

1988 July 7

(DEMETRIADES, STYLIANIDES, PIKIS, JJ)

GALATIA P. GEORGHIADES,

Appellant,

v.

PETRAKIS GEORGHIADES,

Respondent.

(Civil Appeal No. 7140).

Construction of written contracts — Object of interpretation — Cardinal presumption that parties intended what they have in fact said.

Motor cars — Transfer of — Contractual obligation to transfer a car in the name of a particular person in consideration of a particular sum of money — As car's registration had been revoked, its transfer was not possible, unless first re-registered — Which of the parties to said contract should pay the re-registration fees. 5

Evidence — Written contracts — Extrinsic evidence — As a rule inadmissible.

Words and Phrases: «Car» in a contract to transfer a car in the name of another. 10

Settlement — Declared in Court and made Rule of Court — It is a contract.

Action 1885/80 brought by the respondent (hereinafter called the father) against the appellant (hereinafter called the daughter), was settled. The settlement was made a Rule of Court. 15

The settlement provided, inter alia, that upon payment of £4,189 with 7% interest as from 7.6.80 by the daughter to the father, the latter «will take all necessary steps for the transfer of car Reg. No. HW686 in the name of the daughter». 20

As an unregistered car cannot under the relevant Regulations be transferred and as the Registration of the said car had been revoked for failure to renew the circulation licence, the car could not be transferred, unless first registered.

5 In order to make possible the registration of the car the daughter paid the re-registration fees and the circulation licence. The question raised in the action, that ensued between the parties, is whether, under the aforesaid settlement, the amount paid as aforesaid should have been paid by the father.

The trial court found that it was not within the father's undertaken obligations to pay the said amount.

Hence this appeal by the daughter.

10 Held, *allowing the appeal*. The Rule of Court is a contract. The interpretation of a written document is, generally speaking, a matter of law for the court. The object of interpretation of a written document is to discover the real intention of the parties as declared in the document. The construction must be as near to the minds and
15 apparent intention of the parties as is possible and as the law permits. The cardinal presumption is that the parties have intended what they have in fact said.

20 The trial Judge relied on the extrinsic evidence. It is well settled principle of law that when a transaction has been reduced to, or recorded in writing, extrinsic evidence is, in general, inadmissible to contradict, vary, add to or subtract from the terms of the document.

The ordinary meaning of a word, is not necessarily its etymological meaning, but that which the ordinary usage of society applies to it.

What were the obligations of the father under the Rule of Court?

25 They were objective obligations. The father undertook, on condition only of payment of the stipulated amount, to take all necessary steps required to transfer a particular car.

30 The word «car» has a clear and unambiguous meaning. It is a motor vehicle duly registered with the Registrar of motor cars; no unregistered car can be transferred under the Law and the Regulations. Therefore, the obligation of the father, naturally and clearly flowing from the interpretation of this document, is that he should take all necessary steps, and these included the re-registration of the car, in order to register same through the appropriate authority in the name of the daughter. Any other interpretation leads to
35 absurdity and is contrary to Law.

Appeal allowed with costs. No order as to costs in respect of the proceedings before the trial Court.

Cases referred to:

- Ashpitel v. Sercombe* [1850] 5 Exh. 147;
- Halldan Gneg & Co. A/S v. Sterling Coal & Navigation Corporation and another* [1973] 1 All E.R. 545;
- Saab and Another v. Holy Monastery Ay Neophytos* (1982) 1 C.L.R. 499; 5
- G.I.P. Constructions Ltd. v. Assiotis* (1982) 1 C.L.R. 535;
- Panayiotou v. Island Beach Development Ltd.* (1985) 1 C.L.R. 623;
- Ford v. Beech* [1848] 11 Q.B. 852;
- Monypenny v. Monypenny* [1861] 9 H.L.C. 114; 10
- Simpson v. Foxon* [1907] P 54;
- Hilbers v. Parkinson* [1883] 25 Ch. D. 200.

Appeal.

Appeal by defendant against the judgment of the District Court of Limassol (Hadjihambis, D.J.) dated the 6th March, 1986 (Action No. 8285/84) whereby she was adjudged to pay to the plaintiff the sum of £895.- plus interest at 7% on the amount of £4,189.- from 3.12.84 and her counterclaim was dismissed. 15

S. M. Patsalides, for the appellant.

Y. Agapiou, for the respondent. 20

Cur. adv. vult.

DEMETRIADES J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: This appeal turns on the construction of an agreement of the parties, recorded by the Court in Case No. 1885/80 and made a Rule of Court. 25

The appellant is the daughter of the respondent (hereinafter to be referred to as the «daughter» and «father» respectively).

Action No. 1885/80 was filed in the District Court of Limassol by the father against the daughter. 30

On 16th January, 1984, the parties with their advocates were before the Court for that case. A settlement of a number of disputes of the parties was reached. It was stated to the Court by

counsel of the parties. Such settlement was recorded by the Court and was made a Rule of Court.

