

1983 July 7

[HADJIANASTASSIOU, LORIS, STYLIANIDES, JJ.]

ANTIS TRIANTAFYLLIDES & ANOTHER,

Appellants-Applicants.

NATIONAL BANK OF GREECE,

Respondents.

(Civil Appeal No. 6282)

*Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79)—
Interest—Section 4 of the Law—“Debt” due prior to the 14th
August, 1974—Stipulation for increase of interest on such debt
made after that date—Such interest represents interest within
the meaning of the above s. 4.*

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On February 6, 1978 the respondents filed an action against the appellants, on a mortgage debt of £47,500 contracted in 1969, and on 8.2.1978 they obtained an interim order restraining the appellants from parting with certain immovable property standing registered in their name.

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Some time later the parties came to an agreement by virtue of which the respondents undertook to release the aforesaid property from the interim order in consideration of the appellants agreeing to increase the rate of interest on the aforesaid mortgage from 1% to 9% as from 1st March, 1978. The said interim order was then withdrawn.

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Two years later on 16th February, 1980, the respondents filed in the District Court of Nicosia an action claiming the sum of C£7,600.— against the appellants, an amount representing the increased interest only—relying on the above agreement that is 8% on the capital of the said mortgage for the period 1st March, 1978 till 29th February, 1980.

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Upon an application by the appellants under the Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79) for a

declaration to the effect that the amount claimed by virtue of the Action represented interest within the meaning of section 4* of Law 24/79 and as such could not be recovered and collected by the respondents the trial Court held that the amount claimed was not "interest within the meaning of section 4" and dismissed the application. Hence this appeal. 5

Held, that there is nothing in Law 24/79 differentiating the position where the stipulation for the increase of interest was effected prior to the 14th August, 1974 or after that date once the original "debt" the capital money, is due prior to the 14th August, 1974; that section 4 of Law 24/79 is quite clear and unambiguous in stating that "no interest shall be charged, debited or collected on a debt of a displaced or stricken debtor"; that it is clear that the claim of the respondents by virtue of their action is the 8% increase of interest on the capital of C£47,500.- which is a "debt" falling within the provisions of Law 24/79 having been contracted prior to 14th August, 1974, i.e. in 1969 and secured by mortgage; that such interest represents interest within the meaning of section 4 of the Law; accordingly the appeal must be allowed. 10 15 20

Appeal allowed.

Cases referred to:

Re Athlumney [1898] 2 Q.B.D. 547 at p. 551.

Appeal.

Appeal by applicants against the order of the District Court of Nicosia (Artemides, S.D.J.) dated the 17th June, 1981 (Appl. No. 178/80) whereby their application for a declaration that they are displaced and/or stricken debtors was dismissed. 25

G. Triantafyllides, for the appellants.

A. Dikigoropoulos, for the respondents. 30

Cur. adv. vult.

HADJIANASTASSIOU, J.: The judgment of the Court will be delivered by Mr. Justice Loris.

* Section 4 provides that "no interest shall be charged debited or collected on a debt of a displaced or stricken debtor";

LORIS, J.: This is an appeal from the order of the District Court of Nicosia (Chr. Artemides, S.D.J.—as he then was) dated 17th June, 1981, dismissing the application (No. 178/80) of the applicants—appellants under the Debtors Relief (Temporary Provisions) Law, 1979.

The relevant facts which gave rise to the aforesaid application under the Debtors Relief (Temporary Provisions) Law, 1979, are very briefly as follows:

On 6th February, 1978, the respondents in the present appeal instituted three actions in the District Court of Nicosia (Nos. 563/78, 564/78 and 565/78—exhibit 6), against the present appellants together with other defendants, who are not parties to the present proceedings; the subject-matter of Action No. 563/78 against the appellants was a claim on a mortgage debt contracted in 1969; the said mortgage bears No. Y 1358/69 and the mortgage capital thereof is C£47,500.

