1976 December 1

[TRIANTAFYLLIDES, P., STAVRINIDES, MALACHTOS, JJ.]

ANDREAS CHRYSOSTOMOU,

Appellant—Defendant,

v.

G. S. CHALKOUSI & SONS,

Respondents—Plaintiffs.

(*Civil Appeal No.* 5382).

Debt—Assignment—Law applicable—Principles of equity—Form of assignment—An equitable assignment is complete even if no notice has been given to the debtor concerned—Action of assignee not defeated by the nonjoinder of the assignor as a party—Rule 10 *of order* 9 *of the Civil Procedure Rules.*

Civil Procedure—Parties—Joinder—Action by assignee of debt against debtor—Not defeated by nonjoinder of assignor—Rule 10 *of Order* 9 *of the Civil Procedure Rules.*

The appellant owed the sum of C£ 70 to a company, Geotex Distributors Ltd. The company assigned the debt to the respondents and the latter obtained judgment for the above sum against the appellant.

Upon appeal counsel for the appellant contended:

(a) That the assignment of the debt in question was not a valid one because it was not made in writing and no written notice of it was given to the appellant, as the debtor.

(b) That the company had to be joined as a party to the proceedings.

Held, dismissing the appeal, (1) a debt, such as the one involved in the present proceedings, is a legal chose in action; and there can be an equitable assignment of a legal chose in action (see Snell's Principles of Equity, 27th ed. pp. 69, 70, 74, 77). Such an assignment does not have to be in any particular form because

Equity looks to the intent rather than the form; an equitable assignment of a debt made between an assignor and an assignee is complete even if no notice has been given to the debtor concerned.

(2) We are not prepared to hold that the action of the respondents ought to have been dismissed because of the non-joinder of the assignor (see rule 10 of Order 9 of the Civil Procedure Rules); it was up to the trial Judge, if this matter had been raised before him, to make, in exercising his relevant discretionary powers, any order under r. 10, that he might have deemed fit.

Appeal dismissed with costs.

Cases referred to:

Inland Revenue Commissioners v. *Electric and Musical Industries Ltd.*, [1949] 1 All E.R. 120 at p. 126 (affirmed on appeal [1950] 2 All E.R. 261);

Gorringe v. *Irwell India Rubber and Gutta Percha Works* [1886] 34 Ch. D. 128.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Artemides, D.J.) dated the 15th February, 1975 (Action No. 5933/73) by virtue of which he was found liable to pay to the plaintiff the sum of C£ 70 being a debt which he owed to a third party and was assigned to the plaintiffs.

N. Zomenis, for the appellant.

T. Eliades with *P. Sarris*, for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by:

TRIANTAFYLLIDES P.: In this case the appellant complains against a judgment of the District Court of Nicosia by virtue of which he was found liable to pay to the respondents—who were the plaintiffs in the action against him before the Court below—the sum of C£ 70.

This sum was owed, as a debt, by the appellant to a company, Geotex Distributors Ltd., and had been assigned by this company to the respondents.

Regarding assignment of a debt there exists no express provision about it in our Contract Law, Cap. 149; sections 37 and

40 of Cap. 149, which correspond to sections 37 and 40, respectively, of the Indian Contract Act, 1872, can only be regarded as provisions which do not relate directly to the matter of the assignment of a debt and which, in circumstances such as those of the present case, do not operate, in any way, so as to exclude the assignment of a debt (see, also, the commentary on section 37 of the Indian Contract Act in Pollock and Mulla on the Indian Contract and Specific Relief Acts, 9th ed., p. 333).

We have, therefore, to consider what is the law governing the assignment of a debt in Cyprus:

In England it is regulated by a statute, namely the Law of Property Act 1925, which is not applicable in Cyprus.

In our view we have to apply the principles of Equity which were applicable before, and are still applicable after, the enactment of the said statute in England.

A debt, such as the one involved in the present proceedings, is a legal chose in action, as defined in Snell's Principles of Equity, 27th ed., p. 69; and, as it appears from the same textbook (at pp. 70,74, 77), there can be an equitable assignment of a legal chose in action.

Such an assignment does not have to be in any particular form (see *Inland Revenue Commissioners* v. *Electric and Musical Industries, Ltd.*, [1949] 1 All E.R. 120, 126; affirmed on appeal, [1950] 2 All E.R. 261) because Equity looks to the intent rather than to the form; and an equitable assignment of a debt made between an assignor and an assignee is complete even if no notice has been given to the debtor concerned (see *Gorringe* v. *Irwell India Rubber and Gutta Percha Works*, [1886] 34 Ch. D. 128).

We can find, therefore, no merit in the submission of counsel for the appellant that in the present case the assignment of the debt in question was not a valid one because it was not made in writing and no written notice of it was given to the appellant, as the debtor.

Besides, as it appears from the record before us, counsel who was acting, at the material time, for the appellant, and who is not the same one as counsel who appeared before us in this

appeal, wrote on August 11, 1973, a letter to the respondents, which leaves no room for doubt, whatsoever, that the appellant had in fact knowledge of the assignment to the respondents of his debt by Geotex Distributors Ltd., and, also, that he acknowledged its existence and requested that it should be deducted from a pending claim of his concerning commission allegedly due to him.

This letter shows, also, that the contention of counsel for the appellant that it was not duly proved, at the trial, that the debt in question was actually due is not well-founded.

The last point with which we have to deal is the submission of counsel for the appellant that the assignors, that is Geotex Distributors Ltd., had to be joined as parties to the proceedings:

In this respect it is useful to bear in mind that rule 10 of Order 9 of the Civil Procedure Rules provides as follows:-

> "10. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner provided by rule 11 of this Order or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice."

We are not, therefore, prepared to hold that the action of the respondents against the appellant ought to have been dismissed because of the non-joinder of the assignors, though, of course, it was up to the trial Judge, if this matter had been raised before him, to make, in exercising his relevant discretionary powers, any order, under the above rule 10, that he might have deemed fit.

In this connection reference may, also, be made to Chitty on Contracts, 23rd ed., vol. 1, p. 482, para. 1029, where the following are stated:-

> " However, it is to be noted that the debtor may waive the requirement that the assignor be joined*, and in any event the Rules of the Supreme Court now provide that no cause of action is to be defeated for non-joinder of a party, though the Court may direct that he be made a party to the case"**.

For all the above reasons we find that this appeal cannot succeed and it is dismissed accordingly, with costs.

Appeal dismissed with costs.

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* *Brandt's Sons & Co. v. Dunlop Rubber Co.* [1905] A.C. 454.

** R.S.C., Ord. 15, r. 6; County Court Rules, Ord. 5, rr. 6 and 29; Ord. 15, r. 1.