

1982 April 30

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

NICOS STAVROU AND ANOTHER,

Appellants-Plaintiffs.

v.

FEREOS CHRISTOPOULLOS,

Respondent-Defendant.

(Civil Appeal No. 6178).

Judgment—Consent judgment—Setting aside of, in a fresh action—Principles applicable—Concealment or misrepresentation—When it can be a ground for the setting aside of a consent judgment.

5 This was an appeal against the dismissal of appellants-plaintiffs' claim to set aside the consent judgment which was given on the 2nd October, 1976 by virtue of which he undertook to deliver vacant possession of certain premises at Troodos to the respondent.

10 Counsel for the appellants mainly contended that they were induced to enter into the agreement, which was embodied in the judgment by consent, by misrepresentation on the part of the respondent as regards his entitlement to the premises in question, and, also, that he concealed from them material facts showing that the Government disputed - to say the least - his legal entitlement to the premises.

15 *Held*, that though a judgment given by consent may be set aside in a fresh action brought for the purpose on any ground which would invalidate a compromise not contained in a judgment; and that though concealment or misrepresentation can be the ground for the setting aside of a consent judgment if there have been affected thereby the negotiations leading up to the compromise as a result of which the consent judgment was given, in the present instance the trial court found - and there is no reason justifying interference with this finding - that the negotiations and compromise, on the basis of which the consent

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judgment was given, were not in any way affected by the alleged by the appellants misrepresentation or concealment on the part of the respondent as regards his entitlement to the premises concerned; accordingly the appeal must fail.

Appeal dismissed. 5

Cases referred to:

Wilding v. Sanderson [1897] 2 Ch. 534 at p. 544;

Gilbert v. Endean [1878] 9 Ch. D. 259 at pp. 267-270;

Appeal. 10

Appeal by plaintiffs against the judgment of the District Court of Limassol (Artemis, D.J.) dated the 25th September, 1980 (Action No. 723/78) whereby their claim to set aside the judgment given by consent on the 2nd October, 1976 in action No. 2618/73 was dismissed. 15

E. Efstathiou with L. Georghiadou (Mrs.), for the appellants.

K. Michaelides, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellants have appealed against the judgment of the District Court of Limassol in action No. 723/78 by virtue of which there was dismissed on 25th September 1980 the claim of the appellants to set aside the judgment which was given by consent by the District Court of Limassol on 2nd October 1976 in action No. 2618/73. 20 25

The respondent had sought by means of the said action 2618/73 to recover from the appellants possession of premises at Troodos which, having been erected on Government land, were, as alleged by the respondent, let to him and he had sublet them to the appellants. 30

By virtue of the terms of the aforementioned judgment by consent the execution of an eviction order to which the appellants had submitted was postponed till 31st March 1978 on condition of payment of rent by the appellants to the respondent.

The appellants complied, as regards the payment of rent, with the terms of the judgment which was given by consent in action No. 2618/73. After, however, they had failed to deliver 35

vacant possession of the premises to the respondent, in accordance with such judgment, they instituted, on 19th April 1978, the aforesaid new action No. 723/78 seeking to set aside the judgment by consent in action No. 2618/73, in order, obviously, to avoid the adverse for them consequences of the eviction order which was embodied in such judgment.

It is well settled that a judgment given by consent may be set aside in a fresh action brought for the purpose on any ground which would invalidate a compromise not contained in a judgment. It is pertinent to quote, in this respect, the following passage from Halsbury's Laws of England, 4th ed., Vol. 26, pp. 286, 287, para. 562:

"562. Setting aside consent judgment or order. A judgment given or an order made by consent may be set aside in a fresh action brought for the purpose, on any ground which would invalidate a compromise not contained in a judgment or order. Compromises have been set aside on the ground that the agreement was illegal as against public policy, or was obtained by fraud or misrepresentation, or non-disclosure of a material fact which there was an obligation to disclose, or by duress, or was concluded under a mutual mistake of fact, ignorance of a material fact, or without authority. A compromise in ratification of a contract which is incapable of being ratified is not enforceable; and a compromise which is conditional on some term being carried out, or on the assent of the court or other persons being given to the arrangement, is not enforceable if the term is not carried out or the assent is given effectually.

The court may refuse to set aside a compromise when the party seeking to set it aside is guilty of delay in questioning it.

Unless all the parties agree, a consent order, when entered, can only be set aside by a fresh action, and an application cannot be made to the court of first instance in the original action to set aside the judgment or order, except, apparently, in the case of an interlocutory order. Nor can it be set aside by way of appeal."

Useful reference may, also, be made, as regards the possibility of setting aside a judgment given by consent, to, inter alia, the case of *Wilding v. Sanderson*, [1897] 2 Ch. 534, 544.

It has been the crux of the case for the appellants that they were induced to enter into the agreement, which was embodied in the judgment by consent, by misrepresentation on the part of the respondent as regards his entitlement to the premises in question, and, also, that he concealed from them material facts showing that the Government disputed - to say the least - his legal entitlement to the premises.

As it is to be derived from cases such as *Gilbert v. Endean*, [1878] 9 Ch. D.259, 267-270, concealment or misrepresentation can be the ground for the setting aside of a consent judgment if there have been affected thereby the negotiations leading up to the compromise as a result of which the consent judgment was given.

In the present instance the trial court found - and we see no reason justifying interference with this finding - that the negotiations and compromise, on the basis of which the consent judgment was given, were not in any way affected by the alleged by the appellants misrepresentation or concealment on the part of the respondent as regards his entitlement to the premises concerned. It is correct that in his statement of claim in action No. 2618/73 the respondent described himself as the owner of the premises in question, but he then proceeded to give sufficient details as to how he came to be in possession of the premises; and it was, thus, made easy for the appellants to investigate his title, if they so wished.

Moreover there is nothing to show that the appellants were influenced in any way by the contents of the said statement of claim in reaching the agreement which was embodied in the judgment by consent in action No. 2618/73, and by means of which there had, in effect, been prolonged the duration of the tenancy by them of the premises concerned; and it is to be noted that the appellants themselves have pleaded such tenancy in their statement of defence in the said action.

For all the foregoing reasons we find that the claim of the appellants to set aside the consent judgment in question was

rightly dismissed by the trial court and, therefore, this appeal fails.

5 Before concluding our judgment we must make it absolutely clear that it is not a judgment determining substantially, in a final or in any other manner, either the rights, at present or at any other material time, of the parties to the premises in question or the rights of the parties to such premises as against the Government of the Republic.

Appeal dismissed.