

1988 March 4

(MALACHTOS, STYLIANIDES, PIKIS, JJ.)

G. M. PLATRITIS & CO. AND OTHERS,

Appellants - Plaintiffs,

v.

COMPUTER PATENT ANNUITIES AND OTHERS,

Respondents - Defendants.

(Civil Appeal No. 7096).

5. *Contracts — Illegal agreements — The Contract Law, Cap.149, section 23, — Difference between Cyprus and English Law — Effect of illegality — Object of law — The protection of those dealing with the class of persons on whom the prohibition is imposed — Contravention of such law renders, as a rule, the agreement void.*

10 *Trade Marks — Renewal of registration of — Whether matter within the meaning of the word «εγγραφή» («registration») in section 2(1) of the Advocates Law as amended — Question determined in the affirmative — Partnership whose general partner is an advocate and its limited partner a pupil advocate — Agreement to the effect that such partnership will renew trade marks — Void for illegality.*

Words and Phrases — «εγγραφή» (Registration) in section 2(1) of the Advocates Law, Cap. 2, as amended.

15 By an exchange of letters an understanding or agreement was reached between appellants 1 and respondents 1, whereby appellants 1 would, for an agreed fee, renew the registration of trade marks belonging to clients of respondents 1.

20 Appellants 1 are a limited partnership with G.M. Platritis, appellant 2, an advocate, being the general partner and, Triantafyllio Michaelidou, appellant 3, a pupil advocate, the limited partner. Respondents 1 are patent design and trade mark renewal agents based in the Channel Islands, and the remaining respondents partners of that firm.

On 21 1 82 respondents 1 terminated the said agreement. As a result appellants 1 filed an action for damages for breach of contract. The action was dismissed on the ground, inter alia, that the agreement between the parties was illegal, as being contrary to section 2(1) of the Advocates Law, as amended by section 2 of Law 40/75 5

The aforesaid section reads as follows «Any action on behalf of a client for the registration of trade marks or patents and appearance before any administrative authority for the aforementioned purposes » 10

Counsel for the appellants suggested that the word «εγγραφή» («registration») be confined to the registration as opposed to the renewal of a trade mark

Hence this appeal

Held, dismissing the appeal (1) Broadly, the word «εγγραφή» is synonymous to «registration», though the meaning of the two is not precisely identical. «Εγγραφή» connotes the recording of a particular matter or transaction. The word is not necessarily associated with a formal procedure which is often signified by the employment of the word «registration». Subject to this the meaning of the two words is similar and the word «εγγραφή» will hereafter be referred to as «registration» 15 20

(2) Section 2(1) does not in terms limit the meaning of «registration» in the manner suggested by counsel either for the purposes of the Trade Marks Law, Cap 268, or those of the Patent Law, Cap 266. In the absence of such qualification in s 2(1), or any other part of the Advocates Law, the word «registration» should be interpreted in accordance with its popular meaning. Thus read, «registration» in the context of s 2 subsection 1, encompasses every act associated with the recording of a trade mark in the trade mark register, a meaning that encompasses both registration as well as renewal of a trade mark for both acts are designed to achieve registration of a trade mark 25 30

(3) The agreement entered between appellants and respondents was one for the provision of legal services by a body of persons that included a non advocate. The agreement was not confined to the provision of advocacy services by Mr Platritis alone. It stipulated for the provision of such services by both partners in breach of the provisions of s 2(1) of the Advocates Law 35

(4) Section 23(a) of the Contract Law lays down that an agreement forbidden by law is unlawful. Furthermore, «every agreement of 40

5 which the object of consideration is unlawful, is void». Illegality is not, as it is under English Law, solely associated with tainted consideration but also extends to the objectives of an agreement; though the notions of consideration and objects of an agreement overlap in many respects.

10 The parties are presumed to know the law. Where the object of legislation in enacting a penal or prohibitory enactment is the protection of the persons dealing with those on whom the prohibition is imposed, the agreement will, as a rule, be declared to be void.

(5) One of the objects of s.2(1) of the Advocates Law is undoubtedly the protection of the public in the transaction of its legal affairs through a representative.

15 Any agreement made in breach or defiance to the provisions of s.2(1) can properly be classified as an agreement forbidden by law.

*Appeal dismissed.
No order as to costs.*

Appeal.

20 Appeal by plaintiffs against the judgment of the District Court of Nicosia (Artemides, P.D.C.) dated the 20th November, 1985 (Action No. 2468/82) whereby their action for damages for breach of contract was dismissed.

M. Montanios, for the appellants.

Chr. Theodoulou, for the respondents.

25 *Cur. adv. vult.*

MALACHTOS J.: We consider it unnecessary to hear counsel for the respondents on the merits of the appeal. Piki J. will deliver the judgment of the Court.

