

1982 October 25

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

ANDREAS ODYSSEOS,

*Appellant-Plaintiff.*

v.

1. A. PIERIS ESTATES LTD.,
  2. GEORGHIOS S. GALATARIOTIS & SONS LTD.,
- Respondents-Defendants.*

(Civil Appeal No. 6427).

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ANDREAS ODYSSEOS,

*Appellant-Defendant.*

v.

1. GEORGHIOS S. GALATARIOTIS & SONS LTD.,
  2. KYPROS K. LOIZIDES,
- Respondents-Plaintiffs.*

(Civil Appeal No. 6428)

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*Injunction—Interlocutory injunction—Principles applicable—Section 32 of the Courts of Justice Law, 1960—“Serious question to be tried at the hearing”—Probability that plaintiff is entitled “to relief” in the proviso to the above s.32—Interpretation—*

5 *Construction of block of flats under agreement with developers and owners of site—Plaintiff occupying flat under sale agreement with developers to the knowledge of the owners—Has disclosed a serious case that he was lawfully in possession—Ousted from*

10 *possession by owners without any forewarning—Plaintiff entitled to claim protection of his possession and unless he was a trespasser owners had no right to throw him out—Moreover no heed paid by trial Judge to implications in equity of plaintiffs allegations that developers and owners colluded to deprive him of his property*

*in the flat—Once plaintiff disclosed a serious case ends of justice require that his possession be protected pending the outcome of the case—Order that plaintiff shall remain in possession and order restraining owners from alienating the flat, pending determination of the action.*

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*Flats in blocks under construction—Purchasers of—Need for the introduction of appropriate legislation for the protection of their rights.*

*Flats in blocks under construction—Possession under sale agreement with developers to the knowledge of owners—Whether purchaser can be ousted from possession by owners.*

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*Estoppel—Possessory estoppel.*

Respondents 2 (“the owners”) contemplated the acquisition of a plot of land at Limassol, with a view to its development into an apartments block. On the contingency of its acquisition, the owners entered into an agreement with respondents 2 (“the developers”) whereby the latter would in exchange of a number of flats of those to be built erect the building named the “GALAXY COURT”. This agreement was executed on 7th December, 1979. Shortly afterwards, the owners acquired the land as envisaged in their agreement with the developers, and building work commenced in furtherance to the agreement of the parties. It was provided that upon completion of the building and proper discharge of mutual obligations, the owners would transfer to the developers, or any third party named by them, the flats enumerated in this agreement. Among these apartments was that under No. 26 on the second floor.

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On 7.1.1981, the developers sold to the appellant (“Odysseos”) flat 26 for £20,186 paid in cash. By October, 1981 the building of the flat sold to Odysseos was finished and he moved in occupation after putting some furniture in the flat. In January 1982, Odysseos discovered that his furniture had been moved out of the flat and that the lock of the door had been changed making entrance impossible.

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As the developers had difficulties in financing their obligations under the agreement with the owners the original agreement was varied by means of three subsequent agreements; and one of these agreements excluded the above flat 26 from the apart-

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ments originally allocated to the developers. In view of this agreement the owners disputed Odysseos' right to possess the flat and they leased it to another person who moved in occupation. Hence an action by Odysseos against both the  
 5 developers and the owners seeking:

- (a) a declaration that he was entitled to occupation of the property,
- (b) damages for breach of contract—the contract is that with the developers—and,
- 10 (c) damages for conspiracy, allegedly arising from the collusion between owners and developers to deprive him of his property in the flat.

With the institution of the action, he moved the Court for an interim injunction to restrain the owners and the developers  
 15 from interfering with his possession of flat 26 until final determination of the case, and an order restraining them from alienating the property in question.

A day or two later, the owners and the tenant joined in an action, praying for an injunction, restraining Odysseos, his  
 20 servants or agents, from in any way interfering with flat 26, other consequential remedies, as well as damages for trespass, and mesne profits for the use and occupation of the property. Like Odysseos they moved themselves for an order for an interim injunction, designed to keep Odysseos away from the premises  
 25 until final adjudication in the cause.

The trial Judge refused the interlocutory remedies asked for by Odysseos and granted those prayed for by the owners and the tenant on the ground that Odysseos could, under no circumstances, claim ownership of the property or enforce specifically  
 30 his agreement with the developers, in view of the provisions of Cap. 232. Consequently, his remedies, if any, were in damages for which he could be compensated in due course by an appropriate order for compensation.

