

1983 January 31

[TRIANTAFYLLIDES, P., DEMETRIADES, SAVVIDES, JJ.]

COSMO-PLAST LTD.,

Appellants-Defendants.

v.

CHEMIE LINZ AG,

Respondents-Plaintiffs.

(Civil Appeal No. 6351).

5 *Civil Procedure—Cross-appeal—Time within which it may be filed—
Abridgement—Filing of cross-appeal, out of time, not resulting
in any prejudice being caused to appellants—Respondents allowed
to proceed with cross-appeal and time within which it could be
filed abridged—Rules 8 and 10 of Order 35 of the Civil Procedure
Rules.*

10 Though the cross-appeal in the above appeal was not filed
less than six days before the hearing of the appeal, as envisaged
by rule 10* of Order 35 of the Civil Procedure Rules, Counsel
for the respondents did not apply, when filing the cross-appeal,
for abridgement of the period of six days

15 *Held*, that though, in general, unless there is due compliance
with the provisions of rule 10, a cross-appeal which is filed
out of time and without the respondent having secured an order
of abridgement, will have to be treated as not have been duly
filed, subject always, of course, to the discretionary powers
of this Court, especially under rules 8 and 10 of Order 35, having
taken into consideration the nature of the part of the judgment
of the trial Court against which the cross-appeal has been made,
20 this Court has reached the conclusion that the filing of the
cross-appeal less than six days before the date on which this
appeal was to be heard cannot result in any prejudice being
caused to the appellants and has decided to treat this case as
being an exceptional one justifying, in the circumstances, the

* Rule 10 is quoted at pp. 834-835 post.

exercise of its relevant discretionary powers in favour of the respondents; and that, therefore, the respondents will be allowed to proceed with their cross-appeal and the time within which could be filed is abridged accordingly.

Order accordingly. 5

Cases referred to:

Christodoulou v. The Attorney-General (1972) 1 C.L.R. 205, 206;

Madina Maritime S.A. v. Ch. Jeropoulos & Co. Limited (1980)
1 C.L.R. 623.

Application. 10

Application by Counsel of the appellants to ignore the cross-appeal as not having been properly filed.

L. Papaphilippou with R. Mahdesian (Miss), for the appellants.

A. Ladas, for the respondents. 15

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following ruling of the Court. On the 28th September 1982 notice was given to the parties to this appeal that it had been fixed for hearing today.

On the 29th January 1983 counsel for the respondents filed a notice of cross-appeal. 20

Though the cross-appeal was not filed less than six days before the hearing of this appeal, as envisaged by rule 10 of Order 35 of the Civil Procedure Rules, counsel for the respondents did not apply, when filing the cross-appeal, for abridgement of the period of six days. Consequently, counsel for the appellants has invited us today to ignore the cross-appeal as not having been properly filed. Counsel for the respondents, on the other hand, had referred us to *Christodoulou v. The Attorney-General*, (1972) 1 C.L.R. 205, 206, where a cross-appeal was allowed to be filed even after the commencement of the hearing of the appeal. 25 30

Rule 10 of Order 35, above, reads as follows:

“It shall not under any circumstances be necessary for a respondent to make a cross-appeal; but if he intends . 35

upon the hearing of the appeal to contend that the decision of the Court below should be varied, he shall give a written notice of his intention, specifying in what respects he contends that the decision should be varied, to any parties or person who may be affected by his contention, and to the Registrar of the Court of Appeal. Such notice shall set forth fully the respondent's grounds and reasons therefor for seeking to have the decision varied on appeal. The notice given to the Registrar shall be filed by him with the record of the appeal. The notice required by this rule shall be not less than a six days' notice in the case of an appeal from a judgment (whether final or interlocutory) or final order, and not less than a two days' notice in the case of an appeal from an interlocutory order; but these times may be varied by order of the President of the Court of Appeal, an office copy of which shall be served with the notice aforesaid. The omission to give such notice shall not diminish the powers conferred by rule 8 of this Order upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs".

In general, unless there is due compliance with the provisions of rule 10, above, a cross-appeal which is filed out of time and without the respondent having secured an order of abridgement, will have to be treated as not have been duly filed, subject always, of course, to the discretionary powers of this Court, especially under rules 8 and 10 of Order 35, above.

Having taken into consideration the nature of the part of the judgment of the trial Court against which the cross-appeal has been made, namely the order of the trial Court as regards the rate of conversion into Cyprus pounds of the judgment debt which was expressed in U.S.A. dollars, we have reached the conclusion that the filing of the cross-appeal less than six days before the date on which this appeal was to be heard cannot result in any prejudice being caused to the appellants and we have decided to treat this case as being an exceptional one justifying, in the circumstances, the exercise of our relevant discretionary powers in favour of the respondents (as in the *Christodoulou* case, *supra*, and in *Madina Maritime S.A. v. S. Ch. Jeropoulos & Co. Limited*, (1980) 1 C.L.R. 623).

We have, therefore, decided to allow the respondents to proceed with their cross-appeal and we abridge accordingly the time within which it could be filed. Of course, we shall afford counsel for the appellants sufficient time to prepare himself to argue the issue raised by the cross-appeal. 5

Order accordingly.