

CASES
DECIDED BY
**THE SUPREME COURT OF
CYPRUS**
ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

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[TRIANTAFYLIDIS, P., LORIS & STYLIANIDES, JJ.]

IN THE MATTER OF THE FOREIGN JUDGMENTS (RECIPROCAL
ENFORCEMENT) LAW, CAP. 10,

and

IN THE MATTER OF A JUDGMENT OF THE MAYORS' S AND CITY OF
LONDON COURT OBTAINED IN THE CAUSE OF MISS ANNA
FASHIONS LTD., PLAINTIFF AND NICOS ANTONIOU (t/a ERA
FASHIONS), DEFENDANT UNDER CASE NO 8151739 AND DATED
THE 4th DAY OF MAY, 1974, COMMENCED IN THE HIGH COURT
OF JUSTICE AND CONCLUDED IN THE ABOVE COURT,

and

NICOS ANTONIOU,

Appellant-Applicant.
(Civil Appeal No. 6918).

Business names — The partnership and Business Names Law, Cap. 116, — Scope of registration and the statutory provisions relating to business names have no bearing on the identity of the physical person trading under a business name — The business name has no separate entity at Law — 0.7 of the Civil Procedure Rules — Contains rules of procedure — It does not affect the aforesaid position. 5

The appellant sought to set aside the Registration of a foreign judgment effected under Cap. 10* on the ground that the judgment debtor is described as «Nicos Antoniou (trading as ERA Fashions)», whereas execution is sought against Nicos Antoniou, i.e. the person trading under the said name. 10

The application was dismissed. Hence this appeal. Held, dismissing the appeal:

(1) The scope of the registration and the statutory provisions relating to the control of business names have no bearing on the identity of the physical person trading under such business name. On the contrary, the registration creates certain obligations: disclosure of the identity of the physical person carrying on business under such business name is one of the objects of the control by registration. 15
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(2) Order 7, Rules 5 and 11, of the Civil Procedure Rules, are Rules of Procedure. They do not affect the said position.

Appeal dismissed with costs.

Appeal.

Appeal by applicant against the judgment of the District Court of Nicosia (Artemides, Ag. P.D.C.) dated the 23rd September, 1985 (Appl. No. 19/84) whereby his application to set aside the registration of a judgment issued by the Mayor's and City of London Court under the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10 was dismissed. 25
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L. Clerides, for the appellant.

Chr. Chrysanthou, for the respondent

TRIANTAFYLLIDES P.: The Judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: This appeal is directed against the decision of a President of the District Court of Nicosia whereby the application of the appellant to set aside the registration of a 35

* *The Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10.*

Judgment issued by the Mayor's and City of London Court under the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, was dismissed.

5 The single issue raised and argued is whether «Nicos Antoniou trading as ERA Fashions» which is the description of the defendant judgment debtor in the said Judgment is the same as «Nicos Antoniou», the person against whom execution is sought in this country.

10 Miss Anna Fashions Limited commenced an action (Case No. 8151739) in the High Court of Justice in England against «Nicos Antoniou (trading as ERA Fashions)». This action was duly transferred to the Mayor's and City of London Court. On 4th May, 1984, Judgment was issued by the last named Court adjudging that the plaintiffs in the Case No. 8151739 recover against the
15 above-named defendant the sum of £5,334.- plus interest £1,800.- plus costs taxed at £1,590.58, total sum £8,724.58 Sterling. The Judgment remained wholly unsatisfied and was not capable of enforcement by execution in England.

20 The plaintiffs by Application No. 19/84 applied under the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, for the registration of it in the District Court of Nicosia.

25 On 1st June, 1984, an order for registration was made by the District Court of Nicosia for the enforcement of the Judgment against Nicos Antoniou of Aristotelous street, No. 5, Saint Pavlos quarter.

30 Thereafter, Nicos Antoniou, the present appellant, applied to the District Court in the same Application 19/84 to set aside the order given on 1st June, 1984. A number of grounds was set out in the accompanied affidavit, but at the hearing stage all of them were withdrawn except one, namely, that the Judgment was obtained against a different defendant than the one specified in the application for registration.

35 Mr. Clerides in his able address submitted for the appellant that the provisions of section 50(b) of the Partnership and Business Names Law, Cap. 116, which is a replica of section 22 of the Registration of Business Names 1916 (English Act which was repealed by the Companies Act 1981), creates a different legal

entity and that such registration differentiates between a physical person and the person trading under such registered business name. He, further, contended that order 7, rule 11, of the Civil Procedure Rules which corresponds to the Old English Order 48a, rule 11 makes a differentiation between the physical person and the person trading under a business name, and that in view of the above «Nicos Antoniou trading as ERA Fashions» is a different person from Nicos Antoniou. 5

«Business name» means the name or style under which any business is carried on. 10

In the present case «ERA Fashions» is a business name or trading name under which Nicos Antoniou, the appellant, was carrying on his business at the material time. The scope of the registration and the statutory provisions relating to the control of business names have no bearing on the identity of the physical person trading under such business name. On the contrary, the registration creates certain obligations; disclosure of the identity of the physical person carrying on business under such business name is one of the objects of the control by registration. 15

Order 7 of the Civil Procedure Rules provides for actions by and against firms and persons carrying on business in names other than their own. 20

Rule 11, which is identical to rule 11 of Order 48a of the Old English Rules, provides that any person carrying on business in Cyprus in a name or style other than his own name may be sued in such name or style as if it were a firm name. The rule applies to a single individual residing and trading within the jurisdiction in a name other than his name, whether it purports to be the name of a firm or not. A person sued, by his trading name may be ordered to disclose his real name and private address (rule 1 of Order 7). If the trading name is apparently the name of an individual, the plaintiff, if he is aware of it, should add to the defendant's name in the title to the writ the words «a trading name». Where persons are sued in the name of their firm they shall appear individually in their own names - (Order 11, rule 5). 25
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The aforesaid are rules of procedure and do not support in any way the case for the appellant.

«ERA Fashions» is simply a trading name or a business description; it is a business name under which the individual Nicos Antoniou was carrying on business. «ERA Fashions» is not a company registered under the Companies Act. It has no separate
5 entity in law.

We find no merit in the argument of counsel that «Nicos Antoniou trading as ERA Fashions» is a different person from Nicos Antoniou, the physical person against whom execution of the Judgment is sought in this country.

10 Appeal is hereby dismissed with costs.

*Appeal dismissed
with costs.*