*Upon appeal by Odysseos:*

35 *Held*, (1) that there is no reason in principle or on authority to interpret "a serious question to be tried at the hearing" in the context of the proviso to s.32(1)—Law 14/60, as requiring

anything beyond the disclosure of an arguable case on the strength of the pleadings, as the House of Lords suggested in the *Ethicon* case [1975] 1 All E.R. 504; that on the other hand, it is fair to assume that the second requirement laid down by the legislature as a pre-condition for the grant of an interlocutory injunction—"a probability that the plaintiff is entitled to relief"—relates to something other than the complexion of the pleaded case of the applicant, and that could not be, in the context of this statutory provision, anything other than the evidential strength of the case of the plaintiff; that the standard required for the plaintiff to overcome the evidential hurdle is not very high; that he is only required to establish "a probability" of success; that the concept of "a probability" imports something more than a mere possibility but something much less than the "balance of probabilities", the standard required for proof of a civil action; that legal probability is something different from a mathematical probability as the Court explained in *Re J.S. (a minor)* [1980] 1 All E.R. 1061 (C.A.); that "a probability", in the context of the proviso to s. 32(1), requires the applicant to demonstrate that he has a visible chance of success; and that lastly, it must be made to appear for the Court to grant an interlocutory injunction, that, without it, it will be difficult or impossible to do complete justice at a later stage; that it is clear that the question of the adequacy of the remedy of damages, in the light of the facts of the case, comes into play; that when all the aforementioned factors are taken into account, the Court must ultimately decide whether it is "just" or "convenient" to grant the injunction.

(2) That a person in occupation may, in both law and equity, acquire a right to remain in possession; that there is, in this case, material tending to suggest that the entry and possession of the property by Odysseos was lawful; that to the extent necessary at this juncture, he has disclosed a serious case that he was lawfully in possession; that nor is a "probability" of success missing; that even if we are to assume that his status was none other than that of a licensee, the revocation of the licence was a prerequisite to his eviction; that here, the contention of Odysseos is that he was forcibly evicted without any forewarning whatsoever; that if that is the case, he is certainly entitled to claim protection of his possession; that this he could do as against the owner, as well; that unless he was a trespasser,

the owners had no right to throw him out, as they allegedly did; that the implications arising from this aspect of the case, were totally overlooked by the trial Judge who rested his judgments solely on the rights of Odysseos to the ownership of the property; that likewise, the trial Court paid no heed to the implications in equity of the allegations of Odysseos; that Odysseos establishes, at the end of the day, the allegation that developers and owners colluded to deprive him of his property in the flat—viewed in the background of the original agreement between owners and developers, still in existence at the time of sale to Odysseos—the owners may be held to be estopped from asserting their rights of ownership, so as to dispossess Odysseos before justice is first done to him; that the dispossession may put him at a grave disadvantage, in that it may deprive him of the right to raise certain equities protecting his possession, that make it difficult if not impossible to do justice at the end of the day; that once he has disclosed a serious case in the sense earlier explained, as well as a visible chance of succeeding, the ends of justice require that his possession be protected, pending the outcome of the case; and that, therefore, the appeals must be allowed.

*Appeals allowed.*

*Observations with regard to the need for the introduction of appropriate legislation for the protection of purchasers of flats in blocks under construction:*

Cases referred to:

- Lumley v. Ravenscroft* [1895] 1 Q.B. 683;
- Lysaght v. Edwards* [1875–76] 2 Ch. D. 499;
- Re Barney* [1892] 2 Ch. D. 265;
- Thompson v. Park* [1944] 2 All E.R. 477;
- London Borough of Hounslow v. Twickenham Developments* [1970] 3 All E.R. 326;
- Verral v. Gt. Yarmouth B.C.* [1980] 1 All E.R. 839;
- Luganda v. Service Hotels Ltd.* [1969] 2 All E.R. 692;
- Warder v. Cooper* [1970] 1 All E.R. 1112;
- Delaney v. T.P. Smith Ltd.* [1966] 2 All E.R. 23;
- Portland Managements v. Harte* [1946] 1 All E.R. 225;
- American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 All E.R. 504 (H.L.);

