1981 December 4

[LORIS, STYLIANIDES, PIKIS, JJ.]

TECHNICAL OFFICE ANDREAS PANAYIDES & CO.,

Appellants-Plaintiffs,

v.

ELENI TSOKKI,

Respondent-Defendant.

(*Civil Appeal No.* 6108).

Contract—Claim for agreed value of work done—Whether failure to agree on mode of payment abrogates the agreement—Whether any terms of payment can be presumed—Section 52 of the Contract Law, Cap. 149—*Retrial ordered.*

The appellants-plaintiffs sued the respondent-defendant for the recovery of the sum of £45 agreed value of a set of drawings for a house of the respondent. Though the trial Judge found that the agreement of the parties was for the sum of £40.— he dismissed the action for the reason that the parties failed to agree as to the mode of payment.

Upon appeal by the plaintiffs:

Held, that in so holding the trial Judge was wrong, for failure to agree on the mode of payment, in a simple transaction such as this, does not abrogate the agreement; that the trial Judge should have gone further and examine what terms of payment should be presumed in the circumstances of the case in view of the provisions of section 52 of the Contract Law, Cap. 149; and that, therefore, this Court is unable to dispose of this appeal except by ordering retrial of the claim only.

Appeal allowed.
Retrial ordered.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Nicosia (A. Ioannides, D.J.) dated the 22nd March,

1980, (Action No. 165/79) whereby his claim for the sum of £45.—value of a set of drawings for a house was dismissed.

A. Stassouli (*Mrs.*), for the appellants.

Chr. Kitromilides, for the respondent.

LORIS J. gave the following judgment of the Court: Andreas Panayides, the plaintiff-appellant, a building technician trading under the business-name indicated in the title of the action, sued the defendant-respondent for the recovery of the sum of £45.—allegedly agreed value of a set of drawings for a house of the respondent. The respondent admitted in her defence assigning to the plaintiff the task but maintained that the terms of the assignment were different from those averred by the plaintiff.

The trial Judge (Ioannides, D.J.) found that in truth the agreement of the parties was for the sum of £40.—but decided to dismiss the action for the reason that the parties failed to agree as to the mode of payment. In so holding he was wrong, for failure to agree on the mode of payment, in a simple transaction such as this, does not abrogate the agreement. The Judge should have gone further and examine what terms of payment should be presumed in the circumstances of the case in view of the provisions of s. 52 of the *Contract Law*, Cap. 149.

After making the relevant finding, he should consider whether the plaintiff was right in withholding the surrender of the plans in view of the insistence of the defendant to pay him in two instalments, one depending on an uncertain future event, i.e. approval of the drawings by the appropriate authority.

Perhaps also he should have examined whether the plaintiff had any right to claim a fee, in view of his admissions at the trial that he is not authorised to prepare architectural plans, and the provisions of s. 10 of Law 41/62.

For all the above reasons we find ourselves unable to dispose of this appeal except by ordering retrial of the claim only.

Costs of the appeal to be costs in cause but in no event against the appellant.

Appeal allowed. Retrial ordered. Order for costs as above.