Paragraph (c) thereof reads as follows:-

«The Defendant recognizes that she owes to the Plaintiff:-

5 (a)
(b)

10 (c) The amount of £4,189.- paid in settlement of the debt of the Defendant of a car under Registration No. HW 686 with 7% interest thereon from 7.6.80. (The aforesaid car is in the name of the mother of the Defendant and the Plaintiff abandons any claim of the said car.) The Plaintiff undertakes to take all necessary steps required to transfer same in the name of the Defendant upon payment by her of the amount due in respect of the car.

15 The Defendant undertakes to pay all the above debts to the Plaintiff on or before 31/12/84.»

20 In November 1984, before the payment of the amount of £4,189.-, the aforementioned car, Registration No. HW 686 was registered in the name of the daughter by the mother, with the consent of the father, in order to enable her to get the necessary finance and pay off the amount payable to the father under the said Rule of Court.

25 Regulation 5 of the Motor Vehicles and Traffic Regulations 1984 provides that the owner of a car has to register it with the Registrar. Under Regulation 9(1)(b)(v), the registration of a motor vehicle is revoked by the Registrar, if the Circulation Licence thereof is not renewed for three consecutive years.

30 The Road Fund Licence of this car had not been renewed and the Registrar cancelled its registration in the exercise of his power and duties.

35 A motor vehicle may be registered or transferred in the name of any person, if it is a registered motor vehicle under the Law and the relevant Regulations. As it was not registered at the material time, for the performance of the obligation undertaken by the father, as per the said Rule of Court, the amount of its registration duty and/or re-registration ought to be paid.

In order to make possible in law the transfer of the car in the name of the daughter, £850.- for its re-registration and £45.- for

the Circulation Licence from 1.10.84 until 31.12.84, had to be paid. The amount of £895.- was paid by the daughter.

On 30th November, 1984, counsel for the father by written notice demanded payment of the whole amount with interest accrued as per the Rule of Court of 16th January, 1984. 5

On 3rd December, 1984 advocate for the daughter sent to the mother by registered post a letter and enclosed a cheque, dated 8th November, 1984, drawn on the Co-Operative Savings Bank of Limassol, in the sum of £4,600.- In the letter it was stated that an amount of £900.- was deducted as fees for re-registration of the car. 10

On 10th December, 1984, advocate for the parents, acting on behalf of the mother, returned the cheque to advocate for the daughter. In his letter - Exhibit 6 - he stated that the debt was due to the father to whom the daughter had to pay the whole amount with interest, as per his letter of 30th November, 1984. 15

On 22nd December, 1984, the father instituted the present action, whereby he claimed £4,189.-, plus interest at the rate of 7% from 7th June, 1980, until the date of payment, due to him under the said Rule of Court. 20

The daughter resisted and denied the claim alleging legal tender and by way of counterclaim she claimed £895.-, being the amount she paid for the re-registration of the car HW 686 and/or damages for breach of the said Rule of Court and interest thereon at the rate of 9% from 3rd December, 1984 until final payment. 25

On 28th June, 1985 the parties and counsel were before the Court. We consider it necessary to quote seriatim the record of the Court of that day:-

Court: By consent judgment is given for the plaintiff and against the defendant in the sum of £4,189.- with interest thereon at 7% p.a. from 7.6.1980 to 3.12.1984 less £895.-. 30

The following matters remain in issue:

1. The claim for £895.- and the counterclaim for the same amount.

2. The interest on the amount of this judgment and or any other amount which may be found due by the defendant after 3.12.1984. 35

3. The costs of the action.»

It was the contention for the daughter, in the course of the trial, that under the Rule of Court the father had the obligation to take all necessary steps to transfer the car in her name and this included
5 the payment of re-registration fees and the renewal of the Circulation Licence, which entailed the payment of £850.- and £45.- respectively.

The father's case was that the car was not in his custody and the daughter should have renewed the licence in the past. She was in
10 default and, therefore, the registration fees had to be born by her.

The District Court of Limassol had before it all the documents to which reference is made herein above. Its task was as a matter of law to interpret the contract of the parties - the relevant part of the Rule of Court of 16th January, 1984. Instead, it admitted evidence
15 which referred to everything that happened as from 1980 until 1984 with regard to the said car and even admitted other evidence relating to other disputes of the parties.

In the end of the day Judgment was given for the plaintiff against the defendant for £895.-, plus interest at the rate of 7% per annum
20 on the amount of £4,189.-, from 3rd December, 1984 and dismissed the counterclaim. Costs were, also, awarded against the defendant.

