1982 October 19

[L. LOIZOU, DEMETRIADES, PIKIS, JJ.]

G.I.P. CONSTRUCTIONS LTD.,
Appellants-Defendants,

v.

COSTAS ASSIOTIS,
Respondent-Plaintiff.

(Civil Appeal No. 6247).

Contract—Construction—Principles applicable—Court must strive to ascertain the intention of the parties from the terms of the agreement—Agreement, as an entity serves to illustrate context in which clauses of a contract must be read—Only in exceptional cases would the context be allowed to qualify the clear meaning of individual clause—Even the creation of anomalies not a reason for departing from express provisions of a contract.

Damages—Breach of contract—Principles applicable—Part performance of contract accepted—Principle of compensation applicable is that of restoration of the injured party through an award of damages to the position he would have enjoyed in terms of monies worth of the property if the contract had been performed in its entirety.

The appellants a construction company, sold to the respondent, the purchaser, a flat in a block under construction, together with an underground covered parking plot. After the construction of the block the appellants conveyed to the respondent the flat and a corresponding share to the use of an underground parking space designated for joint use by all the occupants of the block, which consisted of nine flats and four shops. The parking ground comprised space for the accomodation of six vehicles. In an action by the respondent the trial Judge found that the apparent intention of the parties, as it might be gathered from a literal interpretation of the clause defining the property sold, was that a flat and a parking plot, that is two separate tenements would be conveyed to the purchaser; and having

held the vendors liable for breach of contract he awarded the purchaser £300 damages. Hence an appeal by the vendors and a cross-appeal by the purchaser against the award of damages.

Held, (I) *on the appeal*:

That the interpretation of a contract is a matter of law for the Court; that the Court must strive to ascertain the intention of the parties from the terms of the agreement that are deemed to contain the only authoritative expression of the intention of the parties; that individual terms of the agreement must be construed by reference to the language used, examined in the context of the agreement as a whole; that the agreement, as an entity, serves to illuminate the context in which clauses of the contract must be read, especially to highlight the purposes and objects of the agreement, but only in exceptional cases, hard to visualize in specific terms, would the context be allowed to qualify the clear meaning of individual clauses; that certainly, there is no rule that the clear meaning of a clause, such as that appearing in this case, in part 2, requiring transfer of a separate parking plot, can be qualified by the heading of a section of the agreement, such as that preceding part 2 of the agreement, entitled "Technical Terms and Conditions"; that even if any anomaly might be created from the agreement of the parties, because of the limited parking space compared with the number of occupants of the plot, that is not, in itself, a reason for departing from the express provisions of the agreement of the parties; and that, therefore, neither the construction placed by the trial Judge on the agreement of the parties, nor his finding that the vendors were in breach, can be faulted; accordingly the appeal must fail.

Held, (II) *on the cross-appeal:*

That in a breach of contract action, where part performance is accepted, the principle of compensation applicable is that of restoration of the injured party, through an award of damages, to the position he would have enjoyed in terms of monies worth of the property if the contract had been performed in its entirety. The trial Judge found that the difference between the value of the property that the vendors covenanted to convey and that actually conveyed, including the right to the joint use of the parking space, was £300.–; that he made a correct evaluation

of the evidence before him, and nothing was submitted before this Court to justify interference with his meticulous approach to the subject; consequently the cross-appeal must fail.

Appeal and cross-appeal dismissed.

Cases referred to:

Saab and Another v. *The Holy Monastery of Ayios Neophytos* (1982) 1 C.L.R. 499;

Stock v. *Frank Jones* [1978] 1 All E.R. 948.

Appeal.

Appeal by defendants and cross-appeal by the plaintiff against the judgment of the District Court of Nicosia (Artemides, S.D.J.) dated the 23rd February, 1981, (Action No. 5499/79) whereby the defendants were ordered to pay to plaintiff the sum of £300.- as damages for breach of contract.

G. Pelaghias, for the appellants.

S. Kittis, for the respondent.

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

Pikis J.: The appellants, a construction company, the vendors, sold to the respondent, the purchaser, a flat in a block under construction, together with an underground covered parking plot at "ELIANA COURT", Ayia Paraskevi quarter, Nicosia. The premises were under construction when the agreement was executed. When the time came for the implementation of the agreement, the vendors failed, in the contention of the respondent, to transfer the entire property sold, by refusing to transfer and register, in the name of the purchaser in addition to the flat, a parking plot. The vendors conveyed instead, the flat and a corresponding share to the use of an underground parking space designated for joint use by all the occupants of the block. It consisted of nine flats and four shops. The parking ground comprised space for the accommodation of six vehicles.

The purchaser accepted performance and reserved his right to sue for damages for breach of contract. So, issue was joined before the District Court of Nicosia where the action of the parties was heard.

Two were the prominent issues; first, what did the property

sold comprise, and the Court had to decide whether it comprised, in addition to the flat, a separate parking plot or joint ownership of the common parking space eventually made available, and, second, the damage, if any, in the event of breach, suffered by the purchaser.