- Fellowes and Another v. Fisher* [1975] 2 All E.R. 829;  
*Acropol Shipping Co. Ltd. and Others v. Rossis* (1976) 1 C.L.R. 38;  
*Constantinides v. Makriyiorghou and Another* (1978) 1 C.L.R. 585; 5  
*Papastratis v. Petrides* (1979) 1 C.L.R. 231;  
*HadjiKyriacos & Co. v. United Biscuits* (1979) 1 C.L.R. 689;  
*Re J.S. (a minor)* [1980] 1 All E.R. 1061 (C.A.);  
*Hadji Yiannis v. The Attorney-General* (1970) 1 C.L.R. 32;  
*Papadopoulos v. National Bank of Greece* (1979) 1 C.L.R. 10; 10  
*Stylianou and Others v. Papacleovoulou and Others* (reported in this part at p. 542);  
*Jones (A.E.) v. Jones (F.W.)* [1977] 2 All E.R. 231.

### Appeals.

Appeals by plaintiff in action No. 330/82 and defendant in action No. 341/82 against the order of the District Court of Limassol (Artemis, S.D.J.) dated the 30th March, 1982, whereby he was restrained from interfering in any way with flat 26 on the second floor of "Galaxy Court" at Yermasoyia, Limassol until the final determination of the action or a new order of the Court. 20

*I. Typographos* with *K. Pourgourides*, for the appellant.  
*G. Cacoyannis*, for the respondents.

*Cur. adv. vult.*

L. LOIZOU J.: The judgment of the Court will be delivered by Pikis, J. 25

PIKIS J.: This is a sad case. Andreas Odysseos purchased a flat from A. Pieris Estates Ltd., the developers, for £20,186.-. He paid the entire purchase price, subsequently he moved into occupation, but eventually found himself denied, both ownership and possession. How and why it happened, is the story of these proceedings. We shall say it as briefly as we can. 30

Georghios S. Galatariotis & Sons Ltd., the owners, contemplated the acquisition of a plot of land at Limassol, with a view to its development into an apartments block. On the contingency of its acquisition, the owners entered into an agreement with the developers, whereby the latter would in exchange of a 35

number of flats of those to be built, erect the building named the "GALAXY COURT". This agreement was executed on 7th December, 1979. Shortly afterwards, the owners acquired the land as envisaged in their agreement with the developers, and building work commenced in furtherance to the agreement of the parties. It was provided that upon completion of the building and proper discharge of mutual obligations, the owners would transfer to the developers, or any third party named by them, the flats enumerated in this agreement. Among these apartments was that under No. 26 on the second floor.

On 7.1.81, the developers sold to Mr. Odysseos flat 26. Building work had progressed considerably by then, and the building as a whole, but more so the construction of the flat was nearing completion. The purchase price was paid in cash. Thereafter, Odysseos took apparently an active interest in the completion of the apartment and paid, as alleged, a number of visits to the offices of the owners in connection with the acquisition of building material necessary for finishing the construction. The agreement between Odysseos and the developers provided that delivery of flat 26 would take place in July, 1981, while, according to the agreement of owners and developers, the structure in its entirety was scheduled to be finished in October, 1981.

By October, 1981, the building of the flat sold to Odysseos was finished and Odysseos moved in occupation, presumably, after being supplied with the keys by the developers. He furnished the flat by putting in some furniture, making it suitable for his use during certain days of the week when Odysseos was staying overnight at Limassol. In January, 1982, Odysseos discovered, to his surprise and dismay, that his furniture had been moved out of the flat and that the lock of the door had been changed, making entrance impossible. In effect, he was ousted from possession. He protested and reported the case to the police as well. The owners disputed his right to possess the property, and in exercise of their rights as owners, they leased the premises to Kypros K. Loizides of Nicosia who moved into occupation. There is a factual dispute between the parties as to the exact circumstances attending the removal of the furniture of Odysseos, and the reason for changing the lock of the door. Odysseos took legal steps to ventilate his grievance

and raised Action 330/82 against the developers and owners, seeking -

- (a) a declaration that he is entitled to occupation of the property,
- (b) damages for breach of contract - the contract is that with the developers - and, 5
- (c) damages for conspiracy, allegedly arising from the collusion between owners and developers to deprive him of his property in the flat.

