1983 June 28

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

DESPINA MARKIDOU,

Appellant-Plaintiff.

v.

KYRIACOS KILIARIS AND ANOTHER,

Respondents-Defendants.

(Civil Appeal No. 6357).

Assignment—Equitable assignment—Contract for sale of land—Creates rights in personam which qualify as a chose in action and can be assigned in equity provided there is an intention to assign—No obstacle in equity to a series of valid assignments of the same chose in action—As far as transfer of the property is concerned an assignee is in no better position than the assignor—The property cannot be registered in his name when the provisions of the Sale of Land (Specific Performance) Law, Cap. 232 are not observed.

Estoppel—Proprietary estoppel—Promissory estoppel—Principles applicable.

Contract—Sale of land—Purchaser prosecuting a claim for damages for breach of contract on the basis that contract is at an end—And though not complying with provisions of the Sale of Land (Specific Performance) Law, Cap. 232, claiming, also, an order for the transfer of the property by invoking proprietary estoppel and promissory estoppel—Prayer for an estoppel of any kind inconsistent in this case with the claim for damages for breach of contract.

Practice—Parties—Joinder—Assignors of a legal chose in action must be joined as parties to the proceedings.

Damages—Breach of contract for sale of land—Date at which damages must be assessed.

The appellant, Despina Markidou, sold to respondent 1, Kyriacos Kiliaris, two adjoining strips of land under written agreements of sale dated 2.10.64 and 26.11.65, respectively. As envisaged in the agreement, Kiliaris took possession of the land purchased and took steps to convert and develop it to his needs. The agreement expressly authorised the purchaser to erect buildings thereon on the property acquired before registration of the property in his name, while enjoining Markidou to facilitate the implementations of the plans of the purchaser in this respect. Markidou, in conformity with her obligations signed the application, prepared by Kiliaris, for a building permit. On 6.12.65 a building permit was granted which sanctioned the building of three shops on the ground floor, including a bakery and, an apartment on the first storey. Some time later, Kiliaris formed a partnership, in association with two other persons for the establishment of a bakery business under the style "UNITED BAKERIES". Kiliaris assigned his rights under the aforesaid agreements with Markidou and his interests in the land to the partnership as part of the share for his contribution by way of capital to the assets of the partnership.

In 1969 the United Bakeries disposed of their property, in the land in question, to Zertalis (respondent 2) under terms and conditions set out in a written agreement dated 3.4.69. Following the agreement, Zertalis moved into possession to the knowledge of Markidou. He changed the user of the premises and converted them into a mechanic's garage and for the storage of disused cars suitable for sale as scrap metal. Zertalis and his family were displaced from their home at Neon Chorion Kythreas as a result of the tragic events of 1974. He built two flats on top of the ground floor for family use, to the knowledge and with the encouragement of Markidou.

By means of an action, Markidou sought declarations for the rescision of the sale agreements of 1964 and 1965. She claimed to be entitled to a discharge from her obligations under the aforesaid agreements due to breaches of contract of respondent 1 and/or respondent 2. Alternatively, she asked for a declaration that she was entitled to repudiate the aforementioned contracts upon a refund of the sum of £1,000.- received under the agreements, less a reasonable amount for the use of the land by the respondents. Also, she sought a declaration stating she was not

contractually related with respondent 2. Lastly, she claimed £30,000.- damages for breaches of the contracts under consideration. The respondents refuted the allegations of Markidou for breaches, while asserting that, if there were any, Markidou was precluded by her conduct over the years from asserting them. The respondents raised an identical counterclaim for an order directing the registration of the property in the name of the respondents. Alternatively, they claimed £70,000.- damages. Finally a statement was made on behalf of Kiliaris, affirming that his rights under the sale agreements had been assigned to Zertalis and that, in the event of judgment being given in favour of respondent 2, he was content to abandon his claim.

