

1986 June 19

[A. LOIZOU, MALACHTOS AND STYLIANIDES, JJ.]

BANK OF CYPRUS LTD.,

*Appellants-Plaintiffs,*

v.

AMBROSIA OILS AND MARGARINE INDUSTRY LTD.  
AND OTHERS,*Respondents-Defendants.*

(Civil Appeal No. 6683).

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*The Debtors' Relief Law 24/79—Ss. 2, 3, 4, 6 and 7—Retrospective effect of said Law as from 15.8.74—Action pending, when said law came into operation, against “displaced” persons for the recovery of “debt” in the sense of s.2—No distinction between actions brought before and actions brought after the coming into operation of said law—Cause of action, meaning of—Plaintiffs' cause of action ceased to exist as from commencement of operation of said law—Said action rightly dismissed—Difference between “dismissal” and “stay” of actions.*

*Words and Phrases: “Cause of action” in s. 2 of the Courts of Justice Law 14/60.*

The respondents are admittedly displaced persons. On 12.8.76 the appellants instituted against the respondents an action whereby they claimed against respondent 1 as principal debtor and against the other respondents as guarantors an amount of £563,176.817 mils with interest thereon at 9% allegedly due on a number of bank guarantees. The debts was incurred prior to 14.8.74. Part of the sum claimed represented interest accrued both before and after the 15.8.74. On the same date the appellants obtained an interim order restraining respondent 2 from selling, mortgaging or in any way alienating his immovable property situate at Larnaca, Scala and Aradhippou.

The said action was still pending, when law 24/79 was enacted. The constitutionality of this Law was challenged

by the appellants and the matter was referred, under s.9 of the said Law, to this Court for its opinion. This Court decided\* that ss. 3 and 4 of Law 24/79 to the extent, if any, to which they contravened Articles 6, 23, 24, 25, 26, 28 and 30 of the Constitution are justified by the "Law of Necessity".

Shortly later the respondents took out summons under Order 27(3) of the Civil Procedure Rules and the inherent powers of the Court, praying for the dismissal of the action. The application was based further on ss. 3, 6 and 7 of Law 24/79. The trial Court dismissed the action on the ground that the effect of Law 24/79 was to render all pending actions without foundation.

Hence the present appeal. Counsel for the appellants argued that Law 24/79 suspended the right of recovery of the debt, but not the right to file an action. He argued that a cause of action has two elements, a factual situation giving rise to a right in law and the availability of a legal remedy. In the present case what is missing is the remedy, not the right. The Court, therefore, ought to have stayed, not dismissed the action. He further invited this Court to distinguish between actions filed before and actions filed after the coming into operation of Law 24/79.

*Held, dismissing the appeal:*

(1) Law 24/79 is a piece of social legislation intended to afford relief to displaced persons and stricken debtors in the sense of the Law. By s. 3 the right of every creditor to recover a "debt", within the ambit of the relevant definition of this term in s. 2, due by a displaced person, is suspended during the abnormal situation and in any case during the period appointed by the law, extended by later amending laws. The right to collect interest was completely taken away by s. 4.

(2) A "cause of action" is defined by Law 14/60. It simply means a factual situation the existence of which entitles one person to obtain from the Court a remedy

\* See *Ambrosia Oils and Margarine Industries Ltd. and Others v. The Bank of Cyprus* (1983) 1 C.L.R. 55.

against another person (*Letang v. Cooper* [1964] 2 All E.R. 929 at 934, per Lord Diplock). The cause of action that existed, when the action in this case was filed, ceased to exist due to s. 3 of Law 24/79.

(3) It is not only the remedy which is suspended but also the right as well. A creditor who has no right of recovery of a debt, has no right to file or prosecute an action. There is no distinction between actions filed before and actions filed after the commencement of the operation of Law 24/79. Law 24/79 has a retrospective effect as from 15.8.74. Section 6 shows clearly that the Law suspends the right to file an action or even to maintain a pending action, for otherwise the suspension of the period of limitation of a right of action would have been unnecessary.

(4) Section 7 of Law 24/79 relates to applications in actions pending before the Courts established under the Debtors' Relief (Temporary Provisions) Law, 1975-1978.

(5) There is a marked difference between dismissal and stay of an action. In cases of stay the action is still pending and the stay is always potentially capable of being removed.

*Appeal dismissed. No order as to costs.*

Cases referred to: 25

*Ambrosia Oils Margarine Industries Ltd. v. Bank of Cyprus Ltd.* (1983) 1 C.L.R. 55;

*Montedison v. Neoplast Ltd.* (1983) 1 C.L.R. 509;

*Letang v. Cooper* [1964] 2 All E.R. 929;

*Empson v. Smith* [1965] 2 All E.R. 881; 30

*Macabe v. Joynt* (1901) 2 I.R. 115.

