

CHRYSOULLA SAVVA NEOPHYTOU AND ANOTHER,  
*Appellants-Applicants,*

—  
CHRYSOULLA  
SAVVA  
NEOPHYTOU  
AND ANOTHER

v.

ANDREAS PAPASOLOMONTOS AND ANOTHER,  
*Respondents.*

v.  
ANDREAS  
PAPA-  
SOLOMONTOS

(Civil Appeal No. 5603).

5 *Debtors Relief (Temporary Provisions) Law, 1975 (Law 9/75)—*  
*“Stricken debtor” in section 2 of the Law—Definition thereof*  
*contains plain words which are not capable of any alternative*  
*construction—It does not include the husband or wife of a*  
*debtor.*

10 *Debtors Relief (Temporary Provisions) Law, 1975 (Law 9/75)—*  
*Stay of sale under section 3(2) of the Law—Terms to be im-*  
*posed, in granting a stay, within the discretion of the trial*  
*Court—Principles on which Court of Appeal will interfere*  
*with the exercise of such discretion—On the totality of the*  
*circumstances of this case the manner in which the trial Court*  
*exercised its discretion duly warranted by the material before*  
*it and exercised in accordance with the Law.*

15 *Court of Appeal—Discretion of trial judge—Reviewing exercise of*  
*—Principles governing intervention by Appellate Court.*

*Forced sale—Stay of—Principles applicable—Section 3(2) of the*  
*Debtors Relief (Temporary Provisions) Law, 1975 (Law 9/75).*

20 On the 1st November, 1971 the two appellants borrowed  
jointly from the respondents, the sum of £5,000 with interest  
at 9 per cent per annum payable on the 30th October 1972  
and secured by the mortgage of their respective houses. On  
the 24th October, 1975 judgment was given against them for  
the aforesaid sum with interest at 9 per cent as from the 5th  
25 January, 1974. Upon the issue of a writ of execution against  
their movables they filed an application, under the Debtors  
Relief (Temporary Provisions) Law, 1975 (Law 9/75), for an  
order that the judgment debt be paid by instalments.

In support of the application they contended that they bor-  
rowed the money for purposes of property development and

1977

Mar. 30

CHRYSOULLA  
SAVVA  
NEOPHYTOU  
AND ANOTHER  
v.  
ANDREAS  
PAPA-  
SOLOMONTOS

that the income of both of them was affected substantially on account of the abnormal situation, because appellant 1 borrowed the money on behalf of her husband, who was an estate agent, and whose income was non-existent on account of such situation and appellant 2 who was an advocate by profession was likewise affected. They further argued that on account of the said situation they have not been able to carry out the property development for which they borrowed the money.

5

The income of appellant 2 was reduced from £300 - £350 per month to £100 - £120.-; he was the joint owner with the husband of appellant 1 of 15 donums of land which they purchased with the money borrowed from the respondents; he was also the joint owner of another 150 - 170 donums which they purchased for the sum of £40,000 - £50,000, and they were intending to develop it into building sites; he had given instructions to his architects to prepare plans for the division of his land into building sites and he would be ready to pay £1500 in about 18 months. He had debts amounting to about £13,000 and had to receive £16,000 on mortgage; and he was the owner of other movable and immovable property including a building site in Ayios Dhometios.

10

15

20

The trial Judge concluded that appellant 1, a housewife, was not affected by the abnormal situation and therefore she did not come within the meaning of "stricken debtor" as defined in section 2 of the above Law, which covered only the debtors themselves and not their husbands or wives; and having concluded that the income of appellant 2 both from his profession as a lawyer and from property development was affected by the abnormal situation substantially so as to bring him within the definition of stricken debtor and that section 3 of the above Law was applicable to his case, it stayed the forced sale of movables until the 30th September 1976, and "if he paid on or before that date the sum of £800 then the compulsory sale to be stayed until the 30th March, 1977, and if he paid on or before that date the sum of £900 the compulsory sale to be further stayed until the 30th September, 1977 and if on or before that date he paid £1,000 then the compulsory sale to be stayed until 30.3.1978 and if he paid another £1,500.- then a further stay to be granted until 30.9.1978 when on or before that date he should pay any balance due".

