1987 May 20

[A LOIZOU MALACHTOS STYLIANIDES JJ.]

THE NATIONAL BANK OF GREECE, S.A.

Appellants,

v.

MOTOVIA LTD. AND OTHERS,

Respondents

(Civil Appeal No. 6605)

Injunctions — Interlocutory injunctions — The Courts of Justice Law 14/60 — Section 32 — The prerequisites for issuing an interlocutory injunction — Bills of exchange given to Bank as security for overdraft facilities — Provision of redemption by Bank upon maturity and provision that principal debtors liable to Bank if not honoured by acceptors upon maturity — Application for a declaration that principal debtors are «stricken debtors» in the sense of the Debtors' Relief (Temporary Provisions) Law 24/79 — If successful, debt would not be payable and therefore, any monies collected from the acceptors would not be payable to the account of principal debtors, whereas under the agreement any such monies can only be applied towards principal debtors' debt — Interlocutory injunction restraining Bank from proceeding against acceptors of the Bills — Sufficiently arguable case made out with probability that debtors entitled to relief claimed — Therefore, it was within the discretion of the Court to issue the interlocutory injunction

Appeal — Injunctions — Interlocutory injunction — Interference by Court of Appeal — Principles applicable

The respondent company entered into two agreements (21.11.69 and 8.3.71) with the appellant Bank as security for credit facilities to the amount of £25,000. One of the terms of the principal agreement (Clause 4) provided for the indorsement and delivery by the respondent to the appellant of bills of exchange, issued in favour of the company by third parties, for the purpose of securing such overdraft. According to another term (Clause 7) the bills were payable to the Bank at maturity and if not honoured, the company was under clause 8 liable to pay the relevant amount to the Bank.

The respondent company, as the principal debtors, and respondents 2 and 3 as its guarantors filed an application (3.3.80) under the Debtors Relief (Temporary Provisions) Law 24/79, claiming that the company is a stricken debtor. As the appellant Bank had proceeded with actions against the

acceptors of the bills of exchange, the respondent company applied for an interlocutory injunction restraining the Bank from proceeding against its former clients as certain of the Bills had been discharged by their acceptors and the company had collected the money, but the bills had remained in the possession of the Bank.

The trial Court held that any rights which the Bank may have under the bills would depend on the debt of the company towards the Bank and that if there was no debt the Bank would have no right to collect on such Bills. Consequently, the trial Court issued the interlocutory injunction applied for.

Hence the present appeal.

Held, dismissing the appeal: (1) Primarily the granting of an interlocutory injunction is a matter of judicial discretion which is not interfered with by an Appellate Court, unless such Court is persuaded that such discretion was wrongly exercised.

(2) Interlocutory injunctions are granted under s 32* of Law 14/60. The applicant must show that there is a serious question to be tried and that on the facts before the Court there is a probability that the plaintiff is entitled to relief. When these two requirements are satisfied the Court must proceed to examine whether the balance of convenience favours the grant or refusal of the interlocutory injunction (A passage from *M and M. Transport Co Ltd v Eteria Astikon Leofonon Lemessou Ltd.* (1981) 1 C.L.R. 605 cited with approval).

(3) In this case the bills of exchange were given to the Bank as security for the advance. It was expressly agreed (Clause 7) that upon maturity they would be redeemed by the Bank for the purposes of the advance. Furthermore clause 8 provided for the liability of the respondent company to pay the Bank the amount of any bill not honoured by the acceptor upon maturity

(4) If the respondents' application succeeds, the debt of the principal debtor would be suspended during the abnormal situation (Section 3 of Law 24/79) and the protection would extend to the guarantors (Section 2 of the same Law). Consequently, in such a case any money collected by the Bank from the acceptors would not be payable into the account of the respondent company, whereas in accordance with the agreement they cannot be applied otherwise than against the debt of the respondent Company.

(5) From the facts before the trial Court this Court reached the conclusion that the applicant/respondent in this appeal succeeded in making an arguable case with a probability that it is entitled to the relief claimed It was within the

* *The proviso to s 32 is quoted at p. 308 post*

discretion of the trial Court to preserve the status quo until the determination of the application

Appeal dismissed with costs

Cases referred to:

Barclays Bank Ltd v Aschaffenburger Zellstoffwerkd A G [1967] 1 Ll Law Rep. 387,

Barclays Bank Ltd v Astley Industrial Trust Ltd [1970] 1 All E.R 719,

Karydas Taxi Co Ltd v. Komodikis (1975) 1 C L.R 321,

M and M Transport Co Ltd v. Etena Astikon Leofonon Lemessou Ltd (1981) 1 C L R 605,

Odysseos v A Piens Estates Ltd (1982) 1 C L R. 557.

Appeal.