With the institution of the action, he moved the Court for an interim injunction to restrain the owners and the developers from interfering with his possession of flat 26 until final determination of the case, and an order restraining them from alienating the property in question. A day or two later, the owners and the tenant joined in an action, praying for an injunction, restraining Odysseos, his servants or agents, from in any way interfering with flat 26, other consequential remedies, as well as damages for trespass, and mesne profits for the use and occupation of the property. Like the plaintiff, they moved themselves for an order for an interim injunction, designed to keep Odysseos away from the premises until final adjudication in the cause. 10 15 20

The two applications were supported by affidavit evidence that was, in due course, supplemented by oral evidence tendered in order to resolve conflicting factual allegations. Artemis, S.D.J. essentially dealt with and disposed of the two applications in the same spell, though he delivered two separate judgments. 25

The case for the owners, respondents on appeal, was that Odysseos had no conceivable right to the property; any rights he might have, arose from his contract with the developers who, in turn, could not pass any title or rights to Odysseos better than they possessed. And the developers abandoned all rights to the property, in virtue of an agreement concluded between owners and developers in April, 1981. The background to this variation of the original agreement, so far as it may be gathered from the material before the trial Court, is the following: The developers had difficulties in financing their obligations under the agreement with the owners. In conse- 30 35



quence, the original agreement was varied, first in February, then in April and, lastly, in August, 1981, in consequence of which the owners financed the discharge of some of the obligations of the developers, who, in turn, ceded a number of  
5 apartments allocated to them under the 1979 agreement. One of these agreements, the April one, excluded flat 26 from the apartments originally allocated to the developers. In this way, according to the owners, neither the developers nor Odysseos had any right to the property. He should, therefore, look  
10 exclusively to the developers for any damage he may have suffered in consequence of their agreement with him.

In his judgments, the learned trial Judge dealt at length with the principles relevant to the exercise of the Court's discretion, in deciding whether to make an interlocutory order, and noticed  
15 the facts pertinent to the exercise of his discretion. The only material finding he purported to make with the caution that should accompany a finding at this preliminary stage, was the following:

“Evidence was given before the Court by both sides,  
20 according to which it seems that the defendant (Odysseos) in this action knew of the contents of the agreement between developers and plaintiff 1 - the owners - and plaintiffs knew of the sale of land by the developers to defendant - respondent.”

25 The trial Judge does not indicate of which agreement between developers and owners Odysseos was aware, while Odysseos denied that he became aware of the April agreement between owners and developers. What is certain, is that he inclined to the view that the owners were aware of the agreement between  
30 developers and Odysseos and the fact that the latter paid the sum total of the purchase price to the developers. Evidence was adduced by Odysseos on the subject, while Mr. Mesis, who testified for the owners, was cross-examined at length on the same aspect of the case.

35 The trial Judge refused the interlocutory remedies asked for by Odysseos, and granted those prayed for by the owners and Kypros Loizides, on the ground that Odysseos could, under no circumstances, claim ownership of the property or enforce specifically his agreement with the developers, in view of the

provisions of Cap. 232. Consequently, his remedies, if any, were in damages for which he could be compensated in due course by an appropriate order for compensation. In view of this appreciation of the merits of the case of the parties, and in the light of the authority in *Lumley v. Ravenscroft* [1895] 1 Q.B. 683, he dismissed the application of Odysseos and granted that of the owners. In *Lumley*, supra, it was held that an interlocutory injunction should be withheld if it was found that the Court had no power to grant specific performance of the agreement between the parties.

Odysseos raised the present appeals, whereby he challenged the correctness of the rulings of the District Court. As it appears from the notices of appeal, and as it became abundantly clear from the arguments raised on his behalf by Mr. Pourgourides before us, his principal complaint is that the learned trial judge paid no heed to the rights of Odysseos in equity that - he submitted - entitled him to the remedies sought. He argued that the law would be reduced to impotence if it possessed no weaponry to suppress the unconscionable conduct of the owners who, while aware of the agreement of Odysseos with the developers, acted in gross disregard to it, reaping considerable advantages therefrom. He submitted, relying on what appears to be settled law for quite some time, that upon the execution of a contract of sale, a resulting or constructive trust arises, whereby the vendor becomes a trustee in equity of the interest of the purchaser, while retaining a right to the collection of the purchase money and a lien or charge on the estate for security. (See *Lysaght v. Edwards* [1875-76] 2 Ch.D. 499). In the submission of Mr. Pourgourides, such a trust came into being notwithstanding the fact that the developers were not the owners of the legal estate in the land - *Re Barney* [1892] 2 Ch.D. 265. On gaining notice of the arrangements between the developers and Odysseos, and the passing for good consideration of the interest of the developers to Odysseos in respect of flat 26, they became, themselves, bound to heed the interest of Odysseos; therefore their collusion with the developers to deprive him of every interest therein, amounted to conduct that should not be countenanced by a court of equity and, certainly, not rewarded, as he submitted, by an injunction.

