1980 January 14

[TRIANTAFYLLIDES, P., DEMETRIADES, SAVVIDES, JJ.]

CHANDUBHAI BHIMJIYANI,
Appellant-Plaintiff,

v.

SOLON GREGORIOU,
Respondent-Defendant.

(*Civil Appeal No.* 6001).

Injunction—Interlocutory injunction—Section 4 *of the Civil Procedure Law, Cap.* 6 *and section* 32 *of the Courts of Justice Law,* 1960 (*Law* 14/60)—*Action concerning ownership of car and right to its possession—Whether possible to make interim order delivering car to one of the parties pending determination of the action.*

Court of Appeal—Discretion—Judicial discretion—Reviewing exercise of—Principles governing intervention by appellate Court.

On July 26, 1979, upon an *ex parte* application by the appellant-plaintiff the trial Court made an interim order by means of which it was ordered that a motor car, the subject matter of the action, should remain, pending the determination of the action or pending a further order of the Court, in the possession of the chairman of the village Commission of Engomi (Nicosia) and that in the meantime, the respondent-defendant should not alienate it. On September 5, 1979, after both parties had been heard, the Court ordered that the car should be delivered to the respondent on condition that there would be taken out in respect of it a fully comprehensive insurance policy and that there would be furnished a bank guarantee for the sum of C£5,000, so that the appellant could be compensated in case the car would be damaged beyond repair in a manner not adequately covered by the insurance, as well as for the depreciation of the value of the car while it will be used by the respondent pending the determination of the action.

Upon appeal by the plaintiff:

Held, (after stating the principles on which the Court of Appeal

will interfere in a matter of this nature which involves the exercise of judicial discretion) that, in spite of *Michael* v. *Brevinos Limited* (1969) 1 C.L.R. 578, 581, 582, it was possible for the trial Court to make the interim order appealed from and there was no legal impediment to the car being possessed and used by the respondent pending the determination of the action (*Michael* v. *Brevinos, supra*, considered; principles of law laid down therein sound and still applicable but they have to be applied in the light of the special circumstances of each individual case); that, on the other hand the interim order in question is, in the form in which it has been made inadequate; and that, consequently, it should be varied as follows:

First, there should be included in it a term prohibiting the respondent from alienating in any way the car concerned, or from parting in any way with its possession, pending the determination of the proceedings.

Secondly, the security of C£5,000, given by the respondent, should, in view of the value of the car, be increased to C£8,000.

Thirdly, there is to be specified in the interim order the amount for which the car should be fully comprehensively insured and that amount should, again, be C£8,000.

Appeal partly allowed.

Cases referred to:

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

Constantinides v. *Makriyiorghou and Another* (1978) 1 C.L.R. 585;

Geo. M. HadjiKyriacos Co. Ltd., and Others v. *United Biscuits (U.K.) Ltd.* (1979) 1 C.L.R. 689;

Michael v. *Brevinos Limited* (1969) 1 C.L.R. 578, at pp. 581, 582;

Tafco (No. 1) v. *The Ship "Lambros L" and her cargo* (1977) 1 C.L.R. 143 at p. 148.

Appeal.

Appeal by plaintiff against the order of the District Court of Nicosia (Hji Constantinou, S.D.J.) dated the 5th September, 1979, (Action No. 2999/79) whereby it was ordered that the motor car, subject matter of the action, should be delivered to the defendant on condition that there would be taken out in respect of it a fully comprehensive insurance policy and that

there would be furnished a bank guarantee for the sum of C£5,000.—, so that the plaintiff could be compensated in case the car would be damaged beyond repair in a manner not covered by the insurance.

N. Zomenis, for the appellant.

L. N. Clerides with *N. L. Clerides*, for the respondent.

TRIANTAFYLLIDES P. gave the following judgment of the Court. This is an appeal against an interim order made by a Judge of the District Court of Nicosia, in civil action No. 2999/79, on September 5, 1979.

Initially there was made, on July 26, 1979, an interim order which was applied for *ex parte* by the appellant, as the plaintiff in the action, and then there was made in its place, after both parties had been heard, the interim order which is challenged by means of the present appeal.

The interim order in question relates to a motor-car which is the subject matter of the action and was imported from England. Its value is stated to be £10,000 (pounds sterling) and the import duty in respect of its importation has not yet been paid.