25

30

35

40

Upon appeal counsel for the appellants contended that the

trial Court wrongly interpreted the term "stricken debtor"\* with regard to appellant 1 and that the conditions upon which the stay with regard to appellant 2 was ordered were unreasonable and contrary to the evidence and incompatible with his income.

*Held, (1) That the definition of "stricken debtor" contains plain words which are not capable of any alternative construction and their literal and simple meaning has to be adopted; that it would lead to an absurd situation if it were to be accepted that the word "debtor" as used in the definition of "stricken debtor" in the context of section 2, includes the husband or wife thereof; and that this becomes obvious when one thinks of a debtor whose business has been completely ruined as a result of the abnormal situation, but the property of the debtor's wife has not been effected (pp. 186-187 post).*

*(2) That the order made by the trial Court with regard to appellant being, by virtue of section 3(2) of the Law, a matter of discretion, the onus was on the appellant to satisfy this Court on appeal, that such discretion was wrongly exercised, as it is well settled that when a trial Court exercises its discretion properly this Court will not interfere even if it would have made a different order, had it been dealing with the matter in the first instance (see, inter alia, HjiPetri v. Aletraris (1973) 1 C.L.R. 166 at p. 169); and that on the totality of the circumstances of this case the manner in which the trial Court exercised its discretion was duly warranted by the material before it and was exercised in accordance with the Law.*

*Appeal dismissed.*

Cases referred to:

*Lordos & Anastassiades and Another v. The District Officer of Limassol and Another (1976) 2 C.L.R. 145 at pp. 152-155;*

*HjiPetri v. Aletraris (1973) 1 C.L.R. 166 at p. 169;*

*Evans v. Bartlam [1937] 2 All E.R. 646;*

*Karydas Taxi Co. Ltd. v. Komodikis (1975) 1 C.L.R. 321 at p. 327;*

*In Re O (infants) [1971] 2 All E.R. 744.*

\* Section 2 of Law 9/75 defines "stricken debtor" as follows:  
"Any debtor whose work or business has been affected as a result of the abnormal situation to such an extent as to render him unable to meet his contractual obligations out of which the debt arose"

1977  
Mar. 30

—  
CHRYSOULLA  
SAVVA  
NEOPHYTOU  
AND ANOTHER  
v.  
ANDREAS  
PAPA-  
SOLOMONTOS

1977  
Mar. 30

—  
CHRYSOULLA  
SAVVA  
NEOPHYTOU  
AND ANOTHER  
v.  
ANDREAS  
PAPA-  
SOLOMONTOS

**Appeal.**

Appeal by applicants against the judgment of the District Court of Nicosia (Kourris S.D.J.) dated the 7th July, 1976 (Application No. 37/76) whereby the application of applicant No. 1, under the Debtors Relief (Temporary Provisions) Law, 1975 (Law 9/75), for an order that the judgment debt in Action No. 2995/75 be paid by yearly instalments was dismissed and it was ordered that the sale of the immovable property of applicant No. 2 be stayed subject to the payment of his debt by instalments.

*Ch. Loizou* in person for himself and appellant 1.

*P. Ioannides*, for the respondents.

*Cur. adv. vult.*

STAVRINIDES, J.: The judgment of the Court will be delivered by Mr. Justice A. Loizou.

<sup>1</sup> A. LOIZOU, J.: The two appellants borrowed on the 1st November, 1971 jointly from the two respondents, the sum of £5,000.- with interest at 9 per cent per annum payable on the 30th October, 1972, and secured by the mortgage of their respective houses.

On the 24th October, 1975, judgment was given against them in the District Court of Nicosia in Action No. 2595/75 for the aforesaid sum with interest at 9 per cent as from 5.1.1974 until final payment. Upon the issuing of a writ of execution against their movables the appellants filed in the said Court an application under the Debtors Relief (Temporary Provisions) Law, 1975, (Law No. 9/75), (hereinafter referred to as the Law), praying for an order that the aforesaid judgment debt be paid by yearly instalments as follows:

- (a) On the 30th March, 1977, the sum of £1,500.-
- (b) On the 30th March, 1978, the sum of £1,500.-, and
- (c) on the 30th March, 1979, the balance thereof.