Mr. Cacoyannis sought to counter the submissions made on

behalf of Odysseos, by referring us to a number of cases that lay down -

- 5 (a) that one cannot pass a better title than he himself possesses, so the developers could not pass a better title than they possessed, nor could they be exonerated of their obligations under the first agreement with the owners;
- 10 (b) Odysseos was in no better position than a trespasser, inasmuch as his licence to remain in occupation, if any, had been revoked. Counsel cited *Thompson v. Park* [1944] 2 All E.R. 477.
- 15 (Note: The case was not followed in *London Borough of Hounslow v. Twickenham Developments* [1970] 3 All E.R. 326, and *Verral v. Gt. Yarmouth B.C.* [1980] 1 All E.R. 839, and it was distinguished in *Luganda v. Service Hotels Ltd.* [1969] 2 All E.R. 692, and *Warder v. Cooper* [1970] 1 All E.R. 1112).
- 20 (c) Possession of the premises by Odysseos, whatever its origin may have been, did not entitle him to assert a right to remain in occupation vis-a-vis the owner of the legal estate to the land (see *Delaney v. T. P. Smith Ltd.* [1966] 2 All E.R. 23; *Portland Managements v. Harte* [1946] 1 All E.R. 225).

25 The circumstances under which Odysseos moved into occupation were not probed into by the trial Judge, nor is there any finding supporting the submission of Mr. Cacoyannis that the licence, if any, granted to Odysseos had been revoked prior to what constituted, according to Odysseos, a forceful eviction.

30 Also, Mr. Cacoyannis submitted that proprietary estoppel has no application in Cyprus in relation to land, except within the context of s.4 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as amended by Law 3/60 (Colonial).

35 We have anxiously considered the case not least because of its grave repercussions on the rights of the parties, and took time to consider every aspect of the case. We shall proceed to formulate our conclusions.

**INTERLOCUTORY INJUNCTION:**

Section 32 of the Courts of Justice Law - 14/60, confers power on the Court to grant an injunction "in all cases in which it appears to the Court just or convenient so to do". However, the justice and convenience of the case is not the sole consideration to which the Court should pay heed in the case of an interlocutory injunction, and no such injunction should be granted, unless the following conditions are satisfied:-

- (a) A serious question arises to be tried at the hearing.
- (b) There appears to be "a probability" that plaintiff is entitled to relief and, lastly,
- (c) unless it shall be difficult or impossible to do complete justice at a later stage without granting an interlocutory injunction.

The object of the legislature, so it appears to us, was to give statutory forum to the equitable remedy of an injunction and put in a code the principles relevant to its grant. An injunction has been, historically, one of the principal weapons of equity to suppress conduct that should not be countenanced by a court of equity.

Until the decision in *American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 All E.R. 504 (H.L.), Courts subscribed to the view that in order to succeed on a motion for an interlocutory injunction, the plaintiff had to make out a prima facie case of entitlement to success which, in turn, required the Court to make some evaluation of the merits of the case. The house of Lords, in the case of *Ethicon*, supra, found this to be a misconception on examination of the provisions of English law comparable to s.32 of our law, and pronounced that all the plaintiff needed to disclose was a serious case, that is, one arguable on the face of it, that would entitle the plaintiff to relief, if successful, in due course. Lord Diplock in his judgment, stressed in categorical terms that it would, under any circumstances, be injudicious to pronounce on the merits of the case, except in the context of the trial, normally the forum for the evaluation of the evidence. The decision in *Ethicon*, supra, was consistently followed in England thereafter. In *Fellowes & Another v. Fisher* [1975] 2 All E.R. 829, detailed guidance was offered on the evaluation

of the several factors likely to have a bearing on the exercise of the Court's discretion, including the convenience of the parties in relation to the making or withholding of the injunction.

