

1984 November 23

[HADJIANASTASSIOU, LORIS, STYLIANIDES, JJ.]

CHRISTODOULOS MAVROU,

Appellant-Defendant,

v.

DEMETRAKIS THEODOROU,

Respondent-Plaintiff.

(Civil Appeal No. 6201).

*Evidence—Extrinsic evidence—Transaction reduced into writing—
Extrinsic evidence to add to or contradict the terms of the docu-
ment—Generally inadmissible—Exceptions to the Rule—Extrinsic
evidence not admissible of negotiations between the parties—
5 And it is not permitted to adduce evidence to show that their
subjective intentions were not in accord with the particular ex-
pressions used in the written document.*

*Civil Procedure—Pleadings—Deviation from, on the hearing—Not
permitted without appropriate amendment.*

10 In the course of the hearing of an action, whereby plaintiff
claimed the amount of £673.715 mils representing balance due
for services rendered and materials provided, plaintiff was con-
fronted with a receipt he has himself issued wherein it was
stated that he had received £143 from the defendant “in full
15 satisfaction of the account up to 28.9.1973”. Thereafter the
plaintiff was allowed to adduce extrinsic evidence—oral and
documentary—which was substantially aiming at contradicting
the contents of the receipt than merely explaining the circum-
stances under which the receipt was issued. The evidence
20 adduced in this connection was to the effect that on the day
prior to the issue of the receipt the litigants took accounts
of the work already completed, agreed as to the value thereof
and thereupon the plaintiff issued invoices (exhibits 1-4), handed
the originals thereof to the defendant, keeping the copies for
25 himself. The defendant did not pay off the amounts mentioned

in the said invoices but simply paid only £143.— against the aggregate amount of the invoices.

Upon appeal by the defendant against the judgment of the trial Court adjudging him to pay the aforesaid amount of £673.715 mils:

Held, that the general rule of evidence is that when a transaction has been reduced into writing, extrinsic evidence is in general inadmissible to add to or subtract, vary or contradict the terms of the document; that to this rule there are certain exceptions such as cases where fraud or compulsion is alleged: that, further, extrinsic evidence is not admissible of negotiations between the parties; that nor is it permissible to adduce evidence to show that their subjective intentions were not in accord with the particular expressions used in the written instrument; that the extrinsic evidence admitted, both the oral evidence of the plaintiff and the documentary one i.e. exhibits 1-4, was totally inadmissible as it tended to contradict the receipt by providing the subjective intentions of the plaintiff which were, allegedly, "not in accord with the particular expressions used in the written instrument" i.e. the receipt in question; and that since extrinsic evidence and in particular the documentary portion of it tipped the scales in favour of the plaintiff's version and opened the way to judgment the appeal must be allowed and the judgment of the trial Court must be set aside.

Held, further, that the claim is doomed to failure in view of a very serious deviation from the pleadings on the hearing of the case (pp. 640-641 post).

Appeal allowed.

Cases referred to:

Courtis and Others v. Iasonides (1970) 1 C.L.R. 180 at pp. 182, 183. 30

Appeal.

Appeal by defendant against the judgment of the District Court of Limassol (Artemis, D.J.) dated the 29th November, 1980 (Action No. 53/79) whereby he was adjudged to pay to the plaintiff the amount of £673.715 mils representing balance due for services rendered and materials provided by the plaintiff to him. 35

B. Vassiliades, for the appellant.

St. Stylianides with *G. Mettouris*, for the respondent.

Cur. adv. vult.

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

10 LORIS J.: This is an appeal against the judgment of the District Court of Limassol in Action No. 53/79, whereby the appellant-defendant was adjudged to pay to the respondent-plaintiff the amount of £673.715 mils (plus legal interest and costs) representing balance due for services rendered and materials provided by the plaintiff to the defendant at latter's request during the year 1973-1974.

The defendant was at all material times a building contractor; the plaintiff was a blacksmith running a shop in Limassol.

15 According to the statement of claim the plaintiff performed at the request of the defendant, during the years 1973-1974, several pieces of iron work at the construction of various buildings undertaken by the defendant and also provided certain materials in connection therewith.