It was their contention that they borrowed the aforesaid money for purposes of property development and that the income of both of them was affected substantially on account of the abnormal situation, because appellant No. 1

borrowed the said sum on behalf of her husband who is an estate agent and whose income is non-existent on account of the said situation and that appellant No. 2 who is an advocate by profession, was likewise affected and that on account of this situation they have not been able to carry out the property development for which they borrowed the said money.

5  
10  
The trial Judge concluded that appellant No. 1, a housewife, was not affected by the abnormal situation and therefore she did not come within the meaning of "stricken debtor" as defined in section 2 of the aforesaid Law, inasmuch as it covered only the debtors themselves and not the husband or wife of such debtor, and it dismissed her application.

15  
20  
25  
30  
With regard to appellant No. 2 the trial Judge concluded that his income as a lawyer as well as that from property development with which he was engaged, was affected by the abnormal situation substantially so as to bring him within the definition of stricken debtor and that section 3 of the said Law was applicable to his case. Taking into consideration the criteria set out in the said section and the circumstances of the case, the trial Judge stayed the forced sale of the movables of appellant No. 2 until the 30th September, 1976, and "if he paid on or before that date the sum of £800.- then the compulsory sale to be stayed until the 30th March, 1977, and if he paid on or before that date the sum of £900.- the compulsory sale to be further stayed until the 30th September, 1977 and if on or before that date he paid £1,000 then the compulsory sale to be stayed until 30.3.1978 and if he paid another £1,500.- then a further stay to be granted until 30.9.1978 when on or before that date he should pay any balance due. The aforesaid stay would remain effective, so long as the aforesaid law was in force".

35  
Both appellants filed the present appeal which was argued on two grounds:

(a) that the trial Court wrongly interpreted the term "stricken debtor" with regard to appellant No. 1, and

40  
(b) the conditions upon which the stay was ordered were unreasonable and contrary to the evidence and incompatible with the income of appellant No. 2.

1977  
Mar. 30

—  
CHRYSOULLA  
SAVVA  
NEOPHYTOU  
AND ANOTHER  
v.  
ANDREAS  
PAPA-  
SOLOMONTOS

“Stricken debtor” is defined in section 2 of the Law as meaning, “any debtor whose work or business has been affected as a result of the abnormal situation to such an extent as to render him unable to meet his contractual obligations out of which the debt arose”.

5

We have been asked on behalf of appellant No. 1 to interpret the definition of ‘stricken debtor’ in such a way as to give effect to the intention of the legislature by choosing from the alternative constructions which are equally open, that alternative which will avoid injustice and keep it within the purpose for which the statute was passed, which is the bounden duty of the Court to adopt, according to the English authorities cited with approval in the judgment of Triantafyllides, P. in *Lordos & Anastassiades and another v. The District Officer of Limassol and another*, (1976) 2 C.L.R. 145 at pp. 152-155.

10

15

Of course these authorities refer to the instances where there are two meanings each adequately satisfying the language of a statute or, as it is sometimes differently put, alternative constructions are equally open to the Court in which case that alternative must be chosen which will not lead to unnecessary injustice rather than choose the one that might produce highly inequitable and unreasonable results.

20

We fully agree with this proposition; the question, however, is whether the wording of the definition of “stricken debtor” in section 2 is capable of some other meaning than the one given to it by the trial Judge. The definition refers to the debtor himself, his work or business that has been affected and does not cover the work or business of the husband or wife of the debtor. The definition contains plain words which are not capable of any alternative construction and their literal and simple meaning has to be adopted. It would lead to an absurd situation if we were to accept that the word “debtor” as used in the definition of “stricken debtor” in the context of section 2, includes the husband or wife thereof. This becomes obvious when one thinks of a debtor whose business has been completely ruined as a result of the abnormal situation, but the property of the debtor’s wife has not been affected. If we were to give it the interpretation asked by appellant, it means that in such cases, the unfortunate debtor of the example

25

30

35

40

should be found able to meet his contractual obligations out of which the debt arose because of his wife's economic prosperity. We find no merit in this ground.