5 There is no reason in principle or on authority to interpret "a serious question to be tried at the hearing" in the context of the proviso to s.32(1) - Law 14/60, as requiring anything beyond the disclosure of an arguable case on the strength of the pleadings, as the House of Lords suggested in *Ethicon*, supra. On the other hand, it is fair to assume that the second require-  
10 ment laid down by the legislature as a pre-condition for the grant of an interlocutory injunction - "a probability that the plaintiff is entitled to relief" - relates to something other than the complexion of the pleaded case of the applicant, and that could not be, in the context of this statutory provision, any-  
15 thing other than the evidential strength of the case of the plaintiff. In so holding, we are fortified by a series of decisions of the Supreme Court to the effect that the principles adopted in *Ethicon* do not apply in their entirety or in all their breath in Cyprus. The Court must purport to make some evaluation,  
20 what this should be we shall explain below, of the evidential strength of the case for the party applying for an injunction. (See, *Acropol Shipping Co. Ltd. & Others v. Petros Rossis* (1976) 1 C.L.R. 38; *Constantinides v. Makriyiorghou & Another* (1978) 1 C.L.R. 585; *Papastratis v. Petrides* (1979) 1 C.L.R. 231; *HadjiKyriacos & Co. v. United Biscuits* (1979) 1 C.L.R. 689).

The standard required for the plaintiff to overcome the evidential hurdle is not very high; he is only required to establish "a probability" of success. The concept of "a proba-  
30 bility" imports something more than a mere possibility but something much less than the "balance of probabilities", the standard required for proof of a civil action. A legal probability is something different from a mathematical probability as the Court explained in *Re J. S. (a minor)* [1980] 1 All E.R. 1061 (C.A.).

35 "A probability", in the context of the proviso to s.32(1), requires the applicant to demonstrate that he has a visible chance of success.

Lastly, it must be made to appear for the Court to grant an interlocutory injunction, that, without it, it will be difficult or

impossible to do complete justice at a later stage. It is clear that the question of the adequacy of the remedy of damages, in the light of the facts of the case, comes into play. The learned trial Judge, as earlier indicated, felt that Odysseos would, in no way, be hindered in the pursuit of the legal remedies to which he might be entitled, by refusing the injunction. He took the view that Odysseos would, under no circumstances, be entitled to become the owner of the property or remain in possession. 5

When all the aforementioned factors are taken into account, the Court must ultimately decide whether it is "just" or "convenient" to grant the injunction. 10

#### *THE FACTS AND THEIR IMPLICATIONS:*

The Judge was impressed by the absence of any possibility of Odysseos acquiring or asserting any rights of ownership over the apartment in question. Therefore, Odysseos, if successful, would be entitled to damages to the exclusion of any other remedy. 15

*Proprietary Estoppel:* Mr. Cacoyannis argued that proprietary estoppel has no application in Cyprus with regard to land, except to the extent that this is permissible under the provisions of s.4 of the *Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224*, as amended by Law 3/60 (Colonial). 20

Section 4 of Cap. 224 aims to limit the application of the English common law and doctrines of equity for the acquisition of immovable property rights outside the system of registration created by the Cyprus Immovable Property Law. Trusts, however, that form the principal device of equity for the acquisition of property rights outside a system of registration, are expressly excluded from the ambit of s.4. The exclusion is not limited to express trusts, but trusts generally, including constructive, as well as resulting trusts. A contract for the sale of land gives rise to a constructive or resulting trust. (See, *Lysaght v. Edwards* [1875-76] 2 Ch.D. 499). The interest of the purchaser is assignable in equity (see *Halsbury's Laws of England, Vol.4, paras. 994-998*). Further, the concept of a constructive trust is an ever expanding concept, designed to keep the hands of the Court free, to meet the demands of justice and good conscious. The subject is discussed in *Snell's Principles of Equity*. 25  
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27th ed. at p.185. At times, it has been used as a remedy to prevent unjust enrichment.

5 The existence of a constructive trust cannot, in Cyprus, create an estate in land, unless there is compliance with the provisions of the *Sale of Land (Specific Performance) Law, Cap. 232*, as amended by Laws 50/70 and 96/72; and there was none in this case. Consequently, a contract for the sale of land cannot be enforced either by the purchaser or an assignee in the absence of strict compliance with the provisions of Cap. 10 232.

