

1978 November 21

[L. LOIZOU, A. LOIZOU, MALACHTOS, JJ.]

GABRIELLA G. CATSOUNOTOU,

Appellant-Plaintiff,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,
FOR AND ON BEHALF OF THE REPUBLIC OF CYPRUS,

Respondent-Defendant.

(Civil Appeal No. 5427).

Compulsory acquisition—Compensation with interest thereon at 7% by order of the Court—Lodgment of amount of compensation with the Accountant-General due to the absence of the owner of the property abroad—Sections 12(2) and 13 of the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962)—Amount of lodgment paid to the owner immediately after he asked for it—Accountant-General a custodian for the owner and a bailee of the amount deposited with him—Not bound to pay interest to owner during the period the amount of the lodgment remained deposited with him—No resulting trust. 5
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Interest—Damages—Common law—When is interest payable at common law—Compulsory acquisition—Lodgment of amount of compensation, awarded by the Court, with the Accountant-General due to the absence abroad of the owner of the property—Section 12(2) of the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962)—No statutory provision authorising payment of interest in respect of period amount of compensation remained lodged with the Accountant-General—Nor is interest payable at common law—Appellant not entitled to interest on the ground that he was kept out of his money whilst the respondent had the use of it—Section 33(1) of the Courts of Justice Law, 1960 (Law 14/60)—It deals with interest on debts and judgments. 15
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The appellant-plaintiff was the owner of immovable property at Limassol which was acquired compulsorily by the Cyprus Telecommunications Authority. As there was no agreement 25

5 regarding the amount of compensation to be paid for the said property the matter was referred to the District Court of Limassol, which by its judgment, delivered on the 29th April, 1972, awarded the amount of C£30,818 plus 7 per cent interest per annum thereon, as from the 3rd July, 1970, till final payment.

10 On the 24th May, 1972, the appellant left Cyprus and went abroad and returned on the 14th June, 1972. On account of her absence abroad, the Authority on the 13th June, 1972, lodged with the Accountant-General of the Republic, the amount of C£35,013.059 mils, in settlement of the compensation awarded, including the interest that had accrued up to that date. The appellant was informed for the first time about the lodgment as above of the judgment debt on the 6th July, 1972; and when, by letter dated the 5th September, 1972, the Accountant-General was asked to remit the above amount the latter issued a cheque on the 8th September, 1972 which was received by the appellant on the 12th September, 1972.

20 The trial Court dismissed plaintiff's claim for an amount of C£540 which represented the interest from the 13th June, 1972, the date of the deposit with the Accountant-General, up to the 12th September, 1972, the date when the cheque of the Accountant-General was received by her, and hence the present appeal

25 The lodgment of the amount of compensation was made under section 12(2) of the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962) which provides as follows

30 "If any of the persons interested does not consent to receive the compensation payable to him or if on account of his disability or absence from the island of Cyprus the payment of such compensation to him cannot be effected, the acquiring authority may, subject to any directions of the Court, deposit the amount of such compensation with the Accountant-General of the Republic".

35 The legal consequence of the lodgment with the Accountant-General was that, by virtue of section 13 of the above Law, the subject property vested in the Acquiring Authority free from any encumbrances.

Counsel for the appellant contended:

(a) That the trial Court failed to give effect to the judgment

and in particular to that part of it that provided for "interest until final payment to the appellant" and that the Accountant-General by accepting the deposit from the Authority stepped into its shoes and he should pay to the appellant whatever money was payable by the Authority to her which should include the interest until final payment to her, *i.e.* the C£540.- 5

(b) That the case might be treated as one of a resulting trust.