Appeal by respondents against the interlocutory order of the District Court of Nicosia (Papadopoulos, P.D.C.) dated the 22nd July, 1983 (Appl. No. 36/80) whereby the injunction restraining them from filing an action against the applicants was made absolute.

A. Dikigoropoulos, for the appellants.

K. Michaelides, for the respondent.

Cur. adv. vult.

A. LOIZOU J read the following judgment of the Court. This is an appeal from an interlocutory injunction of the District Court of Nicosia in Debtors Relief Application No. 36/80, whereby the respondent Company was, inter alia, restrained from filing an action against the acceptors of bills of exchange drawn by them, - applicants in that application - and indorsed in favour of the appellant Bank as security for credit facilities in the terms of two credit agreements.

The background to this appeal is as follows:

The respondent Company, the main business of which is that of a car dealer and importer, entered into two agreements on the 21st November 1969, and the 8th March, 1971, with the appellant Bank for credit facilities to the amount of £25,000.-

In accordance with clause 4 of the principal agreement of the 21st November 1969, the respondent Company indorsed and delivered to appellant Bank a number of bills of exchange issued in its favour by third parties for the purpose of securing such overdraft, which were bills calculated at 75 percent of their face value. According to Clause 7 the bills were payable to the Bank at maturity and if not honoured, according to Clause 8, the appellant Company was liable to pay the amount of any such bill to the Bank, if not accepted.

Respondents 2 and 3 signed as guarantors of the respondent Company.

On the basis of the above agreements the appellant Bank provided overdraft facilities to the respondent Company, which continued until the 14th August 1974.

On the 29th January 1975, the respondent Company was declared by the Ministry of Labour and Social Insurance a «stricken debtor» and subsequently on the 3rd March, 1980, it applied under the Debtors Relief (Temporary Provisions) Law 1979 (Law No. 24 of 1979), as principal debtors and respondents 2 and 3 as its guarantors by Application No. 36/80 of the District Court of Nicosia, that they be declared stricken debtors and that as such they were entitled to the benefits afforded by such Law and in particular that payment of all debts to that Bank be suspended and that no interest be charged on such debts; and that the acceptors of the bills delivered to the Bank as security be declared as their co-debtors and/or guarantors and be afforded the same protection under Law No. 24 of 1979.

Finally, as the appellant Bank in its effort to recover the amount due to it, had proceeded to file court actions against the acceptors of such bills of exchange, which had matured, the respondent Company applied for an interlocutory injunction restraining the Bank from proceeding against its former clients as certain of the bills had been discharged by their acceptors and it had collected the money but the bills had remained in the possession of the Bank.

It was decided by the trial Court in granting the interlocutory injunction that the matter had to be considered in the light of both the provisions of Law No. 24 of 1979 and the agreement between

the parties since «any right which the Bank may have in respect of the bills of exchange, according to the terms of the agreement must pass from the applicant Company, that is, it would depend on the debt of the Company towards the Bank, if such existed, as such bills were given to the Bank, as security for the debt of the Company and therefore, if there was no debt, the Bank would have no right to collect on such bills».

As a result of this decision the appellant Bank filed the present appeal. Its main argument is that it is irrelevant whether the respondent Company, is entitled or not to the benefits of Law No. 24 of 1979 in that it was contended, the Court in granting the interlocutory injunction, misdirected itself and erred in Law in concluding that the rights of the appellant Bank against the acceptors of Bills of Exchange drawn upon such acceptors by the respondent Company and indorsed to the appellant Bank for good and valuable consideration, were dependent upon the debt (obligation) if any, of the respondent to the appellants.

It was argued that the obligations of the acceptors are not dependant on the obligations of the respondent Company, but that in this instance the acceptors would have no defence against the Bank which is a holder for value and that irrespective of the terms of the agreement and the resulting obligations of Motovia to the Bank, once the bills were handed over to it as security it has the right to collect from those that are liable to pay Motovia.

The cases of *Barclays Bank Ltd., v. Aschaffenburger Zellstoffwerke A.G.* [1967] 1 Lloyd's Law Reports 387 and *Barclays Bank Ltd., v. Astley Industrial Trust Ltd.*, [1970] 1 All E.R. 719 were cited in support.

On the other hand it was argued by counsel for the respondent Company that the position of the respondent Company under Law No. 24 of 1979 is a most material factor and such that must primarily be taken into account in deciding this appeal and when considering the position of the acceptors of such bills, as it was submitted, in effect section 2 of the Law protects all persons whose names appear on the bills since one of them, the principal debtor, is an «affected person». It was contended that the present instance is a case of a loan granted to the respondent Company by way of current account secured by the pledge of the bills of exchange to

the Bank and, since such loan cannot directly be repaid by the respondent Company, the Bank cannot indirectly proceed to collect such money from the acceptors of the bills; consequently the interlocutory injunction was correctly granted by the trial Court.