30 PIKIS J.: The first appellants, G. M. Platritis & Company, are a limited partnership with G. M. Platritis, appellant 2, an advocate, being the general partner and, Triantafyllio Michaelidou, appellant 3, a pupil advocate; the limited partner. The first respondents are patent design and trade mark renewal agents based in the Channel Islands, and the remaining respondents
35 partners of that firm.

By an exchange of letters an understanding or agreement was reached between appellants 1 and respondents 1, whereby

appellants 1 would, for an agreed fee, renew the registration of trade marks belonging to clients of respondents 1. Respondents 1 estimated that about a hundred briefs would be entrusted to appellants 1 for renewal, an estimate that proved in due course far above the renewals actually assigned to appellants 1 for renewal. Respondents 1 also expressed the hope that their cooperation would last «over the next few years» (letter of 5/4/79). 5

On 21st January, 1982, respondents 1 signified the intention to terminate their cooperation (Exhibit 15), informing appellants 1 that their renewals would be handled by another member of the Cyprus Bar. The protest of appellants 1 had no effect and produced no change of mind on the part of respondents 1. The appellants raised an action before the District Court of Nicosia, claiming damages for breach of contract. The damages consisted of future loss of profit and costs. Respondents resisted the action and denied liability. 10 15

The trial Court dismissed the action for illegality of the agreement stemming from :-

(a) Breach of the provisions of s.2(1) of the Advocates Law (as amended by s.2 of Law 40/75), and 20

(b) conflict with the provisions of s.30.3(d) of the Constitution entrenching the right to choose an advocate to represent him as a fundamental human right.

The learned Judge drew attention to the fact that engagement in advocacy by anyone other than a registered advocate, is an offence under the Advocates Law, punishable with three months imprisonment and/or a fine of £500.--. Nonetheless he recognised that implementation of the agreement between the parties need not necessarily lead to the commission of an offence as renewal could be processed by the general partner of the firm, Mr. Platritis, a registered advocate. 25 30

Apart from illegality the Judge concluded in a brief addendum to his judgment that no agreement emerged from the correspondence of the parties. He drew attention to the reference made by Mr. Platritis in one of his letters that the understanding between the parties operated in the realm of gentlemen's agreement, a fact from which it could be inferred that the parties did not contemplate a legal relationship. 35

The grounds pursued on appeal may briefly be recounted as follows:-

- (i) Misinterpretation and erroneous assessment of the provisions of s.2(1) of the Advocates Law, particularly, the definition of «practising advocate», as supplemented by s.2 of Law 80/82. The essence of the submission is that the inclusion in the definition of «advocate» of «εγγραφή» (registration) of trade marks is confined to the application for the registration of a trade mark and steps associated therewith, as opposed to renewal of a trade mark (s.22).
- (ii) The agreement between the parties, violative though it might be to the provisions of s.2(1) of the Advocates Law, could not be extricated from the performance of the agreement. Since performance would be effected by an advocate the agreement should be sustained as in no way antagonistic to the ends of the law. Aside from the provisions of s.2(1) of the Advocates Law, an agreement to render legal services for non contentious business over a period of time, did not contravene either the provisions of Ord. 59 of the Civil Procedure Rules regulating the recovery of costs for legal services, or any other part of the Rules or Regulations relevant to the subject. On the contrary, counsel argued that the Minimum Rate of Remuneration of Advocates Rules of 1985, made by the Cyprus Bar Council*, specifically exempt from the obligation to charge the minimum rates envisaged therein, agreements for the rendering of legal services over a period of time through a special or general retainer.
- (iii) The agreement was in no way offensive to the provisions of article 30.3(d) of the Constitution in that it did not take away the freedom guaranteed therein, save that one who defaulted in the discharge of his contractual obligations would be liable in damages.
- (iv) The correspondence between the parties led to a binding agreement. Perception of its effect by one of the parties did not absolve the Court from the obligation to examine the correspondence in its proper perspective. We agree that a party's appreciation of the effect of correspondence exchanged between the parties is not determinative of its effect. Nevertheless, careful examination of the contents of the correspondence raises serious doubts whether an enforceable agreement came into being. Doubts derive from the uncertainty of its terms, particularly those

* (A.R.A. 82/85, Supplement III(1) No. 2037 - 1/3/85).

affecting the volume of business and the duration of the agreement.

We shall not debate this aspect of the appeal further and shall assume, for the purposes of this judgment that, a valid agreement had been entered into between the parties. We shall bypass this aspect of the appeal because of the selfevident illegality of the agreement with which we shall presently concern ourselves. Before giving our reasons for holding the agreement founding appellants action as illegal, we may note that counsel for the appellants doubted the soundness of the order whereby the appellants were adjudged to pay costs. We shall concern ourselves no further with this aspect of the appeal either, considering that costs followed the event, a matter within the discretion of the trial Court.

The illegality of the Agreement: The part of s.2(1) affecting the outcome of the case, provides:

«Την εκ μέρους πελάτου ενέργεια εγγραφής εμπορικών σημάτων ή διπλωμάτων ευρεσιτεχνίας και την εμφάνισιν ενώπιον οιασδήποτε διοικητικής αρχής δια τους προειρημένους σκοπούς.»

