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[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

NEOPHYTOS
EVRIPIDOU
AS ADMINISTRATOR
OF THE
ESTATE
OF THE
DECEASED
ATHINA
KAMILIERI
v.
EVLAMBIA
DEMO-
STHENOUS

NEOPHYTOS EVRIPIDOU, AS ADMINISTRATOR OF THE
ESTATE OF THE DECEASED ATHINA KAMILIERI,

Appellant-Defendant,

v.

EVLAMBIA DEMOSTHENOUS,

Respondent-Plaintiff.

(Civil Appeal No. 4732).

Contract—Intention to create legal obligations—Personal services rendered upon the faith of a promise to leave property by will—In the circumstances this arrangement amounted to an agreement intended to be binding in law on both sides—Breach of this agreement—No such legacy bequeathed—Compensation for the services rendered in the shape of damages for breach of contract—And not in the shape of reasonable compensation for non-gratuitous services under sections 65 and 70 of the Contract Law, Cap. 149.

Services rendered—Non-gratuitous such services—See supra.

Findings of fact made by trial Courts—Not to be disturbed by the Court of Appeal unless sufficient reasons shown.

The appellant-defendant in this case is the administrator of the estate of the deceased lady A.K. It was the case for the plaintiff (now respondent) that under an arrangement with the deceased, made at the latter's suggestion, the plaintiff rendered personal and household services to the deceased over a period of more than three years, from 1960 to 1963, on the promise of a bequest of her immovable property. In fact, on April 4, 1962, when the arrangement in question had been acted upon and the plaintiff had rendered her services to the deceased for about two years, the deceased executed a will benefiting the plaintiff. Some time later on good relations between the parties apparently had broken down; and on September 12, 1963, the deceased revoked her said will and eventually terminated the plaintiff's services in question. About seventeen months later the deceased died leaving no will. Hence this action whereby the plaintiff (respondent) claimed damages for breach of contract or reasonable remuneration for her non-gratuitous services.

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The trial Judge found that the plaintiff proved her case and took the view that she was entitled to reasonable remuneration for her services "under sections 65 and 70 of the Contract Law, Cap. 149"; and he proceeded to assess the value of such services at £270 for which he gave judgment with costs.

From this judgment, the defendant now appeals, mainly on the ground that :

"the trial Court failed to consider . . . the principle of law that no action can be maintained for services performed upon an undertaking that the plaintiff was to make no charge, but that he should receive a legacy at the death of the person to whom they were rendered."

It was further argued in this connection that there being an agreement between the plaintiff and the deceased, the plaintiff can only claim upon the agreement. "She must stand or fall—as he put it—by that agreement".

There are also some other grounds of appeal challenging the findings of fact made by the trial Judge.

Sections 65 and 70 of the Contract Law, Cap. 149, read as follows :

"65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

Dismissing the appeal, the Court :—

Held, (1). Regarding the grounds of appeal challenging the findings of the trial Judge, these may be disposed of without difficulty. On the evidence adduced, all the findings of fact upon which the trial Judge based his decision, were certainly open to him ; and the appellant has shown no valid

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reason for disturbing them (See *Antoniou v. Elmaz* (1966) 1 C.L.R. 210 ; *Gregoriades v. Kyriakides* (1970) 1 C.L.R. 120 ; *Kyriacou v. Aristotelous* (1970) 1 C.L.R. 172).

(2) In the cases cited to us, the success of the claim depended on whether the plaintiff could satisfy the Court that a legally enforceable agreement between the parties had been broken by the defendant.

(3) On a fair reading of the statement of claim in the instant case and upon the evidence before him, the trial Judge's finding that the services of the plaintiff were rendered to the deceased on the basis of the alleged agreement between them, is, we think, well justified. The breach of the agreement by the deceased is likewise sufficiently established. And at this stage the value of the services rendered as found by the trial Judge (*viz.* £270) is not in dispute.

(4) The trial Judge awarded the value of the plaintiff's services as "remuneration under sections 65 and 70 of the Contract Law, Cap. 149" (*supra*).

We, however, take the view that the plaintiff is entitled to that amount (£270) as damages for breach of the agreement under which she rendered her services to the deceased as alleged in the statement of claim.

Appeal dismissed with costs.

Cases referred to :

- Antoniou v. Elmaz* (1966) 1 C.L.R. 210 ;
Gregoriades v. Kyriakides (1970) 1 C.L.R. 120 ;
Kyriacou v. Aristotelous (1970) 1 C.L.R. 172 ;
Baxter v. Gray [1842] 133 E.R. p. 1349 ;
Parker and Another v. Clark and Another [1960] 1 All E.R. 93 ;
M' Gagan v. Smith (1892) 21 S.C.R. 263 (Can.) cited in Vol. 24 of the English and Empire Digest at p. 678 (in the reference to Scottish, Irish and Commonwealth cases) under number 1674.
Maddison v. Alderson [1883] L.R. 3 App. Cas. p. 467.

Appeal.

Appeal by defendant against the judgment of the District Court of Paphos (Pitsillides, D.J.) dated the 1st June, 1968, (Action No. 661/66) whereby the defendant in his

capacity as administrator of the estate of the deceased Athina Kamilieri was adjudged to pay £270 to plaintiff as remuneration for the services she rendered to the said deceased.

St. McBride, for the appellant.

A. E. Neocleous, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

VASSILIADES, P. : The appellant is the administrator of the estate of the deceased Athina Kamilieri, who died intestate in the village of Kōuklia, in the District of Paphos, on February 15, 1965. The deceased was a rather corpulent woman of advanced age, who lived alone in her own house in the village and was in need of care for herself and of help for her household work.

The respondent (plaintiff in the action) is a married woman of the same village, much younger than the deceased, living with her husband and their three young children, in a neighbouring house, also belonging to the deceased, of which the plaintiff's husband was a tenant.

It is the case for the plaintiff, that under an arrangement with the deceased, made at the latter's suggestion, the plaintiff rendered personal and household services to the deceased (including at times services of onerous and unpleasant nature) over a period of more than three years, from 1960 to 1963, on the promise of a bequest of her immovable property.

In fact, on April 4, 1962, when the arrangement in question had been acted upon and the plaintiff had rendered her services to the deceased (presumably to the latter's satisfaction) for about two years, the deceased deposited with the Registrar of the District Court of Paphos, a will benefiting the plaintiff. This much has been proved ; but the precise contents of the will are not known as some eighteen months later, the deceased revoked that will. Good relations between the parties apparently had at that time broken down. The deceased took action to eject the plaintiff and her husband from her house ; and on September 12, 1963, she revoked the will which she had earlier made and deposited in favour of the plaintiff. The latter's services to the deceased were thus terminated.

About seventeen months later, in February 1965, the deceased died ; and some eighteen months after her death,

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the plaintiff filed the present action against the estate, claiming damages for breach of contract or reasonable remuneration for her non-gratuitous services.

The administrator of the estate who was the then registrar of the District Court of Paphos, defended the action, mainly on four grounds :—

1. That plaintiff's statement of claim did not disclose a cause of action.
2. That plaintiff's action could not proceed against the administrator as his "status powers and duties" were limited by his appointment to collecting and receiving the estate only ; " but no further or otherwise ".
3. That no such services had ever been rendered by the plaintiff to the deceased ; and if rendered, they were gratuitous.
4. That the plaintiff was estopped from raising any such claim, as she had waived it by failing to make it when the deceased sued the plaintiff and her husband for ejectment in September, 1963.

The case went to trial in October, 1967. The plaintiff gave evidence in support of her claim, and called four more witnesses, including the then registrar of the District Court of Paphos, Mr. Constantinides. The defendant (who was at that time posted in another District) gave evidence for the defence ; followed by another witness from the village of the deceased.

In the course of the trial, an official copy of the grant of letters of administration to the defendant (on Nov. 16, 1965, in Probate Application 73/65 in the D.C. of Paphos) was put in evidence as *exhibit 2* ; and the file of civil action 455/66 in the same Court, was also produced to show, apparently, that the defendant had exercised in that action, the powers which he disclaimed by this defence in the instant action. In fact that part of the defence was ultimately abandoned, as expressly stated by defendant's advocate at the closing of his case.

Regarding the defence of waiver and estoppel, a copy of notes in the ejectment action (1873/63, D.C. Paphos) was put in by consent, as *exhibit 3*. The notes show that the action was withdrawn as settled out of Court ; and it was dismissed. On the material before him, the trial Judge took the view that there was no merit in the defence of

waiver and estoppel ; and he discarded it. We agree with him. What, therefore, remains is the defence to the substance of the claim, i.e. the nature of plaintiff's services ; and whether she is entitled to remuneration or compensation as claimed.

The trial Judge found that the plaintiff proved that she rendered services to the deceased in the latter's house, including such personal services as were necessary for her (the deceased's) condition of health and age ; and that they were rendered under an agreement as alleged in the statement of claim. The judge, moreover, found that the deceased, acting under the agreement in question, made a will in favour of the plaintiff intending to compensate her services ; which, (will) however, the deceased revoked in September 1963, after putting an end to plaintiff's services.

On these findings, the trial Judge took the view that the plaintiff was entitled to reasonable remuneration for her services " under sections 65 and 70 of the Contract Law, Cap. 149 ". And he proceeded to assess the value of such services, finding them at £7,500 mls per month, for 36 months, i.e. a total of £270 ; for which he gave judgment to the plaintiff with costs.

From this judgment, the defendant now appeals, mainly on the ground that—

" the trial Court failed to consider and/or give due weight to the principle of law that no action can be maintained for services performed upon an undertaking that the plaintiff was to make no charge, but that he should receive a legacy at the death of the person to whom they were rendered."

There are also other grounds in the notice of appeal, challenging the findings of the trial judge ; but these may be disposed of without any difficulty. On the evidence before him; all the findings of fact upon which the trial judge based his decision, were certainly open to him ; and the appellant has shown no reason for disturbing them. (See *Petros Antoniou v. Yashar Elmaz* (1966) 1 C.L.R. 210 ; *Gregoriades v. Kyriakides* (1970) 1 C.L.R. 120 ; *Kyriacou v. Aristotelous* (1970) 1 C.L.R. 172).

We can now return to the legal ground upon which the appeal is mainly based, as stated earlier. Learned counsel for the appellant submitted that there being an agreement between the plaintiff and the deceased, the plaintiff can only claim upon that agreement. " She must stand or fall—as he

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put it—by that agreement”. In support of his submission, counsel referred us to *Baxter v. Gray* [1842] 133 English Reports p. 1349 ; and to *Parker v. Clark* [1960] 1 All.E.R. 93.

Learned counsel for the respondent (plaintiff) on the other hand, contended that his client having lawfully rendered her services upon an agreement or a mutual understanding that they would not be gratuitous, she is entitled to reasonable remuneration by way of damages or compensation in the amount found and awarded by the trial Court ; and referred us to a Canadian case, *M' Guban v. Smith* (1892) 21 S.C.R. 263 (Can.) cited in Vol. 24 of the English and Empire Digest at p. 678 (in the reference to Scottish, Irish and Commonwealth cases) under number 1674.

Baxter v. Gray (*supra*) was decided in England about 130 years ago (1842). It was the case of a doctor who did not send in his bill for medicines and attendance to a deceased patient in her lifetime, under the expectation of a legacy. On her death, finding that she had left him nothing, he made a claim on her executors. The Court held that the plaintiff was entitled to recover, no proof having been given of any understanding between the parties that he was to be paid only by a legacy. The matter to be considered was how did the parties understand the position to be at the time when the services were being rendered.

A claim of unpaid wages to a housekeeper, on the promise of a legacy of a life interest in a farm of the deceased, was the subject matter in *Maddison v. Alderson* L.R. 8 App. Cases p. 467, which reached the House of Lords in 1883. The appellant in that case lived with the deceased for many years as his housekeeper, and he became indebted to her for unpaid wages. She asserted that she was induced to remain with him by a promise that he would leave her a life interest in a certain farm. In fact the deceased made a will leaving her a life interest in the farm. The will was, however, inoperative not being duly attested. The legal heir sued the appellant to recover the title deeds of the farm, and the appellant made a counterclaim for a declaration that she was entitled to a life interest in the farm. Stephen, J. left to the jury the question—

“ whether the defendant was induced to serve (the deceased) as his housekeeper without wages for many years, and to give up other prospects of establishment in life, by a promise, made by him to her, that he would make a will, leaving her a life estate in Maulton Manor Farm, if and when it became his property? ”

The jury answered that question in the affirmative ; and Stephen, J. entered judgment for the housekeeper. But his decision was reversed by the Court of Appeal ; and she appealed to the House of Lords.

The matter was considered in the light of no less than thirty-six earlier cases referred to in their Lordship's opinions and some eighteen other cases referred to in argument, mainly on its two aspects : The provisions of section 4 of the Statute of Frauds, 1677, regarding contracts affecting land ; and the equity of part performance taking it out of the operation of the section. The Earl of Selborne, L.C., put the matter in these words :— (at p. 473).

“ Mr. Justice Stephen and the Court of Appeal arrived at the conclusion that a contract was proved in this case, (notwithstanding the character of the evidence and the form of the verdict) on which, but for the Statute of Frauds, the appellant might have been entitled to relief ; but they differed on the question of part performance, Mr. Justice Stephen thinking that there was part performance sufficient to take the case out of the Statute of Frauds, the Court of Appeal thinking otherwise. This makes it necessary for your Lordships now to examine the doctrine of equity as to part performance of parol contracts. The cases upon this subject (which are very numerous) have all, or nearly all, arisen under those words of section 4 of the Statute of Frauds which provide that ‘no action shall be brought to charge any person upon any contract for sale of lands, tenements, or hereditament, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised’ .”

It was held—

“ that there was no contract, and that even if there had been and although the woman had wholly performed her part by serving till the intestate's death without wages, yet her service was not unequivocally and in its own nature referable to any contract, and was not such a part performance as to take the case out of the operation of the Statute of Frauds s. 4 ; and that she could not maintain an action against the heir for a declaration that she was entitled to a life estate in the land.”

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M' Gagan v. Smith (supra) was decided in Canada, about nine years after the *Maddison* case (1892). The full report of the case is not available. But the reference in the English and Empire Digest (under No. 1674 at page 678 of Vol. 24) gives it as a case where it was held that—

“ where services are rendered upon the faith of a promise to leave property by will, which the testator fails to perform, an action may be maintained against his representatives to recover compensation for the services in the shape of damages for breach of the previous promise.”

The last case to which we have been referred, is *Parker and Another v. Clark and Another* [1960] 1 All E.R. 93, decided by Devlin, J. (as he then was) in November, 1959. The matter is sufficiently presented in the opening paragraph of the judgment which reads :

“ The plaintiffs in this case are suing on an unusual sort of contract. They are a married couple and they are suing another married couple on an allegation that the defendants repudiated a contract whereunder the two couples were to share the running costs of the defendants' house and whereunder the defendants' house was to be left by will in a manner that benefited the plaintiffs and their relatives. Such contracts are not easily proved in fact, and, when proved, are likely to run into legal difficulties such as those that are created by s. 40 of the Law of Property Act, 1925, as is the case here.”

Accepting the evidence of the plaintiffs in preference to that of the defendants, the trial Judge in that case held that there was a legal contract between the parties because in the circumstances it was shown that an arrangement binding in law was intended on both sides. The Court further held that the plaintiffs were entitled to damages against the defendants for breach of contract which (damages) were assessed on the relevant facts and were awarded accordingly.

In all these cases, the success of the claim depended on whether the plaintiffs could satisfy the Court that a legally enforceable agreement between the parties, had been broken by the defendant.

On a fair reading of the statement of claim in the instant case and upon the evidence before him, the trial Judge's finding that the services of the plaintiff were rendered to

the deceased on the basis of the alleged agreement between them, is, we think, well justified. The breach of the agreement by the deceased is likewise sufficiently established. And at this stage the value of the services rendered, as found by the trial Court, is not in dispute.

The trial Judge awarded the value of plaintiff's services (£270) as "remuneration under sections 65 and 70 of the Contract Law". We, however, take the view that the plaintiff is entitled to that amount as damages for breach of the agreement under which she rendered her services to the deceased as alleged in the statement of claim.

We hold that the administrator's appeal must be dismissed with costs.

Appeal dismissed with costs.

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