The trial Court absolved the respondents of any liability to Markidou and dismissed her claim. Regarding the counterclaims the trial Court upheld the claim of one of the counterclaimants, Zertalis, to damages for breach of contract by Markidou, having held that the rights accruing to Kiliaris under the sale agreements with Markidou were validly assigned to Zertalis, entitling the latter to enforce the agreement by stepping into the shoes of the purchaser. The claim of Zertalis to an order for the conveyance in his name of the property purchased was dismissed in view of the failure of Kiliaris to observe the provisions of the Sale of Land (Specific Performance) Law, Cap. 232 but he was awarded damages for breach of contract measured on the difference between the value of the property at the time of the breach and the contract price.

Upon appeal by Markidou it was mainly contended that the rights under the two sale agreements were not of a species capable in law of being assigned and that the agreement of 1969 relied upon as achieving assignment, did not have that effect in law.

On the other hand upon a cross-appeal, by Zertalis though not disputed that a contract for the sale of land is specifically enforceable only in the event of strict compliance with the provisions of Cap. 232, it was contended that the findings of the trial Court justified an order for the registration of the property in his name and was submitted that the sole agreements judged in combination with the events that followed, gave him a right to a proprietary estoppel and also to a promissory estoppel.

Held. (1) *on the appeal:*

That a contract for the sale of land creates, like any other contract, rights in personam; that an estate in land may accrue from adherence to the provisions of Cap. 232; that short of observance of the provisions of Cap. 232, a contract for the sale of land merely confers personal rights, that is, rights against the counter-contracting party, in the event of breach, it does not give any rights over the land; that the rights acquired by Kiliaris under the contracts of sale were purely personal; that they entitled him to notice of performance vis-a-vis Markidou and damages in the event of breach; that these rights qualified as a chose in action and could be assigned in equity without any legal impediment, provided always there was an intention to assign; that there is no obstacle in equity to a series of valid assignments of the same chose in action; that, therefore, the trial Court rightly ruled that Zertalis became an assignee of the rights of United Bakeries and Kiliaris under the sale agreements; that he stepped into the shoes of the purchaser and in that capacity he could demand of Markidou performance of her part of the agreement; that in the face of her refusal to meet her obligations thereunder, he had a right to sue her for damages; that in consequence, that part of the appeal that is directed against the finding of the Court that Zertalis became an assignee of the aforementioned rights, must be dismissed.

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

(1) That as far as the transfer of the property is concerned, an assignee is in no better position than the assignor; and that, therefore, the contracts of sale give a right to neither for the registration of the property in their name.

(2) *After dealing with proprietary and promissory estoppel:*

That the prayer for an estoppel of any kind, is inconsistent in this case with the claim for damages for breach of contract, designed to compensate Zertalis for such breaches on the premise, that agreement came to an end; that in these proceedings, Zertalis has basically relied upon his legal rights; that he cannot, at the same time, ask the Court to restrain Markidou from exercising her legal rights; and that, therefore, the cross-appeal for an order for registration, or an injunction, is groundless and must be dismissed.

Held, (III) *on the appeal and cross-appeal as to the damages:*

That loss and damage ordinarily crystallize naturally at the

date of breach and fall to be assessed at such date; that there is no room for disturbing the finding of the trial Court that the breach occurred in 1979 and not later and that damages ought to have been assessed as at that time; accordingly the appeal and cross-appeal as to the damages must fail.

Appeal and cross-appeal dismissed.

Per curiam:

The assignors of a legal chose in action must be joined as parties to the proceedings, either as plaintiffs or defendants, depending on their stand.

Cases referred to:

Woodar Investment v. Wimpey Construction [1980] 1 All E.R. 571 (H.L.);

Tseriotis v. Christodoulou and Another, 19 C.L.R. 216;

Iordanou v. Anyftos, 24 C.L.R. 97:

Holy Monastery of Ayios Neophtos v. Antoniades (1968) 1 C.L.R. 10;

Xenopoullos v. Makridi (1969) 1 C.L.R. 488;

Chrysostomou v. Chalkousi & Sons (1978) 1 C.L.R. 10;

Trendtex Trading Corpn. v. Credit Suisse [1980] 3 All E.R. 721;

Property Discount Corpn. v. Lyon Group [1980] 1 All E.R. 334;

I.R.C. v. Electric Industries [1949] 1 All E.R. 120;

Butler Estates v. Bean [1941] 2 All E.R. 893 (C.A.);

Odysseos v. Pieris Estates Ltd. & Another (1982) 1 C.L.R. 557;

Stylianou & Others v. Papacleovoulou & Another (1982) 1 C.L.R. 542;

Moorgate Mercantile v. Twitchings [1975] 3 All E.R.314 (C.A.);

Ismail v. Polish Ocean Lines [1976] 1 All E.R.902 (C.A.):

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

Appeal and cross-appeal.