(c) That the Court failed to give effect to the principle of law by virtue of which interest is awarded when the defendant has kept the plaintiff out of the money and the defendant has had the use of it. 10

Held, dismissing the appeal, (1) that it is clear from section 12 of the Law that the Accountant-General in no way steps into the shoes of an Acquiring Authority in any form whatsoever; that he is merely used as an official to whom a valid payment can, in law, be made for and on behalf of an owner; that such deposit with the Accountant-General is, under section 13 of the Law, equated to the payment in advance which, under Article 23 of the Constitution, is a prerequisite to the compulsory acquisition of property, as it is only upon such payment or deposit and proof thereof that the acquired property can vest in the Acquiring Authority and the Chief Lands and Surveys Officer of the Republic may cause registration of such property to be made in the name of the Acquiring Authority; that no more duty is cast by the Law on the Accountant-General than retain same safely for and for the account of the owner of the property compulsorily acquired; that he is not a trustee in the sense of having a duty to invest the trust money, but he must have it readily available to be paid out to an owner whenever called upon; that he is not a debtor who must seek the creditor to pay him his debt; and, that, accordingly, this Court agrees with the trial Judge that he is only a custodian for the owners and a bailee of the amount so deposited with him. 15 20 25 30 35

(2) That the action was not one for a breach of trust, nor was it claimed that the Accountant-General did something wrong by failing to invest; and that, accordingly, the contention that the case might be treated as one of a resulting trust will be dismissed. 40

(3) That, in the absence of express agreement, at common law interest could not be recovered on a debt or damages (see, *inter alia*, *Jefford and Another v. Gee* [1970] 1 All E.R. 1202 and Halsbury's Laws of England 3rd ed. Vol. 27 para. 8); that the only relevant statutory provision, which is section 33(1) of the Courts of Justice Law, 1960 (Law 14/60), deals with interest on debts and judgments and has no provision enabling a Court to award interest by way of damages; that, therefore, there being no statutory provision authorising the payment of interest in circumstances as the present one and the Common Law which is applicable in Cyprus being not helpful to the appellant on the matter, the appellant is not entitled to succeed on this ground also, that is that she was kept out of the money whilst the defendant had the use of it as claimed.

Appeal dismissed.

15 Cases referred to:

- Republic v. Savvides & Others* (1975) 1 C.L.R. 12 at pp. 27 and 28;
Jefford and Another v. Gee [1970] 1 All E.R. 1202 at pp. 1205 and 1206;
 20 *London, Chatham and Dover Ry Co. v. South Eastern Ry Co.* [1893] A.C. 429;
Trans Trust S.P.R.L. v. Danubian Trading Company Ltd. [1952] 1 All E.R. 970 at p. 977;
Hilhouse v. Davis [1813] 1 M & S 169 at p. 175;
 25 *Arnott v. Redfern* [1826] 3 Bing. 353 at p. 359;
The Funabashi [1972] 2 All E.R. 181;
Cremer v. General Carriers [1974] 1 All E.R. 1;
Miliangos v. George Frank (Textiles) Ltd. (No. 2) [1976] 3 All E.R. 599;
 30 *K. v. K.* [1976] 2 All E.R. 774.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Pitsillides, S.D.J.) dated the 5th April, 1975, (Action No. 1018/73) dismissing her claim for the sum of C£540.- as interest, calculated at the rate of 7%, on the amount of compensation awarded for property compulsorily acquired, during the period the said amount remained lodged with the

Accountant-General under section 12(2) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62).

G. Cacoyiannis, for the appellant.

S. Nicolaidis, Senior Counsel of the Republic, for the Respondent.

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Cur. adv. vult.

L. LOIZOU J.: The judgment of the Court will be delivered by H.H. Mr. Justice A. Loizou.

A. LOIZOU J.: This is an appeal which raises a very important question, that is, whether an amount of C£540.- is in law recoverable by the appellant from the Republic, by way of interest calculated at the rate of 7 per cent per annum on the amount of compensation awarded for property compulsorily acquired, and which amount was, in view of the absence abroad of the appellant at the time of payment, lodged with the Accountant-General, under the provisions of section 12 of the Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962), hereinafter to be referred to as "the Law".

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The appellant was the owner of immovable property at Limassol which was acquired compulsorily under the Law by the Cyprus Telecommunication Authority—hereinafter to be referred to as "the Authority". As there was no agreement regarding the amount of compensation to be paid for the said property, the matter was referred to the District Court of Limassol, which heard the case and delivered its judgment on the 29th April, 1972, in favour of the appellant for the sum of C£30,818.- plus 7 per cent interest per annum thereon, as from the 3rd July, 1970, till final payment.

