

1981 March 23

[HADJIANASTASSIOU, A. LOIZOU, DEMETRIADES, JJ.]

LORRIS TRYFONOS AND ANOTHER,

Appellants-Applicants,

v.

FAMAGUSTA SHIPPING CO. (1957) LTD.,

Respondents.

(Civil Appeal No. 6134).

Debtors Relief (Temporary Provisions) Law, 1979 (Law No. 24/1979)
—Application under section 3 of the Law—Whether applicant
should disclose names of all his creditors and join them as respon-
dents—Definition of “stricken debtor” in section 2 of the Law.

5 By means of an application under section 3* of the Debtors
Relief (Temporary Provisions) Law, 1979 (Law 24/1979),
the appellants applied for a declaration that they were stricken
debtors on the ground that they were unable to meet their
contractual obligations towards the respondent Company
10 because of the events of 1974. The trial Court directed that
the appellants should join on their applications all their creditors
as on the 15th August, 1974; and hence this appeal.

15 *Held*, that in an application under section 3 of Law 24/1979
what are determined are the rights between the parties in rela-
tion to a particular debt, the subject of such application, and
not the status of a person vis-a-vis all his creditors (see the
definition of “stricken debtor” in section 2 of the Law); that,
therefore, a Court on an application under section 3 is concerned
with the suspension of the right of the creditor, who is named in
20 the application and not of the rights of any other creditor that
the applicant may have; accordingly the appeal must be allowed.

Appeal allowed.

* Section 3 is quoted at pp. 139–140 *post*.

Appeal.

Appeal by applicants against the order of the District Court of Famagusta (Pikis, P.D.C.) dated the 3rd June, 1980, (Debtors Relief Appl. No. 4/80) whereby they were ordered to join on their application all their creditors as on the 15th August, 1974. 5

Sp. Spyridakis with Chr. Triantafyllides, for the appellants.

A. Poetis, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Andreas Loizou. 10

A. LOIZOU J.: In the application filed in the District Court of Larnaca under the Debtors Relief (Temporary Provisions) Law, 1979 (Law No. 24 of 1979) the appellants prayed for a declaration that they were stricken debtors on the ground that they were unable to meet their contractual obligations towards the respondent Company, because of the events of 1974. 15

The question whether in proceedings under the aforesaid Law it was imperative that an applicant should disclose the names of all his creditors and join them as respondents thereto, was heard and determined by the learned President as preliminary to the issues on the substance of the case. 20

It is a fact that neither in the application nor in the accompanying statement of claim, any reference was made to any other creditors of the applicants, nor was any information forthcoming on the subject. Moreover, the application was served only on the respondents who were the only parties in the proceedings. 25

The learned President took the view that a declaration under section 3 of the aforesaid Law involves a declaration of status that affects the position of a stricken debtor vis-a-vis the entire body of his creditors and after referring to the Rules applicable, he went on to say the following: 30

“Thus a party may refer in his statement of claim to the sum total of his debts. Nor is there any restriction to the joinder of parties; on the contrary there is jurisdiction under rule 4 of the relevant rules to have, at the instance 35

of the Court or the Registrar, the proceedings served on every party that might have a legitimate interest in the proceedings with a corresponding right vested in such parties to defend the proceedings”.

5 And then further down he said the following:

“Although the proceedings were rightly initiated by an application under the 1975 rules there are, nonetheless, omissions that should be remedied before the matter proceeds to trial. It is imperative that in proceedings
10 under Law 24/79 the applicant should disclose the names of all his creditors and join them as parties to the proceedings. Here the applicant failed to give any information on the subject, consequently the matter must be set right before we hear the case on the merits; and the submission
15 of the respondents in this respect is well founded.

I, therefore, adjourn this application for mention to 10th June, 1980, to enable the applicants to look into the matter”.

From this order, directing that the applicants should join
20 on their application all their creditors as on 15th August, 1974, the present appeal was filed. It has been argued on behalf of the appellants that section 3 of the Law has to be read in conjunction with the definition of a “stricken debtor”, to be found in section 2 thereof and that the aggregate effect of the
25 two is that what has to be ordered under section 3 is a suspension of the right of a creditor to collect a debt due by the displaced or stricken debtor.

