

1979 December 21

[TRIANTAFYLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

FREDERICK W. HARRISON LTD.,  
*Appellants-Defendants,*

v.

E. PHILIPPOU LTD.,  
*Respondents-Plaintiffs,*

(Civil Appeal No. 5925).

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5 *Arbitration—Stay of proceedings—Arbitration clause—Section 8 of the Arbitration Law, Cap. 4—Discretion of the Court—Principles applicable—Action for agreed discount commission under a contract for supply of goods—Even assuming that a dispute within the ambit of the arbitration clause exists, this is not a proper case in which the Court, in the exercise of its discretionary powers, ought to have made an order staying the proceedings.*

10 The respondents-plaintiffs sued the appellants-defendants claiming, *inter alia*, an amount of C£824,297 mils being balance of agreed discount commission on the invoiced value of goods under three orders placed by the respondents and executed by the appellants. The appellants, relying on the arbitration clause\* appearing in the relevant contract, applied for a stay of the proceedings, by virtue of section 8\*\* of the Arbitration Law, Cap. 4, on the ground that they disputed the claims of the respondents but without giving any particulars or reasons. The trial Court dismissed the application having held that a mere denial of the claim in the action without disclosing any reasons, could not by itself be treated, conclusively, as disclosing the existence of any specific dispute arising out of the contractual relations between the parties to the action.

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\* The arbitration clause reads as follows:

"All disputes relating to this Contract shall be referred to the Tribunal of Arbitration of the Manchester Chamber of Commerce, to be determined in accordance with the rules of the Tribune".

\*\* Quoted at p. 605 *post*.

*Upon appeal by the defendants:*

*Held*, that, even assuming that this is a case where there has been established that a dispute exists which is sufficiently specific to be treated as coming within the ambit of the relevant arbitration clause, and, therefore, referable to arbitration thereunder, this is not a proper case in which, in the exercise of the discretionary powers granted under section 8 of Cap. 4—with which the trial Court was vested and with which this Court is, also, vested by virtue of Order 35, rule 8, of the Civil Procedure Rules—there ought to be made an order staying the proceedings in the action in question so that the dispute between the parties can be referred to arbitration in Manchester; that, consequently, this Court is satisfied that there exists sufficient reason why the subject matter of the action should not be referred to arbitration in accordance with the arbitration clause in the contracts between the parties; and that, accordingly, the appeal must be dismissed (see *G. Freeman & Sons v. Chester Rural District Council* [1911] 1 K.B. 783 at p. 791).

*Held*, further, that in deciding not to order a stay of proceedings, this Court has been influenced by the factor of the long delay which has intervened while the claim of the respondents against the appellants remained unsatisfied ever since 1976 and, furthermore, by its view that the claim of the respondents is not of such a nature as would require the expertise which is possessed by the Tribunal of Arbitration of the Manchester Chamber of Commerce, even assuming, without having to decide so for the purposes of this appeal, that the dispute between the parties is one which comes within the competence of such Tribunal.

*Appeal dismissed.*

Cases referred to:

*G. Freeman & Sons v. Chester Rural District Council* [1911] 1 K.B. 783 at p. 791;

*Skaliotou v. Pelekanos* (1976) 1 C.L.R. 251.

**Appeal.**

Appeal by defendants against the judgment of the District Court of Nicosia (Hji Constantinou, S.D.J.) dated the 26th January, 1979 (Action No. 5481/77) whereby their application

for staying the proceedings in the above action so that the matter in dispute could be referred to arbitration was dismissed.

*A. Markides*, for the appellants.

*D. Liveras*, for the respondents.

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*Cur. adv. vult.*

10 TRIANTAFYLLIDES P. read the following judgment of the Court. In the present case the appellants challenge a decision of the District Court of Nicosia by means of which an application for staying the proceedings in action No. 5481/77, in the District Court of Nicosia, so that the matter in dispute could be referred to arbitration, was dismissed.

The application was made by the appellants, as defendants in the said action, under section 8 of the Arbitration Law, Cap. 4, which reads as follows:-

15 "If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the arbitration agreement or any person claiming through or under him, in respect of any matter agreed to be referred, 20 any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that Court to stay the proceedings, and that Court, if satisfied that there is no sufficient reason why the matter should not 25 be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings."

30 As correctly pointed out by the trial Judge, our section 8 corresponds very closely to section 4 of the Arbitration Act, 1889, and to section 4 of the Arbitration Act, 1950, in England.

35 The trial Judge based his decision on the view that a mere denial of the claim in the action without disclosing any reasons could not by itself be treated, conclusively, as disclosing the existence of any specific dispute arising out of the contractual relations between the parties to the action; therefore, he did not proceed to decide, in the exercise of his relevant discretion,

whether or not he should stay the proceedings in the action under section 8.

The nature of the claim of the respondents, as plaintiffs, appears from paragraphs 3-9 of the statement of claim, which read as follows:

“3. In or about June and July 1976 the defendants undertook to execute three orders placed by the plaintiffs for different types of textiles of the agreed value of Stg. £35,453.94p. as per particulars hereunder set out:

*Particulars:*

Order No. 1: 5,135 meters fast navy all cotton drill at 39.5p. per meter C.I.F. Limassol valued Stg. £2028.33p.

Order No. 2: 24,543.5 meters 100% cotton denim at 85 p. per meter C.I.F. Limassol and 159.4 meters 100% blue cotton denim at 85 p. per meter C.I.F. Limassol all value Stg. £20,997.47p.

Order No. 3: 10,187 meters all cotton blue denim at 1.22p. per meter C.I.F. Limassol value Stg. 12,428.14p.

4. It was agreed between the parties that the defendants were to credit and pay to the plaintiffs 4% discount/commission on the invoiced value which amounted to Stg. £1418.16p.

5. The defendant in spite of repeated demands made by the plaintiffs orally and in writing and in spite of promises made by the Defendants to that effect paid on account in or about September 1976 the sum of Stg. £300.- and have failed till today to pay the resulting balance of Stg. £1118.16p.

6. The plaintiffs moreover allege that although the defendants have duly executed order No. 1 and Order No. 3 failed to execute Order No. 2 in so far as the number of meters undertaken to be supplied. The defendants whilst they have invoiced the plaintiffs and were paid for the whole of the number of meters ordered they have in

fact supplied 24.702.9 yards instead of 24.702.9 meters resulting in the difference of 2.206 meters of a value of Stg. £1.875.10p.

5 7. The plaintiffs have promptly raised the matter with the defendants orally and in writing and sought settlement of the matter in vain.

8. The plaintiffs by their counsel's letter dated 25.10.77 demanded once more payment of the above mentioned balance and/or overcharge which the defendants failed to pay in spite of their many promises to do so.

9. Thus the plaintiffs claim:

(A) C£824.297 mils being the equivalent of Stg. £1,118.16p. at the rate of 1.3565 as per particulars of the statement of claim above.

15 (B) C£1382.308 mils being the equivalent of Stg. £1,875.10p. at the rate of 1.3565 as per particulars of statement of claim above.

(C) Legal interest and costs."

20 No statement of defence was filed because the application for the stay of the proceedings supervened; but in the affidavit supporting this application it is stated that the appellants dispute the claims of the respondents, without, however, any particulars or reasons being given.

25 In the relevant contracts between the parties the arbitration clause, on which reliance has been placed by the appellants, reads as follows:-

30 "All disputes relating to this Contract shall be referred to the Tribunal of Arbitration of the Manchester Chamber of Commerce, to be determined in accordance with the rules of the Tribune."

The scope of the competence of the Tribunal of Arbitration of the Manchester Chamber of Commerce appears sufficiently from rule 1 of its Rules which provides that—

35 "the object of the Tribunal of Arbitration (hereinafter called the Tribunal) of the Manchester Chamber of Com-

merce (hereinafter called the Chamber) shall be the determination and settlement by commercial men of experience and special knowledge of the subject matter in dispute or difference of any dispute or difference relating to trade, manufacture and commerce (including customs of trade) by whomsoever submitted.” 5

Having given careful consideration to the arguments put forward by learned counsel before us we have reached the conclusion that, even assuming that this is a case where there has been established that a dispute exists which is sufficiently specific to be treated as coming within the ambit of the relevant arbitration clause, and, therefore, referable to arbitration thereunder, this is not a proper case in which, in the exercise of the discretionary powers granted under section 8 of Cap. 4—with which the trial Court was vested and with which we ourselves are, also, vested by virtue of Order 35, rule 8, of the Civil Procedure Rules—there ought to be made an order staying the proceedings in the action in question so that the dispute between the parties can be referred to arbitration in Manchester; consequently, we are satisfied that there exists sufficient reason why the subject matter of the action should not be referred to arbitration in accordance with the arbitration clause in the contracts between the parties. 10 15 20

We have proceeded to apply in this case the provisions of section 8 of Cap. 4 bearing in mind the observations regarding the effect of section 4 of the Arbitration Act, 1889, in England, which are to be found in the judgment of Buckley L.J. in *G. Freeman & Sons v. Chester Rural District Council*, [1911] 1 K.B. 783, who (at p. 791) has said: 25

“It remains that s. 4 of the Arbitration Act, 1889, gives a discretion, and that in two ways, namely, (1.) the words are permissive, not imperative, for the verb is ‘may make’, not ‘shall make’, and (2.) the jurisdiction to stay the proceedings arises if the Court is ‘satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission’. Over and above the contractual rights, therefore, there exists this discretion in the Court.” 30 35

Also, the relevant principles have been extensively reviewed

in our own case of *Skaliotou v. Pelekanos*, (1976) 1 C.L.R. 251.

In concluding we would like to add that we have been, also, influenced, in deciding not to order a stay of proceedings, by  
5 the factor of the long delay which has intervened while the claim of the respondents against the appellants remained unsatisfied ever since 1976 and, furthermore, by our view that the claim of the respondents is not of such a nature as would require the expertise which is possessed by the Tribunal of Arbitration  
10 of the Manchester Chamber of Commerce, even assuming, without having to decide so for the purposes of this appeal, that the dispute between the parties is one which comes within the competence of such Tribunal.

In the light of all the foregoing considerations this appeal  
15 is dismissed with costs.

*Appeal dismissed with costs.*