By means of the initially made interim order it was ordered that the car should remain, pending the determination of the action or pending a further order of the Court, in the possession of the chairman of the village commission of Engomi (Nicosia) and that, in the meantime, the respondent, who is the defendant in the action, should not alienate it.

By the subsequently made interim order, to which the present appeal relates, it was ordered that the car should be delivered to the respondent on condition that there would be taken out in respect of it a fully comprehensive insurance policy and that there would be furnished a bank guarantee for the sum of C£5,000, so that the appellant could be compensated in case the car would be damaged beyond repair in a manner not adequately covered by the insurance, as well as for the depreciation of the value of the car while it will be used by the respondent pending the determination of the action.

Counsel for the appellant has argued that the trial Court erroneously altered, as aforesaid, the interim order which it had

originally made. On the other hand, counsel for the respondent submitted that the said interim order should continue to be as it was eventually revised by the trial Court. The powers of this Court to intervene in a matter of this nature, which involves the exercise of judicial discretion, have been referred to in, *inter alia*, *Karydas Taxi Co. Ltd.* v. *Komodikis*, (1975) 1 C.L.R. 321, *Constantinides* v. *Makriyiorghou and another*, (1978) 1 C.L.R. 585, and *Geo. M. HadjiKyriacos Co. Ltd., and others* v. *United Biscuits (U.K.) Ltd.* (Civil Appeal No. 5916, not yet reported*).

We do not agree that in view of the judgment in the earlier case of *Michael* v. *Brevinos Limited*, (1969) 1 C.L.R. 578, 581, 582, and because in the action from which this appeal has arisen the parties are contesting the right of each other to possess the car in question, in addition to their dispute about the ownership of the car, it was not possible for the trial Court to make an interim order to the effect that the car should remain in the possession of the respondent pending the determination of the action.

In our opinion the *Michael* case, which was decided on the basis of its own particular facts, has laid down sound and still applicable principles of law, but such principles have to be applied in the light of the special circumstances of each individual case; and in the present case we find that there was no legal impediment to the car being possessed and used by the respondent pending the determination of the action. A case in which the *Michael* case, *supra*, has been considered, and in which possession of the subject matter of the proceedings was delivered to one of the parties pending the conclusion of the proceedings, is *Tafco (Foreign Trade Organization for Chemicals and Foodstuffs) of Syria (No. 1)* v. *The Ship "Lambros L" and her Cargo*, (1977) 1 C.L.R. 143, 148.

Nor do we agree with counsel for the appellant that it was not open to the trial Court in making the interim order under section 4 of the Civil Procedure Law, Cap. 6, and under section 32 of the Courts of Justice Law, 1960 (Law 14/60), to take into account that the respondent needed the car in question for the purposes of his own work, or to take judicial notice of the fact—assuming,

* Now reported in (1979) 1 C.L.R. 689.

as alleged, that no evidence existed before it to that effect—that if the car remains immobilized pending the conclusion of the proceedings it may suffer depreciation of its value due to deterioration of its condition.

On the other hand, we feel that the interim order which is now challenged by this appeal is, in the form in which it has been made, inadequate and that, consequently, it should be varied as follows:

First, there should be included in it a term prohibiting the respondent from alienating in any way the car concerned, or from parting in any way with its possession, pending the determination of the proceedings.

Secondly, the security of C£5,000, given by the respondent, should, in view of the value of the car, be increased to C£8,000.

Thirdly, there is to be specified in the interim order the amount for which the car should be fully comprehensively insured and that amount should, again, be C£8,000.

So, the interim order which was made, as aforesaid, on September 5, 1979, is varied accordingly, and the respondent should comply with the terms laid down by this judgment within one month from today. If he does not do so then the said interim order will be treated as having been discharged as a whole and there will then come into force the interim order made on July 26, 1979, in which case the respondent will, of course, be once again entitled to oppose its continuance in force.

As regards costs, we think that the appropriate order is to decide that the costs of the proceedings for the interim order before the trial Court, as well as the costs of this appeal, should be costs in the cause in the action.

This appeal is, therefore, allowed in part, as stated in this judgment.

Appeal partly allowed. Order for costs as above.