

1981 December 22

[LORIS, STYLIANIDES, PIKIS, JJ.]

M. & M. TRANSPORT CO. LTD.,

*Appellants-Defendants,*

v.

ETERIA ASTIKON LEOFORION LEMESSOU LTD.,

*Respondents-Plaintiffs.*

(Civil Appeal No. 6160).

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*Injunction—Interlocutory injunction—Principles governing grant of—  
Discretion of trial Court—Principles on which Court of Appeal  
interferes with exercise of such discretion—Section 32 of the  
Courts of Justice Law, 1960 (Law 14/60)—Injunction restraining  
5 defendants from conducting illegal bus service pending determi-  
nation of action—Difficult to assess with sufficient certainty,  
at the end of the trial, the damages to be suffered by plaintiffs—  
Grant of injunction not wrong.*

*Motor Transport (Regulation) Laws, 1964–1978—Impose not only  
10 a public duty but confer a civil remedy as well—Licensees and  
wrongdoers under the Laws—Legitimate interest of licensee to  
take proceedings against wrongdoer.*

The respondents-plaintiffs were a bus company, licensed  
under the Motor Transport (Regulation) Laws, 1964–1978  
15 to carry passengers at separate fares within the urban transport  
area of Limassol. The appellants-defendants, which were  
a transport company licensed under the above Laws to carry  
passengers by contract on the Nicosia-Larnaca-Dhekelia  
and Nicosia-Akrotiri-Episkopi routes in furtherance of a  
20 contract, in January, 1980 entered into a contract with Possidonia  
Hotel, situate within the Limassol urban transport area, agreeing  
to carry their personnel from the Hotel to various parts of  
Limassol, of which, with the exception of one, were within  
the Limassol urban transport area; and they started carrying  
25 passengers, as stipulated in their contract, without securing  
a new licence under the above Laws. Hence an action by

the respondents-plaintiffs and an application for an interlocutory injunction restraining the appellants-defendants from conducting a bus service within the urban transport limits of Limassol pending the determination of the action.

*Upon appeal by the defendants against the grant of the interlocutory injunction\**, it was mainly contended that: 5

- (a) That there was no probability that the plaintiffs-respondents were entitled to relief in the sense that—
  - (i) The plaintiffs had no actionable right; and,
  - (ii) The defendants were not violating any Law by operating their buses as aforesaid. 10
- (b) That the balance of convenience did not justify the issue of this order.
- (c) That the trial Judge went wrong in the result because the respondents were not among the class envisaged to be protected by the Motor Transport (Regulation) Laws, 1964-1978 and because they were lacking legitimate interest in the proceedings as they were only entitled to carry passengers at separate fares. 15

*Held*, that the Motor Transport (Regulation) Laws, 1964-1978, impose not only a public duty, but confer a civil remedy as well; that a public carrier, being a carrier at separate fares or otherwise, stands to lose whenever anyone is allowed within his area to conduct a bus service, be it under a contract; that their interest in the proceedings is self-evident; that the submission that the Court should leave matters as they are pending the hearing overlooks what prima facie appears to be a sad reality, viz. the appellants are conducting the bus service illegally; that the granting of an interlocutory injunction is a matter of judicial discretion and the onus is on the appellant to satisfy the appellate tribunal that the trial Court's discretion was wrongly exercised (see, *inter alia*, *Ioannis Kotsapas & Sons Ltd. v. Titan Construction and Engineering Co.*, 1961 C.L.R. 317-322); that the damages to be suffered by the plaintiffs, if the violation of the Law and the infringement of the rights of the respondents were allowed to continue, would be difficult to be assessed 20 25 30 35

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\* The interlocutory injunction was granted under section 32 of the Courts of Justice Law, 1960 which is quoted at p. 608 *post*.

with sufficient certainty at the end of the trial and it would be impossible to do complete justice at that stage; that, therefore, this Court is not satisfied that the grant of the order by the Court below was wrong; accordingly the appeal must fail.

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*Appeal dismissed.*

Cases referred to:

*Preston v. Luck* [1884] 27 Ch. D. 497;

*American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 All E.R. 504;

10 *Acropol Shipping Co. Ltd. and Others v. Petros I. Rossis* (1976)  
1 C.L.R. 38;

*Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd. and Others* (1976) 1 C.L.R. 302;

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

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

*Smith and Others v. Inner London Education Authority* [1978] 1 All E.R. 411;

*Bryanston Finance Ltd. v. de Vries (No. 2)* [1976] 1 All E.R. 25;

20 *Peristeronopighi Transport Co. Ltd. v. Toumazou* (1970) 1 C.L.R. 196;

*Ioannis Kotsapas & Sons Ltd. v. Titan Construction and Engineering Co.*, 1961 C.L.R. 317;

*Efstathios Kyriacou & Sons Ltd. v. Mouzourides* (1963) 2 C.L.R. 1.

25 **Appeal.**

Appeal by defendants against the order of the District Court of Limassol (Eleftheriou, D.J.) dated the 2nd August, 1980 (Action No. 1902/80) whereby they were restrained from conducting a bus service on a contractual basis or otherwise  
30 within the urban transport limits of Limassol.

*A. Panayiotou*, for the appellants.

*P. Ioannides*, for the respondents.

*Cur. adv. vult.*

35 STYLIANIDES J. read the following judgment of the Court.  
The appellants—defendants in Action No. 1902/80 in the District

Court of Limassol take this appeal against an order of Eleftheriou, D.J., restraining them from conducting a bus service on a contractual basis or otherwise within the urban transport limits of Limassol.

The order “restrained (the appellants) from conducting motor-bus services with motor-buses F.W.264, H.H.933 or any other motor omnibus (unless such other motor-bus is duly licensed) for the transportation of passengers at separate fare and/or on contract, within the urban area of Limassol, pending the determination of this action or until further order”.

The interlocutory injunction was granted under s. 32 of the Courts of Justice Law, 1960 (Law No. 14/60), the relevant part of which reads as follows:-

“32.1—Subject to any rules of Court every Court, in the exercise of its civil jurisdiction, may, by order, grant an injunction (interlocutory, perpetual or mandatory) or appoint a receiver in all cases in which it appears to the Court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith:

Provided that an interlocutory injunction shall not be granted unless the Court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage”.

The principles governing the grant of an interlocutory injunction, because of the wording of the proviso to s. 32(1), follow closely those formulated in *Preston v. Luck*, [1884] 27 Ch.D. 497, so a party asking for an interim injunction must show that there is a serious question to be tried at the hearing and that on the facts before the Court there is a probability that the plaintiff is entitled to relief in contrast to the principles adopted by the House of Lords in the *American Cyanamid Co. v. Ethicon Ltd.*, [1975] 1 All E.R. 504, where they discouraged evaluation, at this stage, of the probabilities of success. (*Acropol Shipping Co. Ltd. and Others v. Petros I. Rossis*, (1976) 1 C.L.R. 38; *Nemitsas Industries Ltd. v. S. & S. Maritime Lines Ltd. and Others*, (1976) 1 C.L.R. 302; *Karydas Taxi*

*Co. Ltd. v. Andreas Komodikis*, (1975) 1 C.L.R. 321; *Constantinides v. Makriyiorghou and Another*, (1978) 1 C.L.R. 585). When the above requirements are satisfied, the Court must proceed to examine whether the balance of convenience favours the grant or refusal of the interlocutory relief sought. In balancing matters relevant to convenience an important consideration centres round the need to preserve the status quo. By the expression "preservation of the status quo" we mean the position prevailing when the defendant embarked on the activity sought to be restrained. (*The Cyanamid case; Smith and Others v. Inner London Education Authority*, [1978] 1 All E.R. 411; *Bryanston Finance Ltd. v. de Vries (No. 2)*, [1976] 1 All E.R. 25).