Section 3 of the Law reads as follows:

“3.-(1) Παρά τας διατάξεις οίουδήποτε έτέρου Νόμου, και
30 τηρουμένων τών διατάξεων του άρθρου 4, διαρκούσης της έκρύθμου καταστάσεως και έν πάση περιπτώσει διά την περιοδον την άρξαμένην την 15ην Αύγουστου, 1974, και λήγουσαν την 31ην Δεκεμβρίου, 1982, τó δικαίωμα παντός πιστωτού δι’ εισπραξιν όφειλης όφειλομένης υπό έκτοπισθέντος ή πληγέντος όφειλέτου αναστέλλεται και άπασαι αι
35 κατά την ήμέραν ένάρξεως της Ισχύος του παρόντος Νόμου έκκρεμοῦσαι ή όρισθεισαι αναγκαστικά πωλήσεις αναστέλλονται έν ανταί άφοροῦν εις—

- (α) ακίνητον ἢ κινητὴν ἰδιοκτησίαν εὐρισκομένην ἐντὸς πληγείσης περιοχῆς·
- (β) ακίνητον ἢ κινητὴν ἰδιοκτησίαν μὴ εὐρισκομένην ἐντὸς πληγείσης περιοχῆς ἀλλὰ τελοῦσαν ὑπὸ πώλησιν δι' ἱκανοποίησιν χρέους προκύψαντος ἐκ τῆς πωλήσεως, ὑποθηκείσεως, ἐνεχυριάσεως ἢ κατ' ἄλλον τρόπον ἐπιβαρύνσεως ἐτέρας ἰδιοκτησίας εὐρισκομένης ἐντὸς πληγείσης περιοχῆς· 5
- (2) Ἡ βάσει τοῦ παρόντος ἀρθροῦ ἀναστολὴ ἀναστέλλει τὴν περιόδον ἰσχύος οἰουδήποτε ἐντάλματος πωλήσεως ἢ διατάγματος παραλαβῆς ἢ διαλύσεως ἐν σχέσει πρὸς ταύτην". 10

In English it reads:

- "3.-(1) Notwithstanding the provisions of any other Law and subject to the provisions of section 4, during the abnormal situation and in any case during the period beginning as from the 15th August, 1974, and ending on the 31st December, 1982, the right of every creditor to recover a debt due by a displaced or stricken debtor is suspended and all forced sales pending or fixed on the date of the coming into operation of this Law shall be stayed if they relate to— 15
- (a) immovable or movable property situate within a stricken area;
- (b) immovable or movable property not situate within a stricken area but subject to sale in satisfaction of a debt resulting from the sale, mortgage, pledge or other encumbrance of other property situate within a stricken area. 25
- (2) The stay under this section shall suspend the period during which any writ of sale, receiving order or winding up order in relation thereto is in force". 30

The definition of a "stricken debtor" as given in section 2 of the Law is as follows:

- "Πληγείς ὀφειλέτης" σημαίνει πάντα ὀφειλέτην τοῦ ὁποίου ἡ ἐργασία ἢ ἐπιχείρησις, λόγω τῆς ἐκρύθμου καταστάσεως, ἐπηρεάσθη εἰς τοιοῦτον βαθμὸν οὕτως ὥστε νὰ μὴ δύναται 35

οὗτος νὰ ἀνταποκριθῆ πρὸς τὰς συμβατικὰς αὐτοῦ ὑπο-
χρεώσεις ἐξ ὧν προέκυψε ἡ ὀφειλὴ ἢ ὀφειλέτην τοῦ ὁποίου
ἀγνοεῖται ἢ τύχη συνεπεία τῆς Τουρκικῆς εἰσβολῆς καὶ
περιλαμβάνει συνοφειλέτην καὶ ἐγγυητὴν παντὸς τοιοῦτου
ὀφειλέτου”.

(“ ‘stricken debtor’ means any debtor whose work or
business has been affected, by reason of the abnormal
situation, to such an extent so as to render him unable
to meet his contractual obligations out of which the debt
arose, or a debtor who is missing as a result of the Turkish
invasion and includes a co-debtor and a guarantor of
any such debtor”).

It is clear from the aforesaid definition that in an application
under section 3 what are determined are the rights between the
parties in relation to a particular debt, the subject of such appli-
cation and not the status of a person vis-a-vis all his creditors.

The material words in this section are the words “the right
of every creditor to recover a debt due by a displaced or stricken
debtor is suspended and all forced sales pending or fixed on the
date of the coming into operation of this Law shall be stayed”.

Therefore, a Court, on an application under section 3 is
concerned with the suspension of the right of the creditor, who
is named in the application and not of the rights of any other
creditor that the applicant may have.

For all the above reasons the appeal is allowed with costs.

Appeal allowed with costs.