SUPREME COURT OF CYPRUS

JURISDICTION OF FIRST INSTANCE

(CIVIL APPLICATION NO. 87/2020)

September 22nd, 2020

[P. PANAGI, G. N. GIASEMIS, CH. MALACHTOS, DIRECTORS]

WITH REGARD TO ORDER 35 INSTITUTION 20 OF THE INSTITUTIONS OF CIVIL PROCEDURE

AND

WITH REGARD TO THE APPLICATION OF BANK OF CYPRUS PUBLIC COMPANY LTD FOR PERMISSION TO FILE AN APPEAL AGAINST THE DECISION OF THE PAPHOS COURT DATED 26/06/2020 IN APPLICATION NO. 1150/10 DUE TO INCORRECT INSTRUCTIONS AND/OR AN ORDER AND/OR DECISION ONLY WITH REGARD TO THE COSTS OF THE PROCEEDINGS

AND

WITH REGARD TO THE JUDGMENT OF THE PAFOS COURT DATED 26/06/2020 IN APPLICATION 1150/10 BY WHICH THE COURT WRONGLY ORDERED BANK OF CYPRUS PUBLIC COMPANY LTD/DEFENDANT 2 IN APPLICATION 1150/10 TO PAY THE PLAINTIFF THE COSTS OF THE PROCEEDINGS TOGETHER WITH DEFENDANT 1

_____

Application date: 17.7.2020

to Grant Permission to File an Appeal

_____

Panagiotis Makridis together with Mrs. Ino Georgiadis, trainee lawyer, for Chrysafinis & Polyviou LLC, for the Applicants.

_____

COURT: The unanimous decision of the Court will be given by Judge P. Panayi, D.

_____

DECISION

(Extempore)

P.PANAGI.D: The applicants are a banking institution. With their application they seek permission to file an appeal, regarding only costs, against an order issued by a judge from the Regional Court of Paphos [District Court?] on 26 June 2020 for application1150/10. Simultaneously, they request an extension to the deadline of lodging an appeal.

The facts supporting the application are presented in a sworn declaration of a Legal Consultant in the Internal Legal Service of the applicants and can be summarized as follows: the above suit which was registered by xxx Ionica (plaintiff), was originally aimed against xxx Zouridis (the defendant). The applicants were not parties at the time of the registration of the suit. In the lawsuit, the plaintiff sought the cancellation of the registration of an apartment in Paphos registered in the name of the defendant and its re-registration in her own name, on the basis of an allegation that the registration was fraudulent by the use of a counterfeit document by which the plaintiff allegedly empowered the father of the defendant to handle her property. The defendant held that the registration was lawful and that the empowering document was valid and binding. In addition, the defendant raised a countersuit, claiming a declarative decision that the transfer was legal or, if void, the pecuniary sum of 146.459,57 Euro deposited to a Cooperative Institution will repay the plaintiff's loan.

Following the plaintiff's request, the applicants were included as defendants 2 considered necessary parties to the lawsuit, after the defendant declared in the context of an intermediary procedure for issuing temporary orders that the relevant property was mortgaged to the benefit of the applicants. Thus, the application of the plaintiff was modified in order to include the claim of cancelling the mortgage that was burdening the property.

The defense of the applicants to the plaintiff's claims was that, essentially, they did not and could not know the different arrangements between the plaintiff and the defendant, and the extent to which the controversial empowering document was fraudulent or not. They also maintained that loaning the defendant and mortgaging the property was a lawful process.

In its final decision, the First Instance Court accepted the plaintiff's position that the document in question was fraudulent, as well as the witness testimony by the applicants, "except some unimportant points", and rejected the version of the defendant as entirely unreliable and inaccurate. It held that the applicants did not have knowledge of the substantial events leading to the voidance of the transfer and that the mortgage in their favour was lawfully constituted. In conclusion, the First Instance Court cancelled the mortgage and the transfer of the apartment in the name of the defendant and ordered its registration in the name of the plaintiff. It condemned the defendant and the applicants to pay the costs of the suit without giving any justification as to its direction, following the logic that costs follow the verdict. It is useful to present in full the relevant order:

"The costs of the suit and the counterclaim, as calculated by the jurat and approved by the Court are judged as follows: the suit in favor of the plaintiff and against the defendants. The countersuit, in favour of the plaintiff and against the defendants".

The applicants claim that the First Instance Court erred in condemning them to the costs of the suit, as it did not provide enough consideration to the events from which it made its findings /As a result, the applicants are required to pay fees that the defendant incurred as a

result of his fraudulent and illegal activity, which was the cause of the court proceeding and the lawsuit. In their own adoption, the applicants argue that the cross-examination of the plaintiff and her witnesses by the original defendant's side cannot alter the objectives of the case. Furthermore, without connection to the differences and conflict between the plaintiff and the defendant, and his father, the applicants lost the financial guarantee they had and were ordered to dispose a sizeable sum of costs, which could potentially rise up to 20.000 Euro with VAT.

The application is based on D.35, th.20 of the Adjudicative Regulations of Civil Procedure, according to which issuing an allowance is only justified when it is clear that the decision on costs is against the law, the adjudicative regulation, based on misinterpretation of facts, or where a party is ordered to contribute to the other's costs without sufficient reason.

Exclusive criterion for success is the establishment of one or more of the conditions set by the civil procedure ethos. According to D.59, th1., the issue of the cost apportion falls within the discretion of the Court, which is exercised judicially and in reference to internal factors of the trial, including instances beyond its verdict and the events in the parties' handling (see among others C & H Heat Flow Ltd (2002) 1 A.A.Δ. 353 and Thrasyvolou v Arto Estates Ltd (1993) 1 ΑΑΔ 12).

Having studied the material, in the light of the above authorities, we are satisfied that the allowance for lodging an appeal is justified. We will not expand to firm pronouncement or conclusion, in order to avoid prejudice matters that may come up in the context of the appeal to follow.

The appeal must be registered within five days from today, as the application request B.