On 8th February, 1978, on the application of the plaintiffs in the said actions an interim order was issued restraining inter alios the appellants—defendants from parting with the immovable property standing registered in their name under plot 1495 of part 'A' of sheet/plan XXI.53.1 at Engomi, Nicosia District.

On 31st March, 1978, the parties in the present proceedings came to an agreement which was reduced into writing and it is exhibit 5 before us; by virtue of the said agreement the respondents in the present appeal (plaintiffs in the said three actions), undertook to release the aforesaid property from the interim order obtained on 8th February 1978, in consideration of the defendants—appellants agreeing to increase the rate of interest on the aforesaid mortgage Y 1358/69 from 1% to 9% as from 1st March, 1978. It is common ground that the said interim order was withdrawn and it is apparent from exhibit 5 that the rate of interest was so increased.

Two years later on 16th February, 1980, the respondents in this appeal filed in the District Court of Nicosia Action No. 759/80 (exhibit 1) claiming the sum of C£7,600.— against the present appellants, an amount representing the increased interest only—relying on the agreement exhibit 5—that is 8% on the capital of mortgage Y 1358/69 for the period 1st March, 1978, till 29th February, 1980.

The appellants filed on 19th November, 1980, Application 178/80 under the Debtors Relief (Temporary Provisions) Law, 1979 (Law No. 24 of 1979) seeking inter alia:

- (a) A declaration to the effect that they are displaced and/or stricken debtors within the meaning of section 2 of Law 24/79 (vide para. (a) at p. 4 of the record). 5
- (b) A declaration to the effect that the amount claimed by virtue of Action No. 759/80 represents interest within the meaning of section 4 of Law 24/79 and as such could not be recovered and collected by the respondents in the present appeal (vide para. (e) at p.4 of the record). 10

As it appears from the decision of the learned trial Judge (vide p. 19 of the record, lines 10-20), counsel on both sides agreed that the issue raised by para. (e) of the application for relief be decided first; in case it would have been decided in favour of the applicants-appellants the trial Judge would have proceeded to decide the remaining issues; otherwise the whole application would have been dismissed. 15

The trial Judge after hearing counsel on both sides on this issue decided same in favour of the respondents and obviously following the previous agreement between counsel, as above, dismissed the application. 20

The appellants in the present appeal substantially put forward a single complaint notably that the finding of the trial Judge to the effect that the amount claimed in Action No. 759/80 is not "interest" within the meaning of section 4 of Law 24/79 (and therefore irrecoverable) is wrong. 25

Submission of learned counsel on both sides before us, and as it appears from the record before the learned trial Judge, may be briefly summarized as follows: 30

1. Learned counsel for appellants relying on the uncontested facts relating to the present application as set out above, submitted, assuming always that the applicants-appellants were held to be "displaced" and/or "stricken debtors" within the meaning of section 2 of Law 24/79, that: 35

- (a) The mortgage debt of 1969 is clearly a debt contracted prior to the 14th August, 1974, and therefore a "debt" within the meaning of section 2 of Law 24/79.
- 5 (b) The written agreement dated 31st March, 1978, provides clearly (para. 1 (a) of exhibit 5 at p. 24 of the record) increase of interest from 1% to 9% on the capital of mortgage Y 1358/69 in consideration of the release by the respondents of the interim order; exhibit 5 was entered into on 31st March, 1978, whilst Law 24/79 was enacted a year later.
- 10 (c) The wording of section 4 of Law 24/79 introducing special provisions with regard to interest is clear and unambiguous and should be given effect. No distinction is made in the law between interest contracted prior to 14th August, 1974 and after 14th August, 1974, for a "debt" envisaged by section 2 of Law 24/79.
- 15 2. Learned counsel for the respondents laid stress on the consideration given by respondents in the agreement of 31st March, 1978, (exhibit 5) and maintained that "the interest of 8% by reference to a pre 14th August, 1974 debt, is not connected with the use of a capital sum but is connected with the release of the properties which were encumbered in favour of the respondents and has nothing to do with the definition of 'interest' in Law 24/79".
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Counsel for respondents went further and invited us to find that the amount contracted by appellant to be paid was not interest within the meaning of section 4 of Law 24/79 but a "debt" contracted after the 15th August, 1974 and therefore not covered by the provisions of the law as being absolutely unconnected with the pre 14th August, 1974 debt, having been created for an altogether new consideration on 31st March, 1978, and maintained that it has nothing to do with the 1980 amendment (Law No. 78 of 1980) of Law 24/79.