THE AGREEMENT OF THE PARTIES: The agreement of the parties was a lengthy document divided into three parts: The first part embodied the terms of the sale agreement, so to say, the second was designed to specify technical terms or conditions, and the third to establish the relationship among the owners or occupants of the premises, as joint owners and occupants of spaces designed for common use.

The property sold is described in the first part of the agreement as made up of a flat plus an underground covered parking plot. The flat is identified in an architectural plan attached to the agreement. The apparent intention of the parties, as it might be gathered from a literal interpretation of the clause defining the property sold, was that a flat and a parking plot, that is two separate tenements, would be conveyed to the purchaser. This interpretation was reinforced by specific reference to "ἰδιόκτητον" plot, that is a plot within the exclusive ownership of the purchaser.

Artemides, S.D.J., as he then was, in a well reasoned judgment, found the above construction inevitable as a matter of interpretation of the wording of the pertinent clauses defining the subject-matter of the agreement, read in the context of the agreement in its entirety. He properly directed himself to the canons that govern the construction of documents, pointing out that the intention of the parties must be derived from the terms they chose to give expression to it. In this case, he observed, they left no room for doubt as to what the subject-matter of the agreement was - a flat and a separate parking plot, both intended to vest in the exclusive ownership of the purchaser. The learned Judge firmly rejected the submission of the vendors that different weight should be given to the various parts of the agreement, depending on the primary purpose they were designed to accomplish, holding that an agreement must be read in its entirety in order to discern the intention of the parties. Having held the vendors liable for breach of contract,

he awarded the purchaser £300.- damages, the loss he found as arising from the breach.

The present appeal is mainly directed towards the construction placed by the trial Judge with regard to the obligations of the vendors thereunder, particularly the property sold. He took pains to persuade us that the decision is erroneous, in that it would be unreasonable to hold the vendors liable to transfer a separate parking plot when, to the knowledge of the parties, the parking spaces were six in all. This construction is strengthened by the omission of the parties to identify, on the architectural plan accompanying the agreement, the parking plot to be conveyed. So, he invited us to override the presumed intention of the parties, revealed in the language employed, arguing in the process, that little importance should be attached to the expression "self owned" parking plot, in the second part of the agreement, because that part of the agreement was not intended to define the obligations of the vendors as to the property to be transferred. He assumed a difficult task for, inevitably, we were invited to ignore the meaning of clear expressions that left no room for doubt whatever, as to their meaning.

The interpretation of a contract is a matter of law for the Court. The subject is discussed in detail, in a recent judgment of the Supreme Court (*Saab and Another v. The Holy Monastery of Ayios Neophytos* - Civil Appeal 6176, delivered on 19.10.82*). The Court must strive to ascertain the intention of the parties from the terms of the agreement that are deemed to contain the only authoritative expression of the intention of the parties. Individual terms of the agreement must be construed by reference to the language used, examined in the context of the agreement as a whole. The agreement, as an entity, serves to illuminate the context in which clauses of the contract must be read, especially to highlight the purposes and objects of the agreement. But only in exceptional cases, hard to visualize in specific terms, would the context be allowed to qualify the clear meaning of individual clauses. Certainly, there is no rule that the clear meaning of a clause, such as that appearing in this case, in part 2, requiring transfer of a separate parking plot, can be qualified

* Reported in this Part at p. 499.

by the heading of a section of the agreement, such as that preceding part 2 of the agreement, entitled "Technical Terms and Conditions".

Counsel for the appellants argued, it would be unreasonable, having regard to the limited parking space available for the occupants of the block, to hold that the parties intended the transfer of a specific plot to the purchaser. There is certainly no inherent absurdity or anomaly in the agreement of the parties, for a vendor might choose, as he did in this case, to sell or make available a specific parking plot to a particular purchaser. But even if an anomaly might be created thereby, that is not, in itself, a reason for departing from the express provisions of the agreement of the parties. The observations made in the House of Lords, with regard to statutory interpretation, in *Stock v. Frank Jones* [1978] 1 All E.R. 948, to the effect that not even the creation of anomalies as such, is a reason for departing from the express provisions of a statute, apply with equal force to the construction of a contract. In our judgment, neither the construction placed by the learned trial Judge on the agreement of the parties, nor his finding that the vendors were in breach, can be faulted. Evidently, the purchaser accepted the performance offered, reserving his right, as he was entitled to, to sue for breach. He was, therefore, entitled to such damages, as the law allowed, assessed by the trial Judge to £300.-.

The purchaser challenged the assessment of damages by a cross-appeal. Little was said in support of the cross-appeal and, certainly, nothing was advanced to persuade us that the trial Judge went wrong in assessing damages. In a breach of contract action, where part performance is accepted, the principle of compensation applicable is that of restoration of the injured party, through an award of damages, to the position he would have enjoyed in terms of monies worth of the property if the contract had been performed in its entirety. The trial Judge found that the difference between the value of the property that the vendors covenanted to convey and that actually conveyed, including the right to the joint use of the parking space, was £300.-. He made, in our judgment, a correct evaluation of the evidence before him, and nothing was submitted before us to justify interference with his meticulous approach to the subject.

Consequently, both the appeal and cross-appeal fail. They are dismissed. There will be no order as to costs.

Appeal and cross-appeal dismissed with no order as to costs.