20 It is alleged in the statement of claim that the total value of the said services of the plaintiff, during the whole of the aforesaid period, as well as the materials provided by him amounted to £1,873.715 mils out of which £1,200.- were paid on several occasions by the defendant whilst a balance of £673.715 mils
25 was still due and payable by the defendant to the plaintiff.

The above figures mentioned in the statement of claim likewise appear in a somewhat detailed account which was produced before the trial Court as exhibit 11.

30 It is useful at this stage to mention that, both in the statement of claim and in exh. 11, which contains the gist of the plaintiff's case, no dates at all were inserted, either in connection with the services rendered and the materials provided or in respect of payments made.

35 The defendant in his defence substantially denies that he is indebted to the plaintiff for the alleged or any amount and on

the contrary he maintains that the plaintiff is indebted to him in the sum of £1,011.980 mils representing services rendered, by the defendant to plaintiff's father (deceased since 1971) in connection with buildings, and the provision of building materials, particulars of which are contained in two folios 5 attached to the defence; defendant further alleges that the plaintiff undertook to pay to him the aforesaid debt of his deceased father and counterclaims accordingly.

It may as well be added here that on the 17.10.1980, immediately before the commencement of the hearing of the action under appeal, the counterclaim was withdrawn and dismissed whilst the hearing on the claim was proceeded with. 10

The judgment of the trial Court is being attacked by virtue of the present appeal on ten grounds which may be conveniently grouped under three heads; 15

- A. Wrong admission of "parol evidence" to contradict, qualify or alter the contents of ex. 9.
- B. Wrong admission in evidence of exhibits 1 to 4.
- C. Findings of the trial Court against the weight of evidence. 20

In connection with A and B above, learned counsel for the appellant submitted that "the wrong admission of parol evidence in respect of ex. 9 and the wrongful admission of exhibits 1 to 4 which were intended to provide self-corroboration to the plaintiff, enabled the judge by making wrong findings of fact to accept the allegations of the plaintiff and open the way to judgment against the defendant". 25

Whilst the plaintiff was giving evidence in order to substantiate his claim, he was confronted with a receipt (ex. 9) he has himself issued on 28.9.1973 wherein it was stated that he had received on the aforesaid date £143.- from the defendant "in full satisfaction of the account up to 28.9.1973". 30

Upon attempt by plaintiff to adduce extrinsic evidence, which was substantially aiming at contradicting the contents of the receipt, than merely explaining the circumstances under which the receipt was issued, objection was taken by the defence; the trial Court after hearing argument on this point allowed extrinsic evidence to be admitted. 35

Such evidence admitted took the form of (a) oral evidence given by the plaintiff, (b) documentary evidence, i.e. exhibits 1 to 4 produced by the plaintiff.

5 The oral evidence of the plaintiff was to the effect that on the day prior to the issue of the receipt the litigants took accounts of the work already completed, agreed as to the value thereof and thereupon the plaintiff issued invoices, handed the originals thereof to the defendant, keeping the copies for himself. These invoices indicating the work done, and the materials provided
10 with the relevant prices opposite each item (representing an aggregate figure of £834.800 mils) were produced by plaintiff after another objection of the defence was overruled by the trial Court and they appear on record as exhibits 1 to 4.

15 According to the version of the plaintiff always, on 28.9.1973 the defendant did not pay off the amounts mentioned in the said invoices; defendant simply paid only £143.- against the aggregate amount of the invoices thus leaving the defendant indebted to the plaintiff for the balance.

20 The defendant although admitting that an account was taken the day prior to the issue of the receipt (ex. 9), alleged that on the next day he paid to the plaintiff the sum of £143.- in full satisfaction of all his accounts with the plaintiff up to that date i.e. 28.9.1973. It was the stand of the defendant throughout that no invoices were ever issued or handed over to him by the
25 plaintiff.