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The learned trial Judge after examining the exhibits placed before him and after considering arguments advanced by both sides, arguments which he termed "equally convincing" inclined to the view that the amount claimed in Action No. 759/80 was

not "interest" as envisaged by Law 24/79 but the "increase of the interest was a way of calculating the consideration given by the respondents in cancelling the interim order".

With respect we find ourselves unable to agree with the learned trial Judge.

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There existed a debt contracted some time in 1969 consisting of a capital of C£47,500.- with interest thereon of 1% per annum. This debt was secured by mortgage No. Y 1358/69.

Assuming (because this issue does not fall for determination) that the debtor was "displaced" or "stricken debtor" within the meaning of section 2 of the Debtors Relief (Temporary Provisions) Law, 1979, the aforesaid debt would be a "debt" envisaged by section 2 of Law 24/79 having been contracted in 1969, i.e. prior to 14th August, 1974.

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The definition of "debt" in section 2 of Law 24/79 reads as follows:-

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" 'debt' includes all monetary liabilities of a debtor of any nature whatsoever, secured or unsecured, whether payable under a judgment or order of a Court or under any agreement or hire-purchase agreement or credit sale agreement of any property and whether payable presently or not but does not include amounts—

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- a) _____
- b) _____
- c) _____
- d) _____
- e) _____
- f) in respect of a debt incurred after the 14th August, 1974".

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At the end thereof the following exception was added by virtue of section 2 of Law 78/80 amending the original law:

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"With the exception of debts which were set off against a pecuniary obligation of any nature whatsoever created before the 14th August, 1974".

In connection with the 1980 amendment of the Law, set out above, on which learned counsel of the respondents devoted

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part of his argument, we feel that we should say straight away that the said amendment cannot be considered in the case in hand, for the simple reason that Law 78/80, which affected the amendment in question, was enacted on 22nd December, 5 1980, whilst the application for relief, under consideration was filed on 19th November, 1980, i.e. more than a month earlier.

On 6th February, 1978, three actions (exhibit 6), were instituted in respect, inter alia, of this secured debt and an interim order was granted two days later encumbering, inter alia, the 10 aforesaid property.

On 31st March, 1978, the respondents in the present appeal agreed (exhibit 5) to withdraw the interim order in consideration of getting an increased percentage of interest. Looking at para. 1(a) of exhibit 5, which appears at p. 24 of the record, 15 we see that it was therein stipulated that "the rate of interest of the capital due under mortgage No. Y 1358/69 was increased from 1% to 9% per annum from 1st March, 1978, till final payment".

It is important to note that at the time when the above-mentioned agreement was signed (31st March, 1978) the Debtors Relief (Temporary Provisions) Law, 1979 had not been passed; 20 it was enacted about a year later, on 23rd March, 1979, and apart from suspending the right of every creditor to recover a debt due by a "displaced" or "stricken debtor" introduced 25 special provisions with regard to interest which were unknown to the former Debtors Relief (Temporary Provisions) Laws 1975 to 1978 repealed by virtue of section 10 of Law 24/79. Interest is thus defined in section 2 of Law 24/79:

" 'interest' means the remuneration or compensation for 30 the use or detention by a person of money capital belonging or due to another person and includes any amount in the form of fees, charges or costs or otherwise, in excess of the capital, payable to the person entitled to the money capital in consideration of or in relation to the use or 35 detention of the money capital, but does not include any amounts lawfully imposed under the provisions of the Moneylenders Law, 1962, or under the provisions of the Hire-Purchase, Credit Sale and Hiring of Property (Control) Law, 1966, by a money lender or creditor in respect of

rentals and hire-purchase fees, cost, charges, or expenses, as the case may be”.

