

1981 April 15

[MALACHTOS, DEMETRIADES, SAVVIDES, JJ.]

LEVEL TACHEXCAVS LTD.,

Appellants-Defendants,

v.

LINOS ALEXANDROU PETRIDES,

Respondent-Plaintiff.

(Civil Appeal No. 5881).

Civil Procedure—Execution—Execution against immovables—Making judgment a charge on land—Memorandum—Section 53 of the Civil Procedure Law, Cap. 6—Prolongation of memorandum under section 56(1) of the Law—A “forced sale” within the meaning of section 5(1)(b) of the Debtors Relief (Temporary Provisions) Law, 1975 (Law 9/75 as amended). 5

Debtors Relief (Temporary Provisions) Law, 1975 (Law 9/1975 as amended)—“Forced sale” in section 2 of the Law—Meaning—Registration of judgment—Memorandum—Prolongation—Sections 53 and 56(1) of the Civil Procedure Law, Cap. 6—A “forced sale” within the meaning of section 5(1)(b) of Law 9/1975. 10

On 13.9.1976 the respondent in this appeal obtained judgment against the appellant for the sum of £2,500 which arose out of a debt secured by a mortgage of immovable property in the District of Kyrenia. On 23.9.1976 this judgment was made a charge on the immovable property of the appellant, situated in the district of Nicosia, in accordance with sections 53 and 54 of the Civil Procedure Law, Cap. 6. When the respondent applied for an order of prolongation of the registration of the judgment, under section 56(1) of Cap. 6, the appellant opposed the application relying on sections 2* (definition of “forced sale”) and 5** of the Debtors Relief (Temporary Provi- 15 20

* Section “2 (definition of “forced sale”) reads as follows:
“‘Forced sale’ means a sale of property ordered by a judgment or writ for the sale of property issued under Part IV or Part V or Part XI of the Civil Procedure Law or the Immovable Property (Transfer and Mortgage) Law, 1965, or by any person acting as a trustee in bankruptcy or receiver.”

** Section 5 is quoted at p. 155 *post*.

sions) Law, 1975 (Law 9/1975 as amended by Laws 43/1975 and 20/1977). The trial judge granted the application and hence this appeal.

Held, that both the making of a judgment a charge on the immovable property of a debtor by registering it with the Lands Office and obtaining a memorandum, as well as the prolongation of a memorandum, are proceedings under Part V of the Civil Procedure Law, Cap. 6, which is dealing with the execution against immovables; that the prolongation of the memorandum is a "forced sale" within the meaning of section 5(1)(b) of Law 9/1975 (see the meaning of "forced sale" in section 2 of Law 9/1975); that, therefore, the trial Judge was wrong in making the Order complained of; and that accordingly the appeal must be allowed.

Appeal allowed.

Appeal.

Appeal by defendants against the order of the District Court of Nicosia (Boyadjis, S.D.J.) dated the 12th September, 1978, (Action No. 1935/76) whereby the memorandum No. 215/76 of the Nicosia District Lands Office charging its immovable property was prolonged for one year from the date of its expiration.

A. Markides, for the appellants.

A. Andreou, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment of the Court. This is an appeal by the defendant company in Action No. 1935/76 of the District Court of Nicosia, hereinafter referred to as the "debtor", against the order made by a District Judge of the said Court whereby the memorandum under No. 215/76 of the Nicosia District Lands Office charging its immovable property was prolonged for a period of one year as from the date of its expiration.

The facts of the case shortly put are the following:

The debtor on 4.1.73 contracted a loan in the sum of £2,500.- from the respondent in this appeal, hereinafter referred to as the "creditor", with interest thereon at the rate of 9% per annum as from that date and payable on 3.1.74. The said debt was

secured by the debtor mortgaging to the creditor a building site under Registration No. 5664 dated 2.8.66, situated at Vassilia village in the Kyrenia District by declaration of mortgage Y12/73.

On 20.4.76, the creditor instituted legal proceedings under the above numbered action, against the debtor as the mortgage debt was not paid off and obtained judgment for the sum of £2,500.— plus interest at 9% per annum as from 4.1.75, since only the interest up to that date had been paid. 5

On 23.9.76 this judgment was made a charge on the immovable property of the debtor situated in Nicosia by registering same with the Nicosia District Lands Office under memorandum No. 215/76. The registration of the said judgment was effected in accordance with sections 53 and 54 of the Civil Procedure Law, Cap. 6. According to section 55 of the said Law registration of a judgment as above, remains in force for the period of two years as from the date when judgment was first registered. However, extension of the period is prolonged by order of the Court by virtue of section 56 of the Law, which reads as follows: 10 15 20

“56.(1) The registration may, from time to time, be prolonged by an order of the Court for any further period or periods not exceeding one year at any one time.

(2) No order shall be made prolonging the registration unless— 25

(a) the application for it is made at least one month before the expiration of the existing period for which it is registered; and
 (b) the Court is able, after hearing and considering the application and all evidence adduced in support of it, to make its order before the expiration of the existing period; and 30

(c) notice of the application and of the time fixed for its hearing has been given to the District Lands Officer and the District Officer of the district within which the property is situate; and 35

(d) the Court is satisfied that the judgment was not a

collusive judgment, or obtained with a view to defeat other creditors, and also that a prolongation of the period of registration will not prejudicially affect the judgment debtor or any other judgment creditor or creditors.

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(3) Notice of the order shall be given to the District Lands Office by or on behalf of the judgment creditor and at his expense, by leaving at the office where the judgment is registered a notice in writing of the making of the order, or an office copy thereof, not later than the day on which, but for the making of the order, the registration of the judgment would cease to have effect, and where notice only is left, by further leaving an office copy of the order at the District Lands Office within fourteen days from the day last aforesaid; and if the office copy or notice and office copy as aforesaid be not so left at the office, the creditor shall forfeit the benefit conferred on him by the order".

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On 22nd August, 1978, the creditor applied to the Court for the prolongation of the said memorandum which was due to expire on 22.9.78.

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The debtor opposed the application of the creditor and relied on sections 2 and 5 of the Debtors Relief (Temporary Provisions) Law, 1975 (Law 9/75) as amended by Laws 42/75 and 20/77. Section 5, former section 4 of this Law is as follows:

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"5.(1) Notwithstanding the provisions of section 3 of this Law, all forced sales pending or fixed on the date of the coming into operation of this Law, shall be stayed and no forced sale shall be fixed and no proceedings in relation thereto shall be carried out where such forced sale or proceedings relate to—

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(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 another property situate within a stricken area".

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The trial judge after hearing arguments by counsel, made the order for the prolongation of the said memorandum and the reasons for doing so appear in his short judgment at pages 11 to 12 of the record of proceedings and read as follows:

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“Counsel for the respondent submitted to the Court that the renewal of a memorandum should be considered as proceedings in relation to a forced sale and for this reason the memorandum should not be renewed. On this point I cannot find anything which explains or justifies this explanation given by counsel for the respondent.

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Section 4(1) speaks clearly about forced sales of property within stricken areas. What the applicant claims here is the renewal of a memorandum and since there are in existence all the required reasons for the issue by the Court of the order for renewal I find no reason not to issue the order applied for. The required reasons are those referred to in section 56(2)(a)(b)(c) and (d) and I find that they exist in the present application and I issue the order as per paragraph (1) of the application dated 22.8.78”.

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Counsel for the debtor in arguing this appeal before us put forward the same arguments as those advanced before the trial Judge. He submitted that the judgment debt in Action No. 1935/76 of the District Court of Nicosia was related to a mortgage on immovable property situated within a stricken area and so the making of this judgment a charge on property not situated within a stricken area, as in the present case, falls within the provisions of section 5(1)(b) of the Law. He also submitted that section 2, the definition section of Law 9/75, as amended by Law 20/77, makes it clear that both the registration and prolongation of a memorandum are forced sales and so they cannot be carried out. Finally, he submitted, that the trial Judge was wrong in law in deciding to make the order for the prolongation of the said memorandum. It should be noted here that Law 9/75 has been repealed and reenacted by the Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79) which came into force on 23rd March, 1979.

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According to section 2 of Law 9/75 as amended by Law 20/77 “forced sale” means sale of property carried out by virtue of a

5 judgment or writ of sale of property issued under Part IV or Part V or Part XI of the Civil Procedure Law or by virtue of the Immovable Property (Transfer and Mortgage) Law, 1965 and includes any seizure of property or other preliminary action taken under the aforesaid laws for the purpose of a forced sale and any writ of attachment of property in the hands of a third person under Part VII of the Civil Procedure Law.

10 Both the making of a judgment a charge on the immovable property of a debtor by registering it with the Lands Office and obtaining a memorandum, as well as the prolongation of a memorandum, are proceedings under Part V of the Civil Procedure Law Cap. 6, which is dealing with the execution against immovables. So, the only question posed in this appeal is
15 whether the prolongation of the memorandum is a forced sale within the meaning of section 5(1)(b) of the Law. From a mere perusal of the meaning of the term "forced sale" in the definition section, the answer should be in the affirmative. Certainly the registration of a memorandum and its prolonga-
20 tion are preliminary actions taken for the purpose of sale of immovable property in execution of a judgment under Part V of the Civil Procedure Law.

25 Therefore, the trial Judge was wrong in making the Order complained of and, consequently, we allow the appeal and we set aside the Order of the trial Judge with costs in favour of the debtor, both here and in the Court below.

Appeal allowed with costs.