

1988 September 26

(STYLIANIDES, KOURRIS, BOYADJIS, JJ.)

AVRAAM AVRAAMIDES,

Appellant-Plaintiff,

v.

SAVVAS CHRISTODOULOU,

Respondent.

(Civil Appeal No. 7116).

Civil Procedure — Title of action — Individual trading under a business name — Practice — Failure to add the words «trading in the style of», but averring in the Statement of claim that the party was trading under such name — Omission not fatal to the action.

Business name — Not an entity separate from the individual using it. 5

The name of the plaintiff in the writ of summons is «Avraam Avraamides». The statement of claim avers that the plaintiff at all material times in this action was trading under the business name MANDESON INSTITUTE.

As the defendant to the action did not appear, the case was fixed for proof. The plaintiff adduced his evidence, but the trial Judge dismissed the claim of £20 (balance of price of goods sold and delivered and £65.- for services rendered) on the ground that the name of the plaintiff was not referred to in the written contract produced in evidence. In fact the contract referred to MANDESON INSTITUTE. 10 15

Held, allowing the appeal: (1) There is no differentiation between the business name of an individual and his physical person; a business name does not constitute a separate legal entity; a judgment issued against a person trading under a business name may be enforced against that individual. 20

(2) In this case the statement of claim clearly disclosed the capacity of the plaintiff. The omission of the words «trading as MANDESON INSTITUTE» in the description of the plaintiff in the title of the action is not in the circumstances fatal.

Appeal allowed with costs. 25

Cases referred to:

In re Antoniou (1988) 1 C.L.R. 1.

Appeal.

5 Appeal by plaintiff against the judgment of the District Court of Nicosia (Michaelides, D.J.) dated the 17th January, 1986 (Action No. 5838/85) whereby his action for £20.- balance of agreed price of goods (cassettes) sold and delivered, £65.- for services rendered and £40.- damages for breach of contract was dismissed.

D. Aristidou, for the appellant.

10 *No appearance for the defendant.*

STYLIANIDES J. gave the following judgment of the Court. This appeal is directed against the dismissal of a Civil Action (D.C.N. 5838/85) brought against the respondent-defendant.

15 The name of the plaintiff in the writ of summons is «Avraam Avraamides».

Paragraph 1 of the statement of claim reads:-

20 «1. The plaintiff at all material times in this action was trading the system of learning the English language MANDESON and was known and/or was trading under the business name MANDESON INSTITUTE.»

25 The plaintiff's claim is for £20.- balance of agreed price of goods (cassettes) sold and delivered, £65.- for services rendered to the children of the defendant by virtue of a written contract between the parties and £40.- damages for breach of the said contract.

The writ of summons was served on the defendant. At the time fixed by the writ of summons - 20th December, 1985 - for the appearance of the defendant, the advocate for the plaintiff appeared but the defendant did not.

30 As the matter is governed by rule 12 of Order 65, which provides that if at the time fixed by the writ of summons for the appearance of the defendant the plaintiff appears but the defendant does not, then upon proof being given of the defendant having been served with the writ of summons, the plaintiff may
35 prove his claim, so far as the burden of proof lies upon him, and

judgment may be given accordingly, the trial Judge adjourned the case for proof on 17th January, 1986.

On 17th January, 1986, the accountant of the plaintiff gave evidence. He verified on oath the allegations set out in the statement of claim and produced the contract entered into between the parties - (Exhibit 1). 5

The learned trial Judge dismissed the action, his reasoning being that the contract (Exhibit 1) nowhere mentions the name of the plaintiff.

The contract is before us. The parties thereto are «MANDESON INSTITUTE» and the DEFENDANT. 10

We have already referred to paragraph 1 of the statement of claim, where it is averred that the plaintiff at all material times was known and/or was trading under the business name MANDESON INSTITUTE. 15

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

There was sufficient evidence before the trial Court that MANDESON INSTITUTE is the business name of the plaintiff.

In Civil Appeal No. 6918* it was held that there is no differentiation between the business name of an individual and his physical person, that a business name does not constitute a separate legal entity and that a judgment issued against a person trading under a business name may be enforced against that individual. 20
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It is desirable in these cases that the name of the plaintiff on the writ of summons should be the name of the individual and then the words «trading as» to follow, and in the statement of claim to aver that «at all material times the plaintiff carried on business under the style, or firm name, or ». 30

In the present case, the statement of claim clearly disclosed the capacity of the plaintiff, the style under which he was trading and the identification of the plaintiff with the business name MANDESON INSTITUTE. The omission of the words «trading as

* See *In re Antoniou* (1988) 1 C.L.R. 1.

MANDESON INSTITUTE in the description of the plaintiff in the title of the action is not in the circumstances fatal.

The claim for £40.- damages was withdrawn.

5 The uncontested evidence adduced by the plaintiff, sufficiently proved the claim of the plaintiff so far as the burden of proof lay upon him.

The appeal succeeds.

Judgment is issued for the plaintiff against the defendant for £85.- with costs both before this Court and the District Court.

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Appeal allowed with costs here and in the Court below.