The reasoning is that under the said Rule of Court the obligation of the father was to transfer the car in the name of the daughter,
25 that the registration fee is not within the ambit of the Rule of Court and it cannot be read so as to impose such obligation, his obligation being only the «transfer» of the car in the defendant's name and not its re-registration. He continued: «Whatever the Plaintiff's obligations may be in relation to a transfer, he certainly
30 cannot be saddled with the obligation to pay re-registration fees (especially when he was not liable for the fact that re-registration became necessary). Even if he could be under such an obligation if he had undertaken to take all necessary steps required for the re-registration of the car in the Defendant's name, the terms of the
35 Rule of Court refer not to a re-registration but to a transfer.»

The appeal is directed only against that part of the Judgment which refers to the amount of £850.- - re-registration fees.

The Rule of Court is a contract.

The interpretation of a written document is generally speaking, a matter of law for the Court (*Ashpitel v Sercombe* [1850] 5 Exch 147 *Halfdan Grieg & Co A/S v Sterling Coal & Navigation Corporation and another* [1973] 1 All E R 545 *Saab and Another v Holy Monastery Ay Neophytos* (1982) 1 C L R 499 *GIP Constructions Ltd v Costas Assiotis* (1982) 1 C L R 535) The object of interpretation of a written document is to discover the real intention of the parties as declared in the document. The construction must be as near to the minds and apparent intention of the parties as is possible and as the law permits. The cardinal presumption is that the parties have intended what they have in fact said. So, then words must be construed as they stand - (*Solon Panayiotou v Island Beach Development Ltd* (1985) 1 C L R 623)

In *Ford v Beech* [1848] 11 Q B 852 it was said -

«The common and universal principle ought to be applied namely that (an agreement) ought to receive that construction which its language will admit and which will best effectuate the intention of the parties, to be collected from the whole of the agreement and that greater regard is to be had to the clear intention of the parties than to any particular words which they may have used in the expression of their intent »

Lord Wensleydale in *Monypenny v Monypenny* (1861) 9 H L C 114 at p 146 said -

«the question is not what the parties to a deed may have intended to do by entering into that deed, but what is the meaning of the words used in that deed a most important distinction in all cases of construction and the disregard of which often leads to erroneous conclusions »

Similarly Sir Gorrell Barnes P said in *Simpson v Foxon* [1907] P 54 at p 57 -

«But what a man intends and the expression of his intention are two different things. He is bound and those who take after him are bound by his expressed intention. If that expressed intention is unfortunately different from what he really desires, so much the worse for those who wish the actual intention to prevail »

Pearson J in *Hilbers v. Parkinson* [1883] 25 Ch. D. 200 at p. 203 said:-

5 «I conceive that all deeds are to be construed not only strictly according to their words, but so far as possible, without infringing any rule of law, in such a way as to effectuate the intention of the parties.»

The trial Judge relied on the extrinsic evidence.

10 It is well settled principle of law that when a transaction has been reduced to, or recorded in, writing, extrinsic evidence is, in general, inadmissible to contradict, vary, add to or subtract from the terms of the document (See Phipson on Evidence, Thirteenth Edition, p. 934; Halsbury's Laws of England, Fourth Edition, Volume 12, para. 1478.)

15 The ordinary meaning of a word, is not necessarily its etymological meaning, but that which the ordinary usage of society applies to it.

The material part of the Rule reads:-

20 «The Plaintiff undertakes to take all necessary steps required to transfer same (car under Registration No. HW.686) in the name of the Defendant ... »

What were the obligations of the father under this Rule of Court?

25 They were objective obligations. He undertook, on condition only of payment of the stipulated amount, to take all necessary steps required to transfer a particular car.

30 The word «car» has a clear and unambiguous meaning. It is a motor vehicle duly registered with the Registrar of motor cars, no unregistered car can be transferred under the Law and the Regulations. Therefore, the obligation of the father, naturally and clearly flowing from the interpretation of this document, is that he should take all necessary steps and this included the re-registration of the car, in order to register same through the appropriate authority in the name of the daughter. Any other interpretation leads to absurdity and is contrary to Law.

35 The Judge followed a wrong step in admitting evidence and then he was carried away by his first fault.

The registration of the car entailed the payment of £850.- registration fees. This was part and parcel of the obligation of the father

In the light of the above the appellant is successful on the counterclaim.

5

Having regard to the issues, as they crystallized on the 26th June, 1985, to which reference was made earlier on in this Judgment, the father - plaintiff is entitled to judgment for interest at the rate of 7% as from 3rd December, 1984, until final payment on the total amount of £4,189.- and the daughter - counter-claimant to judgment against the father for £850.-, with interest at the same rate, i.e., 7% from the end of November, 1984, i.e., 1st December, 1984, until final payment.

10

In the result the appeal succeeds and the judgment of the trial Court is varied as above.

15

With regard to costs, the appellant is entitled to her costs before this Court. As she failed on the issue of the interest on £4,189.- as from 3rd December, 1984 and she succeeded on the issue of £850.- - registration fees for the car - there should be no order as to costs before the first instance Court.

20

*Appeal allowed. Order
for costs as above.*