Appeal by plaintiff and cross-appeal by defendant 2 against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Fr. Nicolaides, D.J.) dated the 13th November, 1981 (Action No. 4029/78) whereby the plaintiff was ordered to pay to defendant No. 2 the sum of £50,910.- as damages for breach of contract.

L. N. Clerides with *C. Savvides,* for the appellant.

Chr. Kitromilides, for respondent 1.

L. Papaphilippou, for respondent 2.

Cur. adv. vult.

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

PIKIS J.: The appellant, Despina Markidou, sold to respondent 1, Kyriacos Kiliaris, two adjoining strips of land under written agreements of sale dated 2.10.64 and 26.11.65, respectively. The land sold formed part of a larger plot of land that Markidou undertook to parcel in order to meet her contractual obligations to the purchaser. As envisaged in the agreement, Kiliaris took possession of the land purchased, covered by the first agreement and, took steps to convert and develop it to his needs. The agreement expressly authorised the purchaser to erect buildings thereon on the property acquired before registration of the property in his name, while enjoining Markidou to facilitate the implementations of the plans of the purchaser in this respect. True to her obligations under the agreement, Markidou signed the application, prepared by Kiliaris, for a building permit.

The purchaser found the first portion of land inadequate for his needs and negotiated the purchase of an adjoining strip of land continuous to the first plot, in order to solve his needs for extra space. The second agreement aimed to regulate the terms and conditions of the sale of the additional plot. Like the first, it gave the purchaser the right to immediate possession and amenity to develop it to suit his needs. On 6.12.65 a building permit was granted. It sanctioned the building of three shops on the ground floor, including a bakery and, an apartment on

the first storey. Kiliaris assumed full possession of the property and erected buildings thereon to accommodate his bakery business. There was a deviation, it seems, from the approved plan, causing the Strovolos Improvement Board to withhold approval for some time. Much later, when Zertalis, the second respondent, assumed possession, the position was regularised by a covering permit issued on 9.4.71. To all appearances, possession of the property by Kiliaris was smooth and uneventful. There was no friction with Markidou who lived nearby in company with her large family.

Some time later, Kiliaris formed a partnership, in association with his brother and a certain Severis, for the establishment of a bakery business under the style "UNITED BAKERIES" (ΗΝΩΜΕΝΑ ΑΡΤΟΠΟΙΕΙΑ) Kiliaris assigned his rights under the aforesaid agreements with Markidou and his interests in the land to the partnership as part of the share for his contribution by way of capital to the assets of the partnership.

In 1969 the United Bakeries disposed of their property, in the land in question, to Zertalis, under terms and conditions set out in a written agreement dated 3.4.69. Following the agreement, Zertalis moved into possession to the knowledge of Markidou, as the trial Court found. He changed the user of the premises and converted them into a mechanic's garage and for the storage of disused cars suitable for sale as scrap metal. Zertalis and his family were displaced from their home at Neon Chorion Kythreas as a result of the tragic events of 1974. He built two flats on top of the ground floor for family use, to the knowledge and with the encouragement of Markidou, as he claimed before the trial Court. Before starting building work, he renewed by the payment of the appropriate fee the building permit in existence. Apparently the building was fashioned to the terms and conditions of the building permit.

There was friction between Markidou and Zertalis. Markidou complained that the user of the premises interfered with the use and enjoyment of her nearby property. She raised an action for nuisance against Zertalis. The latter's right to possession of the property was not disputed. By a counterclaim, Zertalis claimed the transfer of the property in his name. The counterclaim was directed against Markidou as well as United

Bakeries from whom he derived possession of the rights asserted over the property. Eventually the action was withdrawn while the counterclaim was dismissed as premature. However, the rights of Zertalis were expressly reserved in the judgment of the Court, given on 22.9.79, removing any barrier that might otherwise be set up in a subsequent claim for the assertion of the same rights.