The general rule of evidence is that when a transaction has been reduced into writing, extrinsic evidence is in general inadmissible to add to, or subtract, vary or contradict the terms of the document. To this rule there are certain exceptions such
30 as cases where fraud or compulsion is alleged; and several other occasions to which we need not refer here in detail. Nevertheless extrinsic evidence. "——is not admissible of negotiations between the parties; nor is it permissible to adduce evidence to show that their subjective intentions were not in accord
35 with the particular expressions used in the written instrument——" (vide *Chitty on Contracts* 24th edition, para. 735 at p. 338).

In the particular instance in hand we hold the view that the extrinsic evidence admitted, both the oral evidence of the plain-

tiff and the documentary one i.e. exhibits 1-4, was totally inadmissible as it tended to contradict the receipt ex. 9 by providing the subjective intentions of the plaintiff which were, allegedly, "not in accord with the particular expressions used in the written instrument" i.e. the receipt in question. 5

Thus whilst it is clearly stated in the receipt that the defendant paid £143.- "in full satisfaction of the account up to 28.9.1973" the extrinsic evidence admitted tends to show that the said amount was in fact received as payment in full satisfaction of some of the accounts up to that date. 10

Furthermore we have noted in respect of the documentary evidence produced (ex. 1-4) the following inter alia.

- (a) While the plaintiff mentioned to the trial judge before the Court's ruling on admissibility of extrinsic evidence, that he would be referring to two invoices, after the ruling (given on a subsequent date) he produced four invoices. 15
- (b) On all four invoices no signature of the defendant appears.
- (c) Two out of the four invoices bear no date whatever. 20
- (d) No mention whatever is made in the pleadings either
 - (i) of the allegation of the plaintiff to the effect that when accounts were taken between the parties the plaintiff used to issue invoices embodying the accounts taken, or 25
 - (ii) of the specific invoices produced as exhibits 1 and 4.

Independently of the inadmissibility of exhibits 1 to 4 on other grounds, these documents were mainly inadmissible as aiming at providing self-corroboration to the version of the plaintiff, and it is abundantly clear from the judgment of the trial Court that once accepted they were so treated by the Court. 30

Undoubtedly extrinsic evidence and in particular the documentary portion of it (exh. 1 to 4) tipped the scales in favour of the plaintiff's version and opened the way to judgment. Therefore the present appeal should be allowed and the judgment of the trial Court be set aside. 35

Before concluding our judgment we feel it our duty to state, that independently of the complaints of the defendant in the present appeal, we have noted ourselves a very serious deviation from the pleadings on the hearing of the case.

5 In the statement of claim it is clearly stated that the total amount due for services rendered and materials provided by the plaintiff to the defendant at latter's request during the years 1973-1974 was £1,873.715 mils; not a single mil more.

10 It is also unequivocally stated in the statement of claim that against this debt the defendant paid on several occasions the aggregate amount of £1,200 and that therefore a balance of £673.715 mils is still due and payable by the defendant to the plaintiff.

15 To our astonishment we observed from the record that the plaintiff admitted before the trial Court, that he received from the defendant a total of £2,034.600 mils during the period of 23.2.1973 to 9.3.1974 for services rendered and materials provided by him in respect of this case (vide pages 21-22 of the record).

20 In view of the aforesaid unequivocal averments contained in the statement of claim (which were never amended), and the evidence of the plaintiff himself as to the aggregate amount received in connection with this case, the claim is doomed to failure as the defendant could not under the circumstances.
25 be indebted to the plaintiff for any amount whatever.

It has been stated time and again by this Court that "the pleadings in an action are the foundation of the litigation; they must be carefully prepared as the set of rails upon which the trial of the case will run. A case is decided on its
30 pleaded facts to which the law must be applied. If in the course of the trial it appears that a parties' pleading requires amendment, steps for that purpose must be taken as early as possible in order to give full opportunity to the parties affected by the amendment to meet the new situation. (*Courtis and others v. Iasonides* (1970) 1 C.L.R. 180 at pp. 182 and 183.
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In the result the appeal is allowed and the judgment of the trial Court is set aside; costs will follow the event both in this Court and in the Court below.

Appeal allowed: