

1982 January 15

[LORIS, STYLIANIDES, PIKIS, JJ.]

KOULLIS MARATHOVOUNIOTIS,

Appellant.

v.

ALEXIS THEODOTOU,

Respondent.

(Civil Appeal No. 6216).

Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79)—
“Οφειλή” (“legal obligation”) in section 2 of the Law—*Con-*
struction—Relief under the law is pegged to the genesis and not
the discharge of the obligation.

- 5 *Statutes—Construction—Purposive construction—Construction of*
social legislation enacted after the Turkish invasion—Debtors
Relief (Temporary Provisions) Law, 1979 (Law 24/79).

10 By virtue of a contract of lease entered into in 1972 the
respondent leased three shops to the appellant. The contract
provided, inter alia, that upon termination of the tenancy the
premises would be returned to the owner in as good a condition
as that in which they were received. The appellant vacated the
premises in 1976; and an amount of £304 was needed to restore
them to the condition they were at the time of execution of the
15 agreement and remedy the damage caused thereto. The amount
of £304 represented (a) £254 damage caused prior to 14.8.1974,
and (b) £50 damage caused thereafter.

20 Upon an application by the appellant for a declaration that
he was a “stricken debtor” within the meaning of the Debtors
Relief (Temporary (Provisions) Law, 1979 (Law 24/79) the
only question before the trial Court was whether the said amount

of £254 qualified as an “ὀφειλή”* (“legal obligation”) under the above Law. If so, the appellant would be entitled to the benefits of the Law because he was a displaced person.

The trial Court held that the liability in question was outside the ambit of the Law inasmuch as the obligation to make good the damage and restore the premises to their former condition, accrued and became legally enforceable, subsequent to the crucial date notably 14.8.1974. 5

Upon appeal by the tenant.

Held, that the relevant date is stipulated not by reference to the time of enforceability of the monetary obligation but the date on which it was assumed or incurred; that the fact that the monetary obligation need not have become enforceable by 14.8.1974 viewed in conjunction with the provisions of subparagraph (f) particularly the employment of the word “δημιουργηθείσης” (created), clearly suggest that relief is pegged to the genesis and not the discharge of the obligation; that the notion of a “legal obligation” in the context of the 1979 legislation is not co-extensive with that of a presently enforceable right for the recovery of money owing; that this construction is also consonant with the wider aims of the law, designed to give 10 15 20

* “ὀφειλή” is defined as follows by section 2 of Law 24/79:
 “ὀφειλή περιλαμβάνει τὰς πάσης φύσεως χρηματικὰς ὑποχρεώσεις ὀφειλέτου, ἠσφαλισμένως ἢ μὴ, εἴτε αὐταὶ ὀφείλονται δυνάμει δικαστικῆς ἀποφάσεως ἢ διατάγματος εἴτε δυνάμει οἰασδῆποτε συμβάσεως ἢ συμβάσεως ἐνοικιαγωγῆς ἢ πωλήσεως ἐπὶ πιστώσει οἰασδῆποτε ἰδιοκτησίας εἴτε αὐταὶ κατέστησαν ἀπαιτητὰ εἴτε μὴ ἀλλὰ δὲν περιλαμβάνει ποσὰ-
 (α)
 (β)
 (γ)
 (δ)
 (ε)
 (στ) ὀφειλῆς δημιουργηθείσης μετὰ τὴν 14ην Αὐγούστου 1974.”

(“ ‘Legal obligation’ ” includes all monetary liabilities of a debtor of any nature whatsoever, secured or unsecured, whether payable under a judgment or order of a Court or under any agreement or hire-purchase agreement or credit sale agreement of any property and whether payable presently or not but does not include amounts-
 (a)
 (b)
 (c)
 (d)
 (e)
 (f) in respect of a legal obligation created after the 14th August, 1974.”)

relief in respect of obligations undertaken upon a basis or assumptions that were destroyed by the devastating events associated with the Turkish invasion of the country; that manifestly, it was within the contemplation of the legislature to extend relief to those who, as a result of the Turkish invasion, lost their financial base for the discharge of obligations undertaken prior to the calamitous events of 1974; that, therefore, the legal obligation in question, a sum of £254.- is subject to the provisions of Law 24/79 because the obligation to make good damage caused to the building was assumed prior to 14.8.1974, in 1972, when the contract was executed, and because the damage crystallised prior to 14.8.1974; accordingly the appeal should be allowed.

Held, further, that the purposive construction of statutes is especially warranted in the case of social legislation because the wider aims of the law are easily identifiable as well as the mischief against which they are directed; that Law 24/79 forms an important aspect of the social legislation, enacted in the aftermath of the Turkish invasion, in the interests of social harmony; that were this Court to accede to the construction placed upon “ὀφειλή” (“legal obligation”) by the trial Judge, it would inexorably be driven to the conclusion that a debt, no matter how large, assumed prior to 14.8.1974, would be outside the ambit of the Law, if payable subsequent to 14.8.1974; that that could not be the intention of the legislature and enough was said in the Law to make this abundantly clear.

Appeal allowed.

Cases referred to:

Krasismenos v. HjiChami (1963) 2 C.L.R. 448.

30 **Appeal.**

Appeal by applicant against the judgment of the District Court of Nicosia (HadjiConstantinou, S.D.J.) dated the 15th January, 1981 (Appl. No. 162/79) whereby his application for a stay of judicial proceedings against him and for a declaration that he was a stricken debtor under the provisions of the Debtors' Relief (Temporary Provisions) Law, 1979 (24/79) was dismissed.

A. Danos, for the appellant.

G. Papatheodorou, for the respondent.

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Cur. adv. vult.

LORIS J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: A seemingly simple, but in the end, a fairly difficult question of statutory construction must be decided, that is, the nature of the obligations in respect of which relief is conferred by the Debtors' Relief (Temporary Provisions) Law, 1979 (24/79). 5

The respondent leased in 1972 three shops to the appellant, upon terms embodied in a written contract, including one providing that upon termination of the tenancy the premises would be returned to the owner in as good a condition as that in which they were received. The appellant vacated the premises in 1976, not in the condition they were at the time of entry. An amount of £304 – was needed to restore them to the condition they were at the time of execution of the agreement and remedy damage caused thereto. 10 15

In an agreed statement of facts, it is acknowledged that the amount of £304.– represents—

- (a) £254.– damage caused prior to 14.8.1974, and
- (b) £ 50.– damage caused thereafter. 20

The only question the trial Court was required to resolve, was whether the amount of £254.– qualified as an “ὀφειλή” under the 1979 Debtors' Relief Law. If so, the tenant would be entitled to the benefits of the law, being, as admitted, a displaced person. 25

Hadjiconstantinou, S.D.J., in a brief judgment, upheld the submission of the respondent and held that the liability in question was outside the ambit of the law inasmuch as the obligation to make good the damage and restore the premises to their former condition, accrued and became legally enforceable, subsequent to the crucial date, notably 14.8.1974. 30

We were invited to hold, along with the trial Court, that inasmuch as the liability to pay did not materialise, in law, until after the termination of the tenancy, the obligation, subject matter of the appeal, is beyond the scope of the law and relief must, therefore, be refused. 35

It is the first time the Supreme Court is faced with the construction of “ὀφειλή” under the 1979 law. A decision

of marginal relevance to the issue in hand, is that of *Iacovos Ioannou Krasismenos v. Ioannis Iosif Hjichanni* (1963) 2 C.L.R. 448, where the Supreme Court had to determine the meaning of “debt” (χρέος), as encountered in the Agricultural Debtors’ Relief Law, 1962. It was narrowly decided, by means of the casting vote of the then President of the High Court, that a debt must be defined exclusively by reference to the document creating the chose in action, independently of antecedent liabilities giving rise thereto. In this case, there is no controversy about the fact that, the obligation for restoration of the premises to their original condition, was undertaken prior to 14.8.1974, notably in 1972, by virtue of the contract of the parties.

Counsel made reference to *McGreggor on Damages*, 14th ed., with emphasis on the time when a legally enforceable right, to make good damage caused to tenanted property, accrues in law. There is little doubt that the right to enforce the obligation for repairs did not arise prior to the termination of the tenancy, but that does not solve the problem for the definition of “ὀφειλή” expressly says that, for relief to be granted, the obligation need not become payable by 14.8.1974, suggesting thereby that a right to sue is not a condition precedent to seeking relief under the law.

In the end, the question to be answered is, as indicated, largely one of construction of the meaning of “ὀφειλή”, for which an appropriate English translation is “legal obligation”. The relevant date is stipulated not by reference to the time of enforceability of the monetary obligation but the date on which it was assumed or incurred. The fact that the monetary obligation need not have become enforceable by 14.8.74, viewed in conjunction with the provisions of sub-paragraph (στ) particularly the employment of the word “δημιουργηθείσης” (created), clearly suggest that relief is pegged to the genesis and not the discharge of the obligation. The notion of a “legal obligation” in the context of the 1979 legislation is not co-extensive with that of a presently enforceable right for the recovery of money owing. The construction herein favoured is also consonant with the wider aims of the law, designed to give relief in respect of obligations undertaken upon a basis or assumptions that were destroyed by the devastating events associated with the Turkish invasion of the country. Manifestly, it was within the contemplation of the legislature to extend relief to those who, as a

result of the Turkish invasion, lost their financial base for the discharge of obligations undertaken prior to the calamitous events of 1974.

The purposive construction of statutes is especially warranted in the case of social legislation because the wider aims of the law are easily identifiable as well as the mischief against which they are directed. 5

The Debtors' Relief Law forms an important aspect of the social legislation, enacted in the aftermath of the Turkish invasion, in the interests of social harmony. It was one of a series of laws designed to ward off some of the worst likely consequences of the disastrous events of 1974. Social coherence was at risk and the measures taken should be equal to the threat. 10

Were we to accede to the construction placed upon "ὀφειλή" by the trial Judge, we would inexorably be driven to the conclusion that a debt, no matter how large, assumed prior to 14.8.1974, would be outside the ambit of the law, if payable subsequent to 14.8.1974. That could not be the intention of the legislature and enough was said in the law to make this, in our judgment, abundantly clear. 15 20

Applying the law, as explained in this judgment, we are driven to hold that the legal obligation in question, a sum of £254.-, is subject to the provisions of the 1979 legislation because—

- (a) the obligation to make good damage caused to the building was assumed prior to 14.8.1974, in 1972, when the contract was executed, and 25
- (b) the damage crystallized, as it emerges from the joint statement of the parties, prior to 14.8.1974.

Therefore, the appeal is allowed and a declaration is made that the debt in question is subject to the provisions of Law 24/79 and, therefore, its payment suspended accordingly. There will be no order as to costs. 30

Appeal allowed. No order as to costs.

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