1977  
Mar. 30

—  
CHRYSOULLA  
SAVVA  
NEOPHYTOU  
AND ANOTHER  
v.  
ANDREAS  
PAPA-  
SOLOMONTOS

5 With regard to the second ground, a Court dealing with an application for the stay of a sale, must, under sub-section (2) of section 3 of the Law take into account -

“(a) whether the debtor is a stricken debtor;

10 (b) the amount of the debt on the date of the application by the debtor for the stay of the forced sale in relation to the original amount of the debt and the value of the property in respect of which the application for the stay of the forced sale is made;

15 (c) the market conditions in respect of the sale of property in the area in which the forced sale is to take place;

20 (d) whether, having regard to all the circumstances greater hardship will be caused by staying the forced sale than by not staying the same and the effect of each of these on the others”.

25 Furthermore, under sub-section (3) of the said section, a Court may “if it deems expedient so to do, order such stay on condition that the debtor shall pay the debt or part thereof by so many instalments and at such intervals and on such other terms as the Court may deem fit in the circumstances of each particular case”.

30 It is obvious that the Court possesses by virtue of sub-section (3) a wide discretion as to the terms which it may generally impose when granting a stay and also as to the conditions with regard to the instalments and their intervals at which they might be payable. The order made by the trial Court being, therefore, a matter of discretion, the onus was on the appellant to satisfy this Court on appeal, that such discretion was wrongly exercised, as it is well  
35 settled that when a trial Court exercises its discretion properly, this Court will not interfere even if it would have made a different order, had it been dealing with the matter in the first instance.

As stated in the case of *Eleni HjiPetri v. Aletraris*

1977  
Mar. 30

—  
CHRYSOULLA  
SAVVA  
NEOPHYTOU  
AND ANOTHER  
v.  
ANDREAS  
PAPA-  
SOLOMONTOS

(1973) 1 C.L.R. p. 166 at p. 169, "Put very briefly the duty of an appellate Court it to set aside such a decision where the Court below has erred in principle or where it is satisfied that such decision is improper, unjust or wrong. In this respect useful reference may be made to the decision of the House of Lords in *Evans v. Bartlam* [1937] 2 All E.R. 646".

5

This case is referred to in the case of *Karydas Taxi Co. Ltd. v. Komodikis* (1975) 1 C.L.R. 321 at p. 327 where it is pointed out that what was stated in the *Evans* case was followed, *inter alia*, in *Re O (infants)* [1971] 2 All E.R. 744.

10

With these principles in mind we have approached the material that was before the trial Court and we have not been satisfied that there are any valid grounds which would require our interference with the exercise of the discretion of the trial Judge.

15

Appellant No. 2 is a practising advocate whose income on account of the Turkish invasion was reduced from £300 - £350 per month to £100 - £120 per month. He is the joint owner with the husband of appellant No. 1 of 15 donums of land in the area of Tseri which they purchased with the £5000.- borrowed from the respondents; he is also the joint owner of another 150 - 170 donums which they purchased for the sum of £40,000 - £50,000.- and their intention was to develop it into building sites. Appellant No. 2 further stated in evidence that he had given instructions to his architects to proceed with the plans for the division of the land owned by him into building sites and he estimated that in about 9 months' time he would be ready to apply to the Banks for a loan for the development of the area and in 8 - 9 months they would be ready to pay £1,500.-. He has debts amounting to about £13,000 and he has to receive £16,000 on mortgage. He is also the owner of other property both movable and immovable, including a building site in Ayios Dhometios.

20

25

30

35

It is obvious that on the totality of the circumstances of this case the manner in which the trial Court exercised its discretion was duly warranted by the material before it and was exercised in accordance with the Law.

40

For all the above reasons, the present appeal is dismissed with costs.

*Appeal dismissed with costs.*