(English translation of above part of s.2(1)):

«Any action on behalf of a client for the registration of trade marks or patents and appearance before any administrative authority for the aforementioned purposes.»

Broadly, the word «εγγραφή» is synonymous to «registration», though the meaning of the two is not precisely identical. Εγγραφή» connotes the recording of a particular matter or transaction. The word is not necessarily associated with a formal procedure which is often signified by the employment of the word «registration». Subject to this the meaning of the two words is similar and the word «εγγραφή» will hereafter be referred to as «registration». Counsel submitted that «registration» in the context of s.2(1) of Cap. 2 should be interpreted subject to and in accordance with the provisions of the Trade Marks Law - Cap. 268; and be confined as a result to the registration as opposed to the renewal of a trade mark. Registration, counsel explained, of a trade mark involves a fairly complex procedure that would ordinarily justify the engagement of the services of an advocate, whereas renewal is essentially a matter of formality. And the

legislature could not, therefore, be deemed to have contemplated the entrusting of work associated with the renewal of a trade mark to advocates. Section 2(1) does not in terms limit the meaning of «registration» in the manner suggested by counsel either for the purposes of the Trade Marks Law, Cap. 268, or those of the Patent Law, Cap. 266. In the absence of such qualification in s.2(1), or any other part of the Advocates Law, the word «registration» should be interpreted in accordance with its popular meaning. Thus read, «registration» in the context of s.2 subsection 1, encompasses every act associated with the recording of a trade mark in the trade mark register; a meaning that encompasses both registration as well as renewal of a trade mark for both acts are designed to achieve registration of a trade mark. Inevitably, we must conclude that the agreement entered between appellants and respondents was one for the provision of legal services by a body of persons that included a non advocate. The agreement was not confined to the provision of advocacy services by Mr. Platritis alone. It stipulated for the provision of such services by both partners in breach of the provisions of s.2(1) of the Advocates Law.

The next question that must be resolved is whether the agreement created a valid contract in accordance with the provisions of the Contract Law - Cap. 149.

Section 23(a) of the Contract Law lays down that an agreement forbidden by law is unlawful. Furthermore, «every agreement of which the object of consideration is unlawful, is void». Section 23 originates from and is modelled upon the provisions of s.23 of the Indian Contract Act. It is broader in ambit than the prohibition of illegal agreements under English law. In contrast to English law, illegality is not solely associated with tainted consideration but also extends to the objectives of an agreement; though the notions of consideration and objects of an agreement overlap in many respects. The subject is discussed in detail by *Pollock & Mulla*, 10th ed., p.227 et seq. Whenever the consideration for agreement or its objects are prohibited by law the agreement is illegal and as such void. Knowledge of the law is not a condition precedent to the avoidance of an agreement. The parties are presumed to know the law. Where the object of legislation in enacting a penal or prohibitory enactment is the protection of the persons dealing with those on whom the prohibition is imposed, the agreement will, as

a rule, be declared to be void As explained by the learned authors of Pollock & Mulla in this area there is little difference between the principles of Indian and English law* The following passage puts the matter in perspective

«When conditions are prescribed by statute for the conduct of any particular business or profession, and such conditions are not observed, agreements made in the course of such business or profession are void if it appears by the context that the object of the Legislature in imposing the condition was the maintenance of public order or safety or the protection of the persons dealing with those on whom the condition is imposed, (but they) are valid if no specific penalty is attached to the specific transaction, and if it appears that the condition was imposed for merely administrative purposes, e g the convenient collection of the revenue »

Breach of the prohibitions imposed by the Money Lenders Act, was held to have a similar effect on the validity of an agreement because the prohibition was not intended merely to provide a procedure for supervising or regulating money lending but embraced the protection of borrowers who contracted such loans**

One of the objects of s2(1) of the Advocates Law is undoubtedly the protection of the public in the transaction of its legal affairs through a representative Penal sanctions associated with breach of the law served to emphasize the importance attached to the restriction by the legislature

Any agreement made in breach or defiance to the provisions of s 2(1) can properly be classified as an agreement forbidden by law The agreement here under review, assuming an agreement had been formed, was plainly an agreement of a kind forbidden by the Advocates Law, Cap 2 and, as such, void under the provisions of s 23 of the Contract Law - Cap 149 It could not, therefore, provide a foundation for the action of the appellants

* (See Pollock & Mulla, *supra*, at p 233 depicting the legal position in India on this subject in identical terms with Pollock - Principles of Contract, 13th ed, p 276 portraying the corresponding principles of English law)

** (See Pollock & Mulla, *supra* p 236)

In view of our decision it is unnecessary to explore any other aspect of the appeal; hence the appeal will be dismissed albeit with no order as to costs considering the novelty of the point.

In the result the appeal is dismissed. Let there be no order as to
5 costs.

*Appeal dismissed
with no order as to costs.*