#### Appeal.

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Boyadjis, P.D.C. and N. Nicolaou, D. J.)

dated the 14th February, 1984 (Action No. 3560/76) whereby their action against the defendants for the sum of £563,176.817 mils was, on the application of the defendants, dismissed.

5           P. Polyviou, for the appellants.

L. Demetriades with A. S. Angelides and G. Triantafyllides, for the respondents.

*Cur. adv. vult.*

10           A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

15           STYLIANIDES J.: A single point is raised by this appeal: Should an action instituted prior to the enactment of the Debtors' Relief Law, 1979 (Law No. 24 of 1979) against a displaced person for the recovery of a debt contracted prior to the 15th August, 1974, be stayed or dismissed by the Court?

The facts of the case, as set out in the judgment of the Full District Court of Nicosia, are in brief as follows:-

20           The respondents are admittedly displaced persons. The appellants are their bankers and creditors.

25           On 12th August, 1976, the appellants instituted this action against the respondents whereby they claimed against respondent No. 1 as principal debtor and against the other respondents as guarantors an amount of £563,176.817 mils with interest at 9% thereon, allegedly due on a number of bank guarantees issued at the request of the defendants and paid by the plaintiffs to third persons. The debt was incurred prior to 14th August, 1974. Part of the amount claimed represents capitalised interest which accrued before and after 15th August, 1974.

30           On the same day by an ex-parte application of the appellants an interim order was issued restraining the guarantor-respondent No. 2 from selling, mortgaging or in any way alienating his immovable property situate at Larnaca, Scala and Aradippou.

The respondents entered appearance on 18.10.76. Statement of defence was filed on 8th January, 1977. On 28th January, 1977, a consent order was made in the application for the interim order whereby it remained in force until further order, that is, the interim order became absolute. The action was still pending on 23.3.79 when the new Debtors' Relief (Temporary Provisions) Law, 1979 (Law No. 24 of 1979) came into operation by publication in the Official Gazette.

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The constitutionality of this Law was questioned by the appellants and the matter was referred, under s. 9 of Law 24/79, for the opinion of the Supreme Court. The Supreme Court in *Ambrosia Oils and Margarine Industries Ltd. and Others v. Bank of Cyprus Ltd.*, (1983) 1 C.L.R. 55, held that ss. 3 and 4 of Law 24/79 to the extent, if any, to which they contravened Articles 6, 23, 24, 25, 26, 28 and 30 of the Constitution are justified by the "law of necessity" and they were consequently validly enacted.

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Shortly later the respondents took out a summons under Order 27(3) of the Civil Procedure Rules and the inherent power of the Court, praying for the dismissal of the action. The application was based further on ss. 3, 6 and 7 of Law 24/79. The application was opposed. After hearing oral argument, the Full District Court of Nicosia in a well considered judgment held that the impact of Law 24/79 on all pending actions is to render them without foundation and their further prosecution legally impossible and dismissed the action.

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It was strenuously argued by counsel for the appellants that the effect of the Debtors' Relief Law, 1979, is that the right of recovery of the debt is suspended and not the right to file an action. He argued that a cause of action has two elements: A right—a factual situation which gives a right in law—and, secondly, the availability of a legal remedy or relief. In the present case what is missing due to the provisions of Law 24/79 is the right to a remedy. The cause of action, therefore, subsists but in a dormant state. The right, therefore, continues to exist. The Court had a discretion which would be exercised in favour of the appellants and that it should stay the action and not

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dismiss it as by dismissing the action, the interim order already in force will be discharged. The cause of action was not taken away but only the remedial component has been temporarily suspended. He invited the Court to distinguish between an action filed by a creditor against a displaced person for the recovery of a debt contracted prior to 15.8.74, before the coming into operation of Law 24/79, from an action filed afterwards.

The sections of Law 24/79 relevant for the determination of this appeal are Sections 3, 4, 6 and 7. They read as follows:-

“3.- (1) Notwithstanding the provisions of any other Law and subject to the provisions of section 4, during the abnormal situation and in any case during the period beginning as from the 15th August, 1974, and ending on the 31st December, 1982, the right of every creditor to recover a debt due by a displaced or stricken debtor is suspended and all forced sales pending or fixed on the date of the coming into operation of this Law shall be stayed if they relate to-

- (a) immovable or movable property situate within a stricken area;
- (b) immovable or movable property not situate within a stricken area but subject to sale in satisfaction of a debt resulting from the sale, mortgage, pledge or other encumbrance of other property situate within a stricken area.

(2) The stay under this section shall suspend the period during which any writ of sale, receiving order or winding up order in relation thereto is in force”.

“4.- (1) Notwithstanding the provisions of any other Law, 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 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 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 the coming into operation of this Law, pay the difference to the displaced or stricken debtor".