The facts before the trial Court, as they emerge from the affidavits accompanying the application and opposition, coupled with the oral evidence before the Court, were:-

The plaintiffs-respondents are a bus company licensed to carry passengers at separate fares within the urban transport area of Limassol. They operate for such purpose not less than 76 buses.

The defendants are a transport company who own buses, including motor-buses Reg. No. F.Q.264 and H.H.933, licensed as public service vehicles. They had been licensed by the licensing authority, under the Motor Transport (Regulation) Law, to carry passengers by contract on the Nicosia-Larnaca-Dhekelia and Nicosia-Akrotiri-Episkopi routes in furtherance to their contract with the authorities of the British Sovereign Areas.

The appellants in January, 1980, entered into a contract with Possidonia Hotel situate within the Limassol urban transport area, agreeing to carry their personnel from the hotel to various parts of Limassol, all of which, with the exception of one, are within the Limassol urban transport area.

In performance of the aforesaid contract they started, without securing a new licence, to carry passengers as stipulated in their contract. Hence, the plaintiffs-respondents, feeling that their rights were infringed, filed this action and applied for the interlocutory injunction, subject-matter of this appeal.

Learned counsel for the appellants challenged this order on the following grounds:-

- (a) That there is no probability that the plaintiffs-respondents are entitled to relief in the sense that—
  - (i) The plaintiffs have no actionable right; and, 5
  - (ii) The defendants are not violating any Law by operating their buses as aforesaid; and,
- (b) That the balance of convenience did not justify the issue of this order.

The Motor Transport (Regulation) Law, 1964–1978, imposes not only a public duty, but confers a civil remedy as well. This was the perspective in which the matter was put in *Peristeronopighi Transport Co. Ltd. v. Toumazos Th. Toumazou*, (1970) 1 C.L.R. 196, where it was said:- 10

“Viewing Motor Transport (Regulation) Law, 1964, in the circumstances in which it was made and to which its provisions relate, we think that the requirement to use a motor vehicle according to the conditions of its licence, imposes not only a public duty but also a duty enforceable by an individual aggrieved. The statute can thus be more effectively enforced, which must have been the intention of the legislator in this connection”. 15 20

Counsel for the appellants submitted that the Judge went wrong in the result for the reasons above indicated, notably that the respondents are not among the class envisaged to be protected by the Motor Transport (Regulation) Law and because they lack legitimate interest in the proceedings as they are only entitled to carry passengers at separate fares. 25

We cannot sustain either of the above submissions. A public carrier, being a carrier at separate fares or otherwise, stands to lose whenever anyone is allowed within his area to conduct a bus service, be it under a contract. Their interest in the proceedings is self-evident and need not be discussed further. The submission that the Court should leave matters as they are pending the hearing overlooks what prima facie appears to us to be a sad reality, viz. the appellants are conducting the bus service illegally. This is no doubt an issue into which the trial Court will go in detail at the trial. 30 35

The trial Court, after considering the various factors pertaining to the balance of convenience, exercised its discretion in favour of the plaintiffs-respondents.

5 The granting of an interlocutory injunction is a matter of judicial discretion; the onus is on the appellant to satisfy the appellate tribunal that the trial Court's discretion was wrongly exercised. (See, *inter alia*, *Ioannis Kotsapas & Sons Ltd. v. Titan Construction and Engineering Co.*, 1961 C.L.R. 317-322; *Efstathios Kyriacou & Sons Ltd. v. Mouzourides*, (1963) 2 C.L.R. 10 1).

The damages to be suffered by the plaintiffs, if the violation of the Law and the infringement of the rights of the respondents were allowed to continue, would be difficult to be assessed with sufficient certainty at the end of the trial and it would be 15 impossible to do complete justice at that stage. We were not satisfied that the grant of the order by the Court below was wrong.

In view of the aforesaid we would dismiss the appeal with costs against the appellants.

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*Appeal dismissed with costs.*