

CYPRUS SUPREME COURT  
APPELLATE JURISDICTION

Civil Appeal No. 11251

Presiding: Artemidi, Nikolaou, Xatzichambi, J.J.

Between:

A.A. PILOTTOS LTD

Appellants

v.

LAKIS PETYROULAKIS

Respondents

10 February 2003

For Appellants: Mr. A. Poetis

For Respondents: Mrs. L.Georgiadou

**Artemidis, D.:** The Court's unanimous decision is read out by Judge D. Xatzichambis

**JUDGMENT**

This appeal turns against the judgment of the learned President of the County Court in Larnaca, which dismissed litigation proceedings of the appellant company against the Respondent. The proceedings revolved around an agreement between the parties in September 1992 for the sale of two shops at a price of £28,000 by the appellant to the appellee, stipulating immediate surrender under an obligation to pay full price, and ensuing immediate transfer of title in 1994. It also refers to the particulars of claim which argue the appellant paid the £28,000 price in full back in 1994, but the titles of the two shops were not transferred. Paragraph 4 mentions the following:

“The claimants were informed by the defendant that the shops were the property of the defendant’s brother, who resided in Africa, and that the defendant would not encounter any difficulty or legal obstacle in the transfer of their respective titles”

The appellant’s claim was for the return of the £28,000 (an alternative claim for £80,000 in compensation was abandoned early on during proceedings).

In addition to a pre-trial objection of res judicata owing to previous litigation proceedings, the Respondent argued in his defence that he had no contractual relation with or obligation to the appellant, since it was his brother who was the owner of the two shops instead of him, and that he was acting under power of attorney as a representative of his brother, having informed the appellant ab initio as such. Moreover, he argued the price agreed was £38,000 instead of £28,000, and that only £28,000 was paid. We shall not deal with additional claims on the validity of the agreement. As for the rest, the Respondent denies the appellant’s claims.

During trial the Respondent did not show up until the appellant’s factual witness, the company’s director, testified, without being cross-examined, that the agreement was oral, and that he was told by the Respondent that the titles of the two shops were registered under the Respondent’s brother’s name, but the shops were in fact the Respondent’s property. He also testified that the shops’ titles could not be transferred by the Respondent’s brother, since a court order for the seizure of the Respondent’s brother’s property had now been issued, and the two shops rested with the official receiver. The crux of his version, therefore, was that the two shops were registered under the Respondent’s brother’s name, but the agreement was made with the Respondent, as the true owner of the shops, who was under the personal obligation to transfer their title.

Having now turned up, the Respondent attempted to cross-examine the appellant’s director, the court however denied him this right and trial proceeded as normal. The Respondent’s version as features in his defence was corroborated under testimony both by the Respondent’s brother, and by the Respondent himself. Specifically, that the agreement was made with the Respondent, and that the appellant knew the Respondent was acting under power of attorney as his brother’s representative, who was in fact the contractual party and owner of the shops. The Respondent’s brother also mentioned that he had received £28,000 by his brother, that he had commenced litigation proceedings against the appellant for the remaining £10,000 (1634/98), and that a court order for seizure of his property had been issued in 1999.

The learned President highlighted ambiguity in the letter of claim, in that (p.9):

“even though the claim appears directed against the defendant in person, paragraph 4 of the claim form records the fact the claimants were informed by the defendant that the two shops were the property of the defendant’s brother, Nikos Petroulakis, who resided in Africa, and concludes “that the defendant has no difficulty or legal

obstacle whatsoever to transfer title". Paragraph 2, by contrast, simply mentions the defendant sold the claimants the two shops...

Nowhere in the particulars of claim is the fact that the defendant acted as true owner of the two shops mentioned clearly. And despite being told the titles of the shops were registered under the defendant's brother's name, the claimants proceeded with a claim against the defendant personally, without recording the facts supporting this decision. Moreover, even though the defence raises clearly the fact the defendant never agreed in a personal capacity with the claimants, but was acting under power of attorney as a representative of his brother, the claimants failed to register a reply to the defence negating those arguments, in order to record with precision their true version of events".

Rejecting the claimant's director's testimony and version of events, the learned President accepted the corresponding testimonies and version of the Respondent and his brother, hence rejecting the appellant's claim.

The grounds of appeal relate to the totality of the judgment, but feature no chance of success. The appellant complains the learned President's finding of ambiguity in the particulars of claim is false. We would find it hard to improve on his reasoning, both in factual and in legal terms. We limit ourselves to adding the ambiguity is more than obvious, as it features in paragraph 4 of the particulars of claim. And that, as it shall become obvious later on, this ambiguity could relate to the unreliability of the appellant's director's testimony itself.

In any case, the learned President did not limit himself to simply highlighting the innate ambiguity of the particulars of claim, proceeding directly in appraising and ultimately rejecting the testimony of the appellant's director as unreliable, this rejection also featuring in the subject matter of the appeal. The appellant's complaint on this rejection rests on the supposed correlation of the unreliability of the testimony to its limited length, as it was given at a stage when the Respondent had not showed up, and no cross-examination took place. The appellant submits this fact should not have been taken into consideration in adjudging the testimony as unreliable. This submission is both false on its own terms and inefficient. The learned President proceeded in meticulous and full appraisal of the entire testimony, rejecting it in its totality as "contrary to the more reasonable and more earnest position of the defendant and its witnesses as to the fundamental matter of ownership and the way the agreement was struck" (p.20). His specific comments that feature in the grounds of appeal simply relate to the appraisal of a simple facet of events as to whether a meeting took place, and not to the totality of the appellant's director's testimony, and therefore feature out of context. In addition, the learned President's opinion on this matter, as it features in the extensive submissions on the grounds of appeal, was correct and completely balanced on the reliability of the testimony as a whole, which was pivotal in deciding the matter.

Equally, the grounds of appeal that address reliability and acceptance of the Respondent's and his brother's testimonies, including parameters in respect of specific facets of the testimonies concerning ownership of the shops, are without foundation. All matters and arguments in support of these grounds of appeal were examined, where relevant, by the learned President, in what we deem, with no hesitation, an exemplary and classic approach to appraising testimony in every respect, including completeness, consideration, correlation,

differentiation, common logic and legal understanding, to the extent little ground remains for the probability of an incorrect approach, and the conclusion shines through as justifiably correct. To this we add the learned President's reference in p.15, which sums up the true dimension of this case. When referring to the importance of the Respondent's brother's litigation proceedings 1634/98, not as proof of underlying facts, but as suggestive of his mental state in determining reliability, stressing that his testimony was not the product of an afterthought to assist the Respondent, the learned President crucially indicated:

“Probably the opposite holds true, as will be demonstrated in the following analysis. It was the claimants who initiated these proceedings as an afterthought, attempting to profit from the defendant's brother's bankruptcy, as it was by then impossible to claim against him for breach of contract and compensation, or for the return of the paid funds”.

The attempted amendment of the particulars of claim further justifies this courts' opinion as to the true aim behind these proceedings.

The appeal fails and is rejected, with costs for the Respondent and against the appellant.