"6. Notwithstanding the provisions of any other Law, in computing the period of limitation of right of action, the period during which the right of action is suspended under the provisions of this Law shall not be taken into account".

"7. The provisions of this Law shall apply to pending actions for obtaining a judgment of the competent Court on any application submitted thereto under the Laws repealed by this Law, provided that the Court in dealing with such actions may make such order as to costs as the Court deems fit in the circumstances".

It is abundantly clear that Law 24/79 was a social legislation enacted to meet the consequences and repercussions flowing from the abnormal situation created by the calamity caused by the Turkish invasion and the continuing military occupation of a considerable part of the Republic of Cyprus. It intended to afford relief to displaced persons and stricken debtors in the sense of the Law. The right to collect interest was completely taken away by s. 4.

By s. 3 the right of every creditor to recover a "debt"—a debt within the ambit of the definition of this term set out in s. 2 of the Law—due by a displaced debtor is suspended during the abnormal situation and in any case

during a period appointed by the Law which by later amending Laws was extended.

5 In *Montedison v. Neoplast Ltd.*, (1983) 1 C.L.R. 509, this Court upheld a decision of the District Court of Famagusta sitting at Larnaca whereby an action filed after the enactment of Law 24/79 in which the plaintiff claimed for the recovery of a debt owing by a displaced company was dismissed as premature.

10 For an action to subsist there must be a cause of action. A "cause of action" is defined in the Courts of Justice Law 14/60. In *Letang v. Cooper*, [1964] 2 All E.R. 929, Diplock, L.J., at p. 934, very aptly defined the term "cause of action" as follows:-

15 "A cause of actions is simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person".

20 At the time of the issue of the writ of summons the appellants had a cause of action against the respondents. In view, however, of the provisions of s. 3 of Law 24/79, there is no more factual situation which entitles the creditor to a remedy against the debtor during the period of suspension. The right of recovery does not exist at all during the period of suspension by operation of this Law.

25 It is not only the remedy which is suspended but also the right as well. A creditor who has no right of recovery of a debt, he has no right to file or prosecute an action. He has no right in Law to demand payment of the debt. There is no distinction between a pending action which was filed prior and an action which was filed after the commencement of the operation of the Law. The Law has a retrospective effect as from 15.8.74. The cause of action was taken away retrospectively as from that day. Section 6 shows clearly that the Law suspends the right to file an action or even to maintain an action pending, otherwise it would have been unnecessary to make a general provision for the suspension of the period of limitation of a right of action.

This action manifestly cannot be maintained. The action



cannot result in a decision in plaintiffs' favour. The prosecution of it, therefore, is vexatious as no relief can be granted by a Court of Law at the trial.

We find merit in the argument of counsel for the appellants that s. 7 relates to applications in actions pending before the Court established under the Debtors' Relief (Temporary Provisions) Laws, 1975-1978, though this section is not to be commended for good drafting. 5

There is a marked difference between stay and discontinuance or dismissal. In the case of a stay of proceedings, the action still subsists—(*Empson v. Smith*, [1965] 2 All E.R. 881, at 883, per Sellers, L. J.)—It is still pending—(*Macabe v. Joynt*, [1901] 2 I.R. 115, at p. 129)—and the stay is, therefore, always potentially capable of being removed. 10 15

It is clear that the claim in the present case on the face of it, in view of the provisions of s. 3 of Law 24/79, is unsustainable. The action, therefore, is frivolous and vexatious and ought not to be allowed to stand, notwithstanding the fact that at the time of its filing and until the enactment of Law 24/79 the situation was completely different. We have to give effect to the Law. The argument that with the dismissal of the action the interim order will be discharged runs counter to the plain provision of the Law and no more need be said on this matter. 20 25

The appellants seek their action to continue to subsist in order to keep the interim order in force. The legislator made provision in s. 5 for securities in certain cases—in cases of suspension of compulsory sale or suspension of receiving order or winding up—but did not make provision for the protection of the security afforded by a valid interim order like the one sought to be preserved by the appellants. 30

We considered the decision of the Full District Court of Nicosia in Action No. 2517/78 of 11th September, 1979, where it was said that the plaintiffs had a cause of action at the time of the commencement of the proceedings, the cause of action was not extinguished and that it was tem- 35

porarily taken away by the legislature. We are not in quarrel with this statement but after consideration we do not agree that the right approach is to stay the action.

5 There is no reason why the respondents should be harassed by the continuance of this action. This appeal is dismissed. The District Court rightly awarded costs in favour of the appellants until the filing of the application for dismissal of the action and made no order in respect of the application. In the circumstances we make no order for  
10 costs before us.

Appeal dismissed. No order as to costs.

*Appeal dismissed with no order as to costs.*