Special provisions with regard to interest are referred to in section 4 of Law 24/79 and read as follows:

“4. (1) Notwithstanding the provisions of any other law, 5
during the period mentioned in subsection (1) of section 3, no interest shall be charged, debited or collected on a debt of a displaced or stricken debtor.

(2) Any interest which may have been charged or debited 10
or the interest paid by a displaced or stricken debtor for the period as from the 15th August, 1974, until the date of the coming into operation of this Law shall be deemed to have been charged, debited or paid, as the case may be, on account of the balance of the debt.

(3) Where any debt has been discharged during the period 15
mentioned in the previous subsection and in the manner provided thereby, or the balance of the debt still due is smaller than the amount of the interest charged, debited or paid under the said subsection, as the case may be, the creditor shall, within three months from the date of 20
the coming into operation of this Law, pay the difference to the displaced or stricken debtor”.

Thus it is clear from the wording of the statute that when 25
the “debt” consists of capital money and interest the relief afforded under the Law to the displaced or stricken debtor is suspension on the one hand of the right of every creditor to recover capital money due and prohibition on the other to charge, debit or collect interest.

There is nothing in the Law differentiating the position 30
where the stipulation for the increase of interest was effected prior to the 14th August, 1974 or after that date, once the original “debt”, the capital money, is due prior to the 14th August, 1974. It may be argued that a statute must be construed in such a way so as not to be given retrospective operation 35
thereby impairing existing rights such as the right of the respondents on 8% increase of interest acquired almost a year prior to the passing of the Act of 1979 in consideration of the withdrawal by the respondents of the interim order in question.

It is true that in construing a statute the Courts will lean against retrospectivity of same, provided that there is such room for construction; but if the words in the statute are clear and unambiguous they must be given full effect. As it was said
5 by Wright, J. in *Re Athlumney* [1898] 2 Q.B.D. 547 at p. 551:

“Perhaps no rule of construction is more firmly established than this, that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards a matter of procedure, unless
10 that effect cannot be avoided without doing violence to the enactment.....”.

We hold the view that section 4 of Law 24/79 is quite clear and unambiguous in stating that “no interest shall be charged, debited or collected on a debt of a displaced or stricken debtor”;
15 therefore it must be given full effect.

On the other hand it is abundantly clear that what the respondents have agreed, on 31st March, 1978 by virtue of exhibit 5, to collect, in consideration of their withdrawing of the interim order, is interest, “8% increase of interest on the capital of
20 mortgage Y 1358/69” as clearly and unambiguously stated in para. 1(a) of exhibit 5. And what they are now claiming by virtue of Action No. 759/80 (exhibit 1) is this 8% increase of interest for two years on the capital of mortgage No. Y 1358/69. Para. 4 of the statement of claim in the specially
25 indorsed writ in Action No. 759/80 clearly states:

“4.—The capital money due by the defendants (appellants) by virtue of the mortgage is C£47,500.— and the interest thereon from 1st March, 1978 up to 29th February, 1980 amounts to C£7,600.—”

30 And further down in the prayer of the said action the plaintiffs claim:

“(A) C£7,600.— as per para. 4 above”.

It is, therefore, crystal clear that the claim of the respondents by virtue of Action No. 759/80 is the 8% increase of interest
35 on the capital of C£47,500.— which is a “debt” falling within the provisions of Law 24/79 having been contracted prior to 14th August, 1974, i.e. in 1969, secured by mortgage No. Y

1358/69; and as provided by section 4 of Law 24/79 interest cannot be "charged, debited or collected" on a debt of a "displaced" or "stricken debtor".

For the reasons given above the appeal is allowed; and as the litigants in the present application agreed that if this issue is decided in favour of the applicants-appellants the trial Judge will proceed to decide the remaining issues raised by the application for relief, the application is returned to the trial Judge for hearing and determination of the remaining issues. 5

Having given the matter our best consideration, we have decided to make no order as to the costs of the present appeal. 10

*Appeal allowed with no order
as to costs.*