The Supreme Court has acknowledged equitable estoppel as part of the law of Cyprus. (See, inter alia, *Hadji Yiannis v. The Attorney-General* (1970) 1 C.L.R. 32, and *Papadopoulos v. National Bank of Greece* (1979) 1 C.L.R. 10). More recently, in the case of *Stylianou & Others v. Papacleovoulou and Another* - Civil Appeal No. 6163, delivered on 24.9.82\*, - it pronounced proprietary estoppel is applicable in Cyprus, by virtue of the provisions of s.29(c) of the Courts of Justice Law - 14/60. However, in that case, the relationship between the person asserting property rights and the registered owners, was not that of purchaser and vendor. The registered owners were bare trustees, having done, years ago, all in their power to divest ownership of the property and pass it on to the person from whom the plaintiffs had acquired the land. That they did not accomplish their intention, was due to a mistake that was liable to be rectified. Thereafter, they reinforced by their conduct the belief in the plaintiff that he had no property whatever in the land in question. In those circumstances, the Court found that the plaintiff could assert proprietary estoppel and formally 25 divest the original owners of their property in land. 30

From the facts before the trial Court in this case, as they emerge from the material placed before the Court, it can be predicated, without pondering their evidential value, that Odysseos has neither disclosed a serious case, nor demonstrated 35 a possibility of success with regard to the acquisition of the ownership of the apartment under consideration. The trial Judge was right in holding that Odysseos could, under no

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\* Reported in this Part at p. 542 ante.

circumstances, claim to become the registered owner of the property.

*Other Considerations:* That is not, however, the end of the matter. For, a person in occupation may, in both law and equity, acquire a right to remain in possession. There is, in this case, material tending to suggest that the entry and possession of the property by Odysseos was lawful. What was his exact status need not be resolved at this stage. But to the extent necessary at this juncture, he has disclosed a serious case that he was lawfully in possession. Nor is "a probability" of success missing. Even if we are to assume that his status was none other than that of a licensee, the revocation of the licence was a prerequisite to his eviction. Here, the contention of Odysseos is that he was forcibly evicted without any forewarning whatsoever. If that is the case, he is certainly entitled to claim protection of his possession. And this he could do as against the owner, as well. Unless he was a trespasser, the owners had no right to throw him out, as they allegedly did. The implications arising from this aspect of the case, were totally overlooked by the trial Judge who rested his judgments solely on the rights of Odysseos to the ownership of the property.

Likewise, the trial Court paid no heed to the implications in equity of the allegations of Odysseos. If Odysseos establishes, at the end of the day, the allegation that developers and owners colluded to deprive him of his property in the flat - viewed in the background of the original agreement between owners and developers, still in existence at the time of sale to Odysseos - the owners may be held to be estopped from asserting their rights of ownership, so as to dispossess Odysseos before justice is first done to him. We are very careful to debate the law in a purely theoretical perspective, for it is undesirable to define the law in terms certain, except in relation to the findings of the trial Court, and then, to the extent necessary to resolve the dispute of the parties. One may, in equity, in appropriate circumstances, assert successfully a right of possession against the owner, in the absence of a contract of lease - *Jones (A.E) v. Jones (F.W.)* [1977] 2 All E.R. 231.

We have carefully examined every aspect of the case, especially the implications arising from the dispossession of Odysseos pending the determination of the action. The disposses-



sion may put him at a grave disadvantage, in that it may deprive him of the right to raise certain equities protecting his possession, that may make it difficult, if not impossible, to do justice at the end of the day. Once he has disclosed a serious case in the sense earlier explained, as well as a visible chance of succeeding, the ends of justice require that his possession be protected, pending the outcome of the case.

Therefore, we allow the appeal in Action No. 341/82 - Civil Appeal No. 6428 - with costs here and in the Court below. Further, we allow the appeal in Action No. 330/82, and vary the order made by the trial Judge, as follows:

Odysseos shall remain in possession of flat 26 until the determination of the action, upon giving an undertaking, in the sum of £3,000.- to be answerable in damages, to the owners in case his claim for an injunction is dismissed at the end of the day. Also an order is made, restraining the owners, their servants or agents, from alienating or in any way parting with their property in flat 26. He is also entitled to his costs on appeal, but costs in Action 330/82, before the trial Court, shall be costs in the cause.

Finally, we feel we should end this judgment by expressing our consternation at the lack of adequate legal protection of purchasers of flats in blocks under construction.

This case demonstrates the need for the introduction of appropriate legislation to protect their rights. What form the legislation may take, is a matter that should be studied in its proper perspective, and the frequency of complaints nowadays being voiced as to purchasers investing considerable sums of money for the acquisition of property in apartments under construction and then finding themselves unable to enjoy the fruits of their investment.

*Appeals allowed. Order for costs as above.*