full extent of the purchase price. The agent afterwards sold the property to the Defendant.

HELD: *that the Plaintiff had ratified the contract, and that the agent was not entitled to dispose of the property to the Defendant.*

The subject of ratification as between principal and agent considered.

This was an appeal from the judgment of the District Court of Kyrenia.

In August, 1901, the Plaintiff instructed Mr. Theophanes Theodotou to bid for him at the sale of certain water rights at Lapithos. There was a conflict of evidence as to the instructions. According to Mr. Theodotou his instructions were to bid up to £3. According to the Plaintiff the instructions were to start at £3 and if necessary go up to £5. There was also a conflict of evidence as to what happened at the sale. According

to Mr. Theodotou he bid up to £3, but as the bidding continued, having exhausted his mandate from the Plaintiff, he went up to £5 on his own responsibility and bought in the property at that figure. According to the auctioneer Mr. Theodotou offered £5 at once and this was the only bid. Mr. Theodotou gave the name of the Plaintiff as purchaser, but paid the purchase price himself.

There was a further conflict of evidence as to what subsequently took place between Plaintiff and Mr. Theodotou. According to Mr. Theodotou he informed the Plaintiff that he had been unable to secure the property at £3, but that he had bought it at £5, and had debited the Plaintiff with that sum, to which the Plaintiff replied that it was not worth more than £3. According to the Plaintiff, having heard that Mr. Theodotou had bid £5 at once, he told Mr. Theodotou that as he could have got the property for £3, had he carried out the instructions he received, he was not entitled to call upon him (the Plaintiff) to pay more than £3.

The Plaintiff took possession of the water rights purchased and used them in conjunction with other rights in the same stream which he already possessed.

It was admitted that subsequent communications passed between the Plaintiff and Mr. Theodotou, and that in these the Plaintiff, for whatever reason, declared himself as only ready to pay £3. The Plaintiff was in credit with Mr. Theodotou.

In February, 1906, the Plaintiff seems to have written a letter to Mr. Theodotou in which he spoke of the amount due as £3, and requested Mr. Theodotou to have his title registered. Mr. Theodotou's reply was as follows: "The water does not require a title. You forget that I bought this water for you for £5, and I have debited you with this amount."

Receiving no answer to this letter, Mr. Theodotou soon afterwards sold the water rights to the Defendant, who took possession. The Plaintiff thereupon sued the Defendant claiming an injunction restraining him from interfering with the water rights.

The District Court, without giving any finding of fact on the points on which there was a conflict of evidence, held that on any view of the facts Mr. Theodotou had exceeded his instructions; that the Plaintiff had never "ratified the price" of £5; that to constitute a valid ratification there must be a ratification of the whole transaction; and that there having been no such ratification in this case, the property bought under Art. 1485 of the Mejjellé vested in Mr. Theodotou, who was consequently entitled to transfer it to the Defendant.

The Plaintiff appealed.

Pascal, M. Chacalli and Stavrinides for the Appellant.

Theodotou and Loizides for the Respondent.

The Court allowed the appeal.

Judgment: CHIEF JUSTICE: The question for our decision in this case is whether the Plaintiff ratified the contract, which his agent, purporting to act on his behalf, but exceeding his instructions made with the vendor of the property.

TYSER, C.J.
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These questions of ratification generally arise between the actual parties to the contract, that is to say, between the vendor and the purchaser. The point to be determined in such cases is whether the principal has made himself responsible to carry out the contract made by his agent. If he does not ratify the act of his agent in making a purchase on unauthorised terms, then the agent is liable personally to the vendor. If he does ratify the contract, he takes upon himself all the liabilities as purchaser.

In this case by taking over the property with full knowledge of all the facts, it is clear that the Plaintiff adopted the purchase so far as regards the vendor.

It seems to be thought that the object of Art. 1485 of the Mejellé was to confer some privilege on an agent who exceeds his instructions. In my opinion the object of the article is to confer the right on the other contracting party, in case the principal refuses to adopt a contract made in his name on terms which he has not authorised, to sue the agent personally. It does not confer on an agent a right unnecessarily to bid a price in excess of his instructions, and then claim the property unless the principal pays him that price.

In this case the only question which could arise between the Plaintiff and his agent is whether the agent could recover the whole of the £5 he had paid for the plaintiff, or whether the Plaintiff may reduce the amount by a counterclaim for negligence in performing his duty as agent.

The Plaintiff by ratifying the contract took upon himself the obligation to pay £5 as the price of the water. Mr. Theodotou paid that money on his behalf and the Plaintiff, as a consequence of the ratification, is bound to repay it to him, unless he had some set-off or counterclaim.

Mr. Theodotou may recover what he is entitled to be paid but Art. 1485 does not confer on him the right to say, "as you have declined to pay me the whole amount due, I will take from you the water which you have taken possession of under your purchase."

The appeal must be allowed and judgment entered for the Plaintiff with costs both in this Court and in the Court below.

BERTRAM, J.: The question in this case is whether the water rights in dispute belonged to the Plaintiff. That depends upon the further question whether he ratified the contract of purchase made by Mr. Theodotou on his behalf. If he ratified the contract, the property vested in him, and Mr. Theodotou had no power to dispose of it. If he repudiated it, under Art. 1485 of the Mejellé the property vested in Mr. Theodotou, and he was entitled to sell it to the Defendant.

For the purpose of my judgment I will assume that the facts were as sworn by Mr. Theodotou.

The facts, according to Mr. Theodotou, were that Mr. Theodotou bought in the name of the Plaintiff but at a price in excess of his authority—that he informed the Plaintiff he had so bought for him; that he debited the Plaintiff with the price, and so informed the Plaintiff: that the Plaintiff knowing these facts took possession of the property and used it for several years.

In this state of facts, it is perfectly clear that if Mr. Theodotou had not paid the purchase price, and if the vendor had sued the Plaintiff for it, the Plaintiff could have had no sort of defence to the action. If he had pleaded, "my agent had no authority to buy for £5, and I never ratified his act," the answer would have been, "you have taken possession of the property and are now enjoying it," and that answer would have been conclusive.

In the same way, if Mr. Theodotou, having paid the price, had sued the Plaintiff for the amount, it seems to me that it would have been impossible for the Plaintiff to have pleaded that he never ratified the purchase. His possession and enjoyment of the property, with full knowledge of the terms on which it had been purchased for him would have been a conclusive answer to that plea.

In my opinion by taking possession of the property with knowledge of the terms on which it had been bought for him he ratified the contract. By that ratification he took upon himself both the rights and the liabilities of purchaser. He became the owner of the property and at the same time became responsible to the agent for the purchase price.

It is true that for one reason or another he refused to pay the amount of that price. But this refusal did not divest him of the property he had acquired. It merely entitled Mr. Theodotou to sue him for the money.

I agree with the Judges of the District Court that the contract must be ratified as a whole, but I take this to mean that if a man has in fact ratified a contract and afterwards presumes to object to one of its conditions he can be made to comply with that condition. Whether a contract has been ratified or not must, I think, be determined upon the substantial facts of the case. Here in my opinion, the substantial facts show a ratification.

Appeal allowed.

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