Another complaint that Markidou nurtured against the respondents was that they impeded by their acts the proper division of her remaining property into building sites, an allegation denied by the respondents. It must be said that responsibility for the parcellation of the property sold and transfer under the sale agreements with Kiliaris, rested with Markidou. The property remained registered in her name.

By her action Markidou sought declarations for the rescision of the sale agreements of 1964 and 1965. She claimed to be entitled to a discharge from her obligations under the aforesaid agreements due to breaches of contract of respondent 1 and/or respondent 2. Alternatively, she asked for a declaration that she is entitled to repudiate the aforementioned contracts upon a refund of the sum of £1,000.- received under the agreements, less a reasonable amount for the use of the land by the respondents. Also, she sought a declaration stating she was not contractually related with respondent 2, which is a superfluous declaration for, never was an allegation advanced to the contrary. Lastly, she claimed £30,000.- damages for breaches of the contracts under consideration. At one stage she stated to the Court she was ready to transfer the property to respondents, or either of them, upon receiving the sum of £30,000.-. The respondents refuted the allegations of Markidou for breaches, while asserting that, if there were any, Markidou was precluded by her conduct over the years from asserting them. The respondents raised an identical counterclaim for an order, directing the registration of the property in the name of the respondents. Alternatively, they claimed £70,000.- damages. At the end of the day, a statement was made on behalf of Kiliaris, affirming that his rights under the sale agreements had been assigned to Zertalis that, in the event of judgment being given in favour of respondent 2, he was content to abandon his claim.

The Judgment under Appeal:

The trial Court - the Nicosia Full Court composed of D. Stylianides, P.D.C., as he then was and, Frixos Nicolaides, D.J. - made a thorough review of every aspect of the case and having examined the rival contentions, concluded that the case of Markidou was unfounded. They dismissed every allegation that defendants, or either of them, were guilty of breaches of contract or that they were instrumental, directly or indirectly, to the causation of any damage to Markidou by foiling or bringing obstacles to her plans to divide into building sites property adjoining that sold. The Court absolved them of any liability whatsoever to Markidou; and, consequently, dismissed her claim. Some of her claims were remote to the extreme, devoid of any foundation in fact or law; for example, her claim for damages to an amount of £3,000.-, arising from losses of earnings during a visit to Canada because of the time she had to devote to her dispute with Kiliaris and Zertalis, attributable to the latter's illdoings.

The contention of Markidou, the pivotal point of her case that, Zertalis and Kiliaris, or either of them, repudiated by their actions the agreement with Markidou, was found to be groundless. Far from repudiating their contract, the Court found, the respondents adhered to their obligations thereunder and legitimately looked to Markidou to carry out her obligations as well. Repudiation of a contract may result only from the refusal of a party to it to implement a term going to the root of the contract. Nothing less will do - *Woodar Investment v. Wimpey Construction* [1980] 1 All E.R. 571 (HL). Far from breaching any of their obligations under the agreement, respondents were found to have substantially performed their part of the bargain. The one who defaulted was Markidou.

The trial Court vindicated as correct the factual substratum to the counterclaim and upheld the claim of one of the counterclaimants, Zertalis, to damages for breach of contract by Markidou. The rights accruing to Kiliaris under the sale agreements with Markidou were validly assigned to Zertalis, as the Court found, entitling the latter to enforce the agreement by stepping into the shoes of the purchaser. Although Kiliaris prosecuted an identical counterclaim alongside with Zertalis, it was not designed to dispute the validity of the assignment to Zertalis

but merely to close every route Markidou might follow to escape her obligations under the sale agreements. Far from disputing the efficacy of the assignment by United Bakeries to Zertalis, he subscribed to it and at the end of the proceedings informed the Court of readiness to withdraw the counterclaim in the event of Zertalis being successful in his counterclaim.

The claim of Zertalis to an order for the conveyance in his name of the property purchased, was dismissed in view of the provisions of the Sale of Land (Specific Performance) Law - Cap. 232 and, the failure of Kiliaris to observe the provisions of the law. But he was successful, as noted, in his action for damages for breach of contract.

There is, in the judgment delivered by Stylianides, P.D.C., as he then was, a careful analysis of the several items of damage claimed of the relevant terms of the sale agreement and the principles regulating the award of damages. A clause of the first sale agreement bearing on the quantum of damages, was the limitation of damages to the sum of £1,000.- in the event of refusal on the part of Markidou to transfer the land. The significance of this term is examined in association with the provisions of s.74 of the Contract Law and a series of decisions on its interpretation (see, inter alia, *Christodoulos N. Tseriotis v. Chryssi Christodoulou and Another*, 19 C.L.R. 216; *Eleni Panayiotou Iordanou v. Polycarpos Neophytou Anyftos*, 24 C.L.R. 97; *The Holy Monastery of Ayios Neophytos Paphos v. Yiannakis Neokli Antoniades* (1968) 1 C.L.R. 10; *Xenis Xenopoullos v. Elli Isidorou Makridi* (1969) 1 C.L.R. 488). As the trial Court observed, a quantitative stipulation as to damages sets the ceiling to the damages recoverable. Consequently, the innocent party could not recover in respect of the particular breach more than the amount of £1,000.–. However, by virtue of the terms of the first sale agreement, the limitation did not apply to the value of the buildings erected thereon. Consequently, a different measure of damages was applicable in that regard. The two sale agreements were treated as part of one transaction repudiated by Markidou in the year 1979, the year in which she unequivocally declared her refusal to transfer the property to Zertalis. Subject to the limitation as to damages embodied in the 1964 sale agreement, the remaining items of damage fell to be assessed, as the Court found, under the provisions of s.73 of the Contract Law, establishing the normal

measure of damages for breach of contract. The aggrieved party was held to be entitled to the difference between the value of the property at the time of breach and the contract price. Guided by the testimony of two land valuers, they awarded Zertalis the sum of £50,910.-, the value of the property in 1979 subject to the aforementioned limitation.

An appeal was filed by Markidou, questioning almost every aspect of the judgment, factual and legal. A cross-appeal was filed by Zertalis, mainly contesting the dismissal of his claim for an order for the registration of the property. Lastly, Kiliaris disputed the correctness of the order for costs, depriving him of the costs of the counterclaim. Below, we shall deal separately with the appeal of Markidou and the cross-appeal of Zertalis, except that the appeal and cross-appeal as to damages will be dealt with together.

The Appeal of Markidou:

By the notice of appeal Markidou challenged the findings of the Court, the inferences drawn therefrom, as well as the implications of the findings in law, especially the one regarding assignment. Counsel for Markidou abandoned at the hearing those grounds of appeal directed towards challenging the findings of the trial Court. It was, if we may say so, a sound decision. The findings of fact are the province of the trial Court that is uniquely placed under our system of law to sift, evaluate and assess the evidence before it. Not only the findings made were reasonably open to the trial Court but almost inescapable in view of the history of the relationship of the parties, especially the conduct of Markidou over the years. Counsel confined the appeal of Markidou to the finding of the Court respecting assignment, a mixed question of law and fact and, damages. Presently we shall deal with the question of assignment.

Assignment:

The submission on the subject of assignment was essentially twofold: Firstly, that the rights under the two sale agreements were not of a species capable in law of being assigned. Secondly, that the agreement of 1969 relied upon as achieving assignment, did not have that effect in law.

In answer it was submitted that the rights acquired by Kiliaris under the sale agreements, were of a personal nature and, as such, assignable in equity. The agreement of 1969 operated,

it was submitted, as an assignment and placed Zertalis in the position originally enjoyed by the purchaser Kiliaris.

Counsel for both sides made extensive reference to the principles and caselaw bearing on the subject of assignment. It is unnecessary to reproduce them, except incidentally in the context of our analysis of the law and its application to the facts of the case.

The trial Court rightly noted that there is no statutory assignment under Cyprus law. In England it is the offspring of statute, namely the *Real Property Act* 1925 and, not part of the common law of the country made applicable in Cyprus by the Courts of Justice Law. However, statutory assignment is not the only species of assignment known to English law. Long before the legislation of 1925, equity recognised the assignment of legal choses of action as a valid disposition of personal property rights. Equitable assignment has been recognised as part of our law - *Chrysostomou v. Chalkousi & Sons* (1978) 1 C.L.R. 10. The decision follows the provisions of s.29 (1)(c) of the Courts of Justice Law - 14/60, making applicable the doctrines of equity in so far as no other provision is made by Cyprus statute law.

Equitable assignment is discussed at length in *Halsbury's Laws of England,* 3rd ed., Vol. 4, at para. 1016 et seq., as well as in *Snell's Principles of Equity,* 27th ed., p. 74 et seq. Mr. Clerides informed us he did not trace a single case of assignment of rights under a contract for the sale of land. That may be so. But he advanced no convincing arguments why the general principle of equitable assignment should find no application in the case of contracts for the sale of land. The rights acquired under a contract for the sale of land are personal and, as such, prima facie assignable. A contract for the sale of land does not create an estate in land, that is, rights in rem. A chose in action is a term of art that imported different meanings at different stages at the evolution of English law. Literally, it means "a thing recoverable by action" - *Halsbury's Laws of England,* supra, para. 991. Presently, it signifies an actionable right of a personal character, as contrasted to a right in rem, that is, a right attaching to the thing itself. A chose in action encompasses both corporeal and incorporeal rights of property not in possession.

No specific form is required to effect an assignment. Form is never significant in equity. It looks to the intent. So long as an intent to assign is disclosed, equity will give effect to it. Assignment is effective the moment it is communicated to the assignee. Public policy prohibits the assignment of certain rights, such as salaries and pensions of public officers, as well as awards of alimony and maintenance. However, as we may surmise, the judicial trend is towards extending the class of rights assignable in equity. The decision in *Trendtex Trading Corpn. v. Credit Suisse* [1980] 3 All E.R. 721 (QBD) and (CA), is indicative of this trend. As it was acknowledged in the above case, though a personal chose in action to litigate is not assignable, an impersonal one is, provided the surrounding circumstances reasonably warrant this course.

A contract for the sale of land creates, like any other contract, rights in personam. An estate in land may accrue from adherence to the provisions of Cap. 232. Short of observance of the provisions of Cap. 232, a contract for the sale of land merely confers personal rights, that is, rights against the counter-contracting party, in the event of breach. It does not give any rights over the land. As *Goulding, J.* observed in *Property Discount Corpn. v. Lyon Group* [1980] 1 All E.R. 334, a contract gives an interest in land only if it gives the power to require a grant of the land without further permission of the owner. In other words, if it puts it beyond the reach of the owner to withhold consent to the conveyance.

Now, the rights acquired by Kiliaris under the contracts of sale, here under consideration, were purely personal. They entitled him to notice of performance vis-a-vis Markidou and damages in the event of breach. These rights qualified as a chose in action and could be assigned in equity without any legal impediment, provided always there was an intention to assign. Whether a particular transaction amounts to an equitable assignment, is a matter to be gathered from the contents of the document relied upon as setting up an assignment - *I.R.C. v. Electric Industries* [1949] 1 All E.R. 120-126.

Mr. Clerides raised numerous arguments in support of the submission that the agreement of 1969 between United Bakeries and Zertalis did not have the effect of assigning the rights of United Bakeries and those of its predecessor Kiliaris, to Zertalis.

The provisions of the 1969 agreement were analysed from every angle, in order to demonstrate that Zertalis did not become an assignee of the rights of United Bakeries, or their predecessor. That the assignors were not themselves the purchasers but the assignees of the purchaser, is not detrimental to a valid assignment. There is no obstacle in equity to a series of valid assignments of the same chose in action - *Butler Estates v. Bean* [1941] 2 All E.R. 893 (CA). The above case also illustrates that personal rights deriving from a contract concerning land, are assignable - in the above case a contract of lease. Mr. Clerides pressed the point that the agreement between United Bakeries and Zertalis purported to be a sale and not an assignment. Attractive as this argument may appear at first sight, it overlooks the object of an assignment which, in the ordinary case is to pass on rights to the assignee for good consideration; in other words to sell these rights to a person who, in turn, steps into the shoes of the seller or vendor, as the case may be. There is no inherent contradiction between a sale and an assignment. What is uncertain is whether the assignment of a legal chose in action without consideration constitutes a valid assignment (see *Halsbury's Laws of England*, 4th ed., para. 1022). The absence of the word "assignment" as such, does not weaken the case for Zertalis. Equity looks to the intent. The crucial question is whether the assignors intended to pass on their rights under the sale agreements to Zertalis. It is a matter of construction of the agreement.

On examination of the terms of the 1969 agreement, it appears to us that United Bakeries intended to assign their rights to Zertalis. An expression of this intention is also reflected in the fact that immediately after its execution they allowed Zertalis to assume their possessory rights over the property. In exchange of transfering their rights under the sale agreements to Zertalis, the latter agreed to convey to them 25 donums of land at Neon Chorion Kythreas, plus a sum of money, that is, a fairly straight forward exchange, subject to terms and conditions specified in the agreement; one of which was that payment of the money and conveyance of the respective properties would take effect upon transfer of the properties. What is less certain, is the effect of the ultimate clause of the contract, clause 4. It gave the right to Zertalis to withdraw from the agreement in the event of inability to raise a loan of £9,000.- on the mortgage of

the land covered by the sale agreements. It was a term calculated to take effect after transfer of the property, subject matter of the sale agreements, to Zertalis. Nothing happened thereafter to suggest that any of the contracting parties intended to resile from the agreement. On the contrary, so far as we may gather from the stand of Kiliaris in these proceedings, the two sides treated the agreement as binding and looked forward to its implementation. And so far as the assignors were concerned, they did everything in their power to discharge their part of the agreement. They let in Zertalis who assumed possession of the property. It hardly lies to Markidou to contest the validity of this agreement. Evidently, she took notice of it and treated Zertalis as being validly in possession, as successor to the rights of Kiliaris. A debtor - and Markidou stood in the possession of a debtor as regards her obligations under the sale agreement - has a right to set up against an assignee equities she could set up against the assignor. In fact, she unsuccessfully tried to set up such equities against Zertalis, by seeking to burden him with the breaches of the original assignor.

The one legitimate objection that Markidou could have taken in these proceedings, of a procedural character, was not taken up. It concerns the failure of Zertalis to join as parties in these proceedings the remaining partners of United Bakeries. The assignors of a legal chose in action must be joined as parties to the proceedings, either as plaintiffs or defendants, depending on their stand. If the objection had been taken up, the matter was not beyond remedy for, the Court might appropriately order the joinder of the remaining two partners of United Bakeries. In any event, this is not a matter raised on appeal and we cannot take cognizance of it. Presumably Markidou treated the attitude of Kiliaris to these proceedings as reflecting the joint stand of all threee partners.

In our judgment, the trial Court rightly ruled that Zertalis became an assignee of the rights of United Bakeries and Kiliaris under the sale agreements. He stepped into the shoes of the purchaser and in that capacity he could demand of Markidou performance of her part of the agreement. In the face of her refusal to meet her obligations thereunder, he had a right to sue her for damages. In consequence, that part of the appeal that is directed against the finding of the Court that Zertalis

became an assignee of the aforementioned rights, is dismissed. There remains to examine her appeal against damages.

The Cross-Appeal of Zertalis:

While not disputing that a contract for the sale of land is specifically enforceable only in the event of strict compliance with the provisions of Cap. 232, it was submitted on behalf of Zertalis that the findings of the trial Court justified an order for the registration of the property in his name. Mr. Papaphilippou, like Mr. Clerides, sought to draw a distinction between a sale and an assignment, overlooking that an assignment may be the offspring of a sale. As far as the transfer of the property is concerned, an assignee is in no better position than the assignor. Therefore, the contracts of sale give a right to neither for the registration of the property in their name. Mr. Papaphilippou did not exhaust his arguments, on the subject, by reference to the implications of the sale agreements. He submitted that the sale agreements, judged in combination with the events that followed, gave his client a right to a proprietary estoppel. In support, he relied on the decision of the Supreme Court in *Odysseos v. Pieris Estates Limited and Another* (1982) 1 C.L.R. 557. Leaving aside for a moment the principles relevant to proprietary estoppel, we discern an inconsistency between the stand of Zertalis prosecuting a claim for damages for breach of contract aimed to put a money value on the breaches on the basis that the contract is at an end and, an order for the transfer of the property, that is the implementation of the agreement, on the other. In the case of *Odysseos*, supra, we pointed out that proprietary estoppel cannot operate in Cyprus so as to bypass or override the provisions of Cap. 232. We said: "The existence of a constructive trust (which arises in favour of the purchaser upon the execution of a sale of land 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 ...". The case of *Stylianou and Others v. Papacleovoulou and Another* (1982) 1 C.L.R. 542, was distinguished because the vendors there had done all in their power to convey the property, albeit unsuccessfully, because of an error. Thereafter, they did all in their power to reinforce in the purchaser the belief that he was not only the purchaser of the property but its registered owner. Labouring under this belief, considerable sums were invested in improving the pro

perty. Unlike the plaintiff in the above case, Zertalis never laboured under the belief that he was the registered owner, nor did anybody encourage him to harbour such a belief. He hoped to become the registered owner at a future date. And when his expectations were frustrated, he raised the present action for breach of contract. Damages were his remedy under the law.

Counsel advanced arguments not only with regard to proprietary estoppel but also in relation to promisory estoppel. An equitable estoppel in its various forms has come to be regarded as an important principle of equity, intended to streamline the law along the dictates of justice - *Moorgate Mercantile v. Twitchings* [1975] 3 All E.R. 314 (CA). In due course its definition was stripped of formality and its application freed from technical prerequisites. It has come to this: A party will not be allowed to resile from his representations as to the existence of a particular state of affairs in circumstances where so to do would be inequitable - *Ismail v. Polish Ocean Lines* [1976] 1 All E.R. 902 (CA). One of the objects of equitable estoppel is to restrain a party from exercising his legal rights where this would be unjust. As with proprietary estoppel, it is difficult to reconcile the invocation of promisory estoppel with a claim for damages. If the claim of Zertalis was confined to an injunction restraining Markidou from interfering with the possession of the property developed with the encouragement of Markidou, there might be room for probing into the matter and possibly upholding the claim, although we must not be taken as expressing a settled opinion on the matter. However, the prayer for an estoppel of any kind, is inconsistent in this case with the claim for damages for breach of contract, designed to compensate him for such breaches on the premise, as earlier noted, that agreement came to an end. In these proceedings, Zertalis has basically relied upon his legal rights. He cannot, at the same time, ask the Court to restrain Markidou from exercising her legal rights. In our judgment, the cross-appeal for an order for registration, or an injunction, is groundless and must be dismissed.

Damages:

The trial Court made a meticulous examination of the various items of damage and, in our judgment, applied the correct

principles for its determination. They appropriately heeded the limitations as to damages, embodied in the first sale agreement and made their award subject to such limitations. Further, there is no room for disturbing their finding that the breach occurred in 1979 and not later and, that damages ought to have been assessed as at that time. The time at which damages must be assessed on principles relevant thereto, were the subject of detailed discussion in the case of *Saab and Another v. The Holy Monastery of Ayios Neophytos* (1982) 1 C.L.R. 499. Loss and damage ordinarily crystallize naturally at the date of breach and fall to be assessed at such a date. What is natural in a given situation, is a matter of logic and common sense. At common law there is no restriction to the choice of the time at which damages should be assessed. When the breach becomes known, a party can shape his position accordingly and guide his affairs subject to that reality. Only if he is prevented from so doing by objective considerations, that is in exceptional cases, would it be natural to regard damage as crystallizing on a date subsequent to breach. We find no merit either in the appeal or cross-appeal as to damages. They fail accordingly.

Costs: Having regard to the outcome of the counterclaim of Kiliaris, the order made as to costs with regard to that aspect of the case, cannot be faulted; it was certainly an order that could appropriately be made in the exercise of the Court's discretion.

In the result, the appeal and cross-appeals fail. They are dismissed accordingly. There shall be no order as to costs.

Appeal and cross-appeal dismissed. No order as to costs.