1982 June 25

[A. LOIZOU, SAVVIDES, STYLIANIDES, JJ.]

ANDREAS SAMOURIDES,

Appellant-Defendant,

v.

CHARALAMBOUS & HADJICOSTAS LTD.,

Respondent-Plaintiff.

(*Civil Appeal No.* 6114).

Contract—Construction—Impermissible to look outside the agreement in order to discern the intention of the parties—Exceptions to this principle—Where it appears from the terms of the contract made by an agent that he contracted personally extrinsic evidence not admissible to show that it was the intention of the parties that he should not be personally liable—Position when he signs the agreement in his own name without qualification though known to be an agent.

The following issue arose for consideration in this appeal:

Whether the appellant-defendant who was personally a party to two agreements, having executed the one in the capacity of a purchaser and the other as a vendor could adduce evidence to show that he entered into the agreements as an agent.

Held, that it is an impermissible course to look outside the agreement in order to discern the intention of the parties, a principle which is subject to certain exceptions but which in any event do not come into play in this case; that it is well settled that where it appears from the terms of a written contract made by an agent that he contracted personally, extrinsic evidence is not admissible to show that, notwithstanding the terms of the contract, it was the intention of the parties that he should not be personally liable thereon, because such evidence would be contradictory to the written contract (see *Higgins* v. *Senior* [1841] 8 M. & W. 834; and *Sobell Industries* v. *Cory Bros.* [1955] 2 Lloyd's Rep. 82).

Held, further (1) that the appellant signed the agreement in question in his own name without qualification, in which case the law is that though known to be an agent, is understood to contract personally, unless a contrary intention plainly appears from the body of the instrument, and the mere description of him as an agent, whether as part of the signature or in the body of the contract, is not sufficient indication of a contrary intention to discharge him from the liability incurred by reason of the unqualified signature (see *Hough* v. *Manzanos* [1879] 4 Ex. D. 104).

(2) That although it is possible in law for a person to be the agent of more than one principal, with the consent of both principals, the defendant was not in this case the agent of either but a contracting party himself vis-a-vis both (see *North and South Trust Co.* v. *Berkerly* [1971] 1 All E.R. 980).

Appeal dismissed.

Cases referred to:

Higgins v. *Senior* [1841] 8 M. & W. 834;

Sobell Industries v. *Cory Bros.* [1955] 2 Lloyd's Rep. 82;

Hough v. *