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On the 24th May, 1972, the appellant left Cyprus and went abroad, and returned on the 14th June, 1972. On account of her absence abroad, the Authority on the 13th June, 1972, lodged with the Accountant-General of the Republic, the amount of C£35,013.059 mils, in settlement of the compensation so awarded; this amount included the interest that had accrued up to that date. Counsel of the appellant wrote to counsel of the Authority asking him to arrange the payment of the judgment-debt and costs, to which the latter replied by letter dated 6.7.1972, remitting the costs and informing him that the compensation awarded had already been lodged with the

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Accountant-General and the receipts had been filed with the District Lands Office of Limassol in accordance with the Law. This appears to be the first time that the appellant was informed about it. On the 5.9.1972 the Accountant-General was asked
5 by letter to remit to the appellant the sum of C£35,013.059 mils; this letter was received on the 7.9.1972 and on the 8.9.1972 the Accountant-General issued and posted a cheque for the aforesaid sum deposited with him, which was received by the appellant on the 12.9.1972, and no significance has been attri-
10 buted to this short delay.

On the 21st November, 1972, the appellant, through her advocate, claimed from the Authority the amount of C£540.- representing the interest from the 13th June, 1972, the date of
15 the deposit with the Accountant-General of the amount of the judgment, up to the 12th September, 1972, the date when the cheque of the Accountant-General was received by her. It was stated therein that although the default was legally the re- sponsibility of the Authority, it should, however, be borne by the Government due to its delay in effecting payment to the
20 appellant. The Authority by letter dated 28th November, 1972, denied responsibility on the ground that the compensation awarded was lodged with the Accountant-General, in view of the absence abroad of the appellant so that the subject property would be transferred to them under the provisions of section 13
25 of the Law.

Following receipt of the Authority's said letter, counsel of the appellant addressed a letter to the District Lands Officer, Limassol, on the 7.12.1972 in which reference was made to the said letter of the Authority and called upon him and through
30 him the appropriate Government Department, to pay to his client the aforesaid amount of C£540.-.

From the subsequent correspondence it appears that on advice from the Attorney-General of the Republic the stand taken by the Government was that no interest accrued after the deposit
35 of the money with the Accountant-General for the benefit and for the account of those interested.

The lodgment of the amount of compensation with the Accountant-General was made under section 12, sub-section (2), of the Law, which reads:-

“ If any of the persons interested does not consent to receive the compensation payable to him or if on account of his disability or absence from the island of Cyprus the payment of such compensation to him cannot be effected, the acquiring authority may, subject to any directions of the Court, deposit the amount of such compensation with the Accountant-General of the Republic.” 5

No directions seem to have been made by the Court, but that is not in issue in these proceedings, particularly so as the Authority is not a party to them, the Accountant-General could not in any event refuse to accept such a deposit, and any directions that might have been given by the Court in such circumstances would have nothing to do with the circumstances of the present case. The legal consequence of such a deposit with the Accountant-General by virtue of section 13 of the Law is that, the subject property thereupon vests in the Acquiring Authority free from all encumbrances, and in the case of immovable property production of satisfactory evidence of such deposit—hence the forwarding of the receipt of the lodgment to the District Lands Office—gives sufficient authority to the Chief Lands and Surveys Officer of the Republic to cause registration of such property to be made in the name of the Acquiring Authority. 10 15 20

The trial Judge then made certain other findings which are to the effect that there was nothing in the evidence to show that the Accountant-General had notice why the deposit was made with him instead of payment being effected directly to the appellant or that he had notice that the appellant was absent from Cyprus or even if he had such notice, when she would return; further, the Accountant-General was called upon for the first time to pay the amount deposited with him on the 7.9.1972 when he received the letter of counsel of the appellant and that on the day following its receipt he issued and posted to the plaintiff the cheque for the amount deposited which shows a very expeditious attendance to the matter in issue. Also he observed that although the appellant sought payment for the first time from the Authority by her letter dated 23.6.1972 and she was informed about the lodgment by letter dated 6.7.1972, yet she did not seek payment from the Accountant-General of the amount so deposited until the 5.9.1977, by letter of her counsel. 25 30 35 40