Before embarking to deal with the arguments of the parties as put forward, we must consider first the basic principles governing the granting of interlocutory injunctions. Primarily the granting of an interlocutory injunction is a matter of judicial discretion which is not interfered with by an appellate Court unless it is pursuaded that such discretion was exercised wrongly. See *Karydas Taxi Co., Ltd. v. Komodikis* (1975) 1 C.L.R. 321 at p. 327; *M. & M. Transport Co. Ltd. v. Eteria Astikon Leoforion Lemessou Ltd.*, (1981) 1 C.L.R. 605 at p. 611; *Odysseos v. A. Pieris Estates Ltd.*, (1982) 1 C.L.R. 557.

Interlocutory injunctions are granted under section 32 of the Courts of Justice Law 1960, Law 14 of 1960 and the proviso to sub-section (1) thereof provides as follows:

> «Provided that an interlocutory injunction shall not be granted unless the Court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage.»

In the case of *M. & M. Transport* (supra) it was stated in relation thereto:-

> «The principles governing the grant of an interlocutory injunction, because of the wording of the proviso to s. 32(1), follow closely those formulated in *Preston v. Luck*, [1884] 27 Ch.D. 497, so a party asking for an interim injunction must show that there is a serious question to be tried at the hearing and that on the facts before the Court there is a probability that the plaintiff is entitled to relief in contrast to the principles adopted by the House of Lords in the *American Cyanamid C. v. Ethicon Ltd.*, [1975] 1 All E.R. 504, where they discouraged evaluation, at this stage, of the probabilities of success. (*Acropol Shipping Co., Ltd., and Others v. Petros I. Rossis*, (1976) 1 C.L.R. 38; *Nemitsas Industries Ltd., v. S. & S. Maritime Lines Ltd., and Others* (1976) 1 C.L.R. 302; *Karydas Taxi Co. Ltd. v. Andreas Komodikis*, (1975) 1 C L.R. 321; *Constantinides v. Makriyiorghou and Another* (1978) 1

C.L.R. 585). When the above requirements are satisfied, the Court must proceed to examine whether the balance of convenience favours the grant or refusal of the interlocutory relief sought. In balancing matters relevant to convenience an important consideration centres round the need to preserve the status quo. By the expression 'preservation of the status quo' we mean the position prevailing when the defendant embarked on the activity sought to be restrained. (The *Cyanamid case; Smith and Others v. Inner London Education Authority* [1978] 1 All E.R. 411; *Bryanston Finance Ltd., v. de Vries* (No.2), [1976] 1 All E.R. 25).»

Useful reference may also be made to the *Karydas case* (supra), where an extensive review of the English Law governing the granting of interlocutory injunctions appears at pp. 327-329.

As it appears from the agreement between the parties which was at all material times before the trial Court and is now before us, in accordance with Clause 4 thereof, the bills were given to the Bank as security for the advance granted to the respondent Company. It was further expressly agreed, by Clause 7, that upon their maturity such bills would be redeemed by the Bank itself for the purposes of the advance.

Furthermore in Clause 8, it is provided that the «borrower» that is Motovia, would be responsible to pay the Bank the amount of any bill not honoured by the acceptor upon maturity.

Now, if Motovia were at the end of the day to be successful in their application under the Debtor's Relief Law, their debt towards the Bank would, according to section 3 of the Law, be suspended during the abnormal situation and by virtue of section 2 of the Law such protection would also extend to its guarantors.

Consequently, in such a case, any money received by the Bank in its effort to recover the debt would not be payable into the account of Motovia and the Bank would therefore not be able to apply the money for the purpose it was collected as it would otherwise be defeating the purpose of the Debtor's Relief Law.

We consider that it is not for this Court to decide whether such bills were discharged by the acceptors or not, or whether they were, as argued, received by the Bank for discounting or for securing, as such matters are to be decided by the trial Court for the purposes of the application before it. Suffice it for us to say that any

money received by the appellant Bank from those bills according to the terms of the agreement can only be applied against the debt of the respondent Company.

We feel therefore that from the facts before the trial Court, always bearing in mind that such injunction was granted by it in the course of an application under the Debtor's Relief Law, there were sufficient grounds for the applicant Company the present respondents, to make an arguable case with a probability that it is entitled to the relief claimed. We have therefore reached the conclusion that it was within the discretion of the trial Court to preserve, if it so deemed fit, as it did, the status quo until the final determination of the application before it in order that the purpose for which the Debtor's Relief Law was enacted might not be defeated and that it therefore correctly granted the interlocutory injunction complained of.

In the result this appeal fails with costs in favour of the respondents.

Appeal dismissed with costs in favour of respondents.