The trial Judge then concluded that:

“ It is, therefore, obvious that the delay in being paid should be accounted solely on the plaintiff. Apart from the above, there is nothing before me showing that the Republic of Cyprus made any profit from the money of the plaintiff deposited with the Accountant-General so as to find that the profit belonged to the plaintiff and should be given to her. The Accountant-General is not entitled to deal in moneys deposited with him under sub-section (2) of section 12 of Law 15 of 1962; he has only authority under the said sub-section to keep it as custodian for the owners of property compulsorily acquired under the said Law and thus he becomes the bailee of such owners for the amounts deposited with him.”

15 It has been the contention of learned counsel for the appellant that the trial Court failed to give effect to the judgment and in particular to that part of it that provided for “interest until final payment” which should be interpreted as meaning “until final payment to the appellant” and that the Accountant-
20 General by accepting the deposit from the Authority stepped into its shoes and he should pay to the appellant whatever money was payable by the Authority to her which should include the interest until final payment to her, *i.e.* the C£540.

If one looks at the wording of section 12, it is clear that the
25 Accountant-General in no way steps into the shoes of an Acquiring Authority in any form whatsoever. He is merely used as an official to whom a valid payment can, in law, be made for and on behalf of an owner who does not consent to receive the compensation payable to him or to whom on account of his
30 disability or absence from the island the payment of such compensation to him cannot be effected. Such deposit with the Accountant-General is, under section 13 of the Law, equated to the payment in advance which, under Article 23 of the Constitution, is a prerequisite to the compulsory acquisition of
35 property, as it is only upon such payment or deposit and proof thereof that the acquired property can vest in the Acquiring Authority and the Chief Lands and Surveys Officer of the Republic may cause registration of such property to be made in the name of the Acquiring Authority. No more duty is
40 cast by the Law on the Accountant-General than retain same

safely for and for the account of the owner of the property compulsorily acquired. He is not a trustee in the sense of having a duty to invest the trust money, but he must have it readily available to be paid out to an owner whenever called upon, and in any event in the circumstances of this case, even if he were to be so considered, which he is not, the money in question has not been left uninvested for an unreasonable length of time so as to make him liable for any loss and for any interest during the period of its being so left. (See Halsbury's Laws of England, 3rd Ed., Vol. 38, para. 1691, and the authorities set out in footnote (b) and para. 1810 at pp. 1047 and 1048). Nor is he a debtor who must seek the creditor to pay him his debt. We agree with the trial Judge that he is only a custodian for the owners and a bailee of the amount so deposited with him.

Moreover, though argued that the case might be treated as one of a resulting trust, the action of course was not one for a breach of trust, nor was it claimed that the Accountant-General did something wrong by failing to invest. What was claimed, was that the Accountant-General was in the money and that the appellant was out of it.

The next argument advanced on behalf of the appellant is that the Court failed to give effect to the principle of law by virtue of which interest is awarded when the defendant, has kept the plaintiff out of the money and the defendant has had the use of it. This brings us to the principles of the Common Law on the subject as to when interest is payable. An aspect of this was dealt with in the case of *The Republic of Cyprus v. Christakis Savvides & Others* (1975) 1 C.L.R. p. 12, where at pp. 27 and 28, reference is made to the case of *Jefford and Another v. Gee* [1970] 1 All E.R. p. 1202, in which though the question of interest payable turned on the interpretation of section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934, as amended by section 22 of the Administration of Justice Act 1969, the position at Common Law with which we are, in this case, concerned was reviewed by Lord Denning who at pp. 1205 and 1206 said:-

“ 3. *The previous law*

Every Act has to be considered with reference to the previous law and the state of the earlier authorities. These

show that the 1934 Act was intended to give effect to a principle enunciated by Lord Herschell L. C. in 1893. So we will trace it out.

(i) *At common law*

5 The rule of the common law of England was that, in the absence of express agreement, interest could not be recovered on a debt or damages and equity in this respect followed the law. This situation was regretted by many great Judges. In regretting it, they stated the principle
10 which the Courts ought to apply. Thus in 1826, Best C. J. said:

15 ‘However a debt is contracted, if it has been wrongfully withheld by a defendant after the plaintiff has endeavoured to obtain payment of it, the jury may give interest in the shape of damages for the unjust detention of the money.’

20 See *Arnott v. Redfern*, [1826] 3 Bing. 353 at p. 359. In 1893 in *London, Chatham and Dover Ry Co. v. South Eastern Ry Co.* [1893] A.C. 429 at p. 437, Lord Herschell L. C., stated the principle, which he thought should be applied, in these words:

25 ‘..... I think that when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongfully withholding the money from the other ought not in justice to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in the possession of the other part who is entitled to
30 its use. Therefore, if I could see my way to do so, I should certainly be disposed to give the appellants, or anybody in a similar position, interest upon the amount withheld from the time of action brought at all events.’

35 (ii) *The acceptance of the principle*

The principle thus stated by Lord Herschell L. C. was set out in its entirety by the Law Revision Committee in its Second Interim Report which led to the 1934 Act.”

It may be worth noting that Lord Herschell in the *London Chatham* case (*supra*) went on and said at p. 437:

“ But I have come to the conclusion upon a consideration of the authorities agreeing with the Court below, that it is not possible to do so although no doubt in early times the view was expressed that interest might be given under such circumstances by way of damages.” 5

In the editorial note in *Chatham* case (*supra*) it is stated that interest could not be given by way of damages for detention of the debt, the Law upon that subject, unsatisfactory as it is, having been too long settled to be now departed from. 10

The position as to when interest is payable at Common Law is also summed up in Halsbury's Laws of England 3rd edition volume 27 para. 8 which reads as follows:

“ 8.¹ *When interest is payable at common law.* At common law interest is payable (1) where there is an express agreement to pay interest, (2) where an agreement to pay interest can be implied from the course of dealing between the parties or from the nature of the transaction or a custom or usage of the trade or profession concerned; (3) in certain cases by way of damages for breach of a contract (other than a contract merely to pay money where the contract, if performed, would to the knowledge of the parties have entitled the plaintiff to receive interest. 15 20

Except in the cases mentioned, debts do not carry interest at common law.” 25

It is worth referring also to footnote (U) thereof where *inter alia* it is stated with regard to the *Chatham* case and by reference also to the *Trans Trust S.P.R.L. v. Danubian Trading Company Ltd.* [1952] 1 All E.R. 970 at p. 977 that interest will not normally be awarded by way of damages for the nonpayment of unpunctual payment of a debt since in such a case interest is not in general presumed to have been within the contemplation of the parties. And goes on to say that certain dicta in *Hilhouse v. Davis* [1813] 1 M & S 169 at p. 175 and *Arnott v. Redfern* [1826] 3 Bing. 353 at p. 359, which suggest that interest is due at common law whenever a debt has been wrongfully withheld after the defendant has endeavoured to obtain payment of it, cannot be regarded as authoritative. 30 35

I need not refer to such other cases as the *Funabashi* [1972] 2 All E.R. p. 181, *Cremer v. General Carriers* [1974] 1 All E.R. p. 1, *Miliangos v. George Frank (Textiles) Ltd. (No. 2)* [1976] 3 All E.R. p. 599 and *K. v. K.* [1976] 2 All E.R. 774, relied upon
5 by counsel for the appellant as they turn more on the English Statutory Provisions than the Common Law with which we are concerned and the position of Common Law has been sufficiently set out in this judgment.

In Cyprus, however, the only relevant statutory provision is
10 that of section 33(1) of the Courts of Justice Law 1960 which deals with interest on debts and judgments, but has no provision enabling a Court to award interest by way of damages. There being therefore no statutory provision authorising the payment of interest in circumstances as the present one and the
15 Common Law which is applicable in Cyprus being not helpful to the appellant on the matter, we have come to the conclusion that the appellant is not entitled to succeed on this ground also, that is that she was kept out of the money whilst the defendant had the use of it as claimed.

20 For all the above reasons this appeal fails and is hereby dismissed with no order as to costs.

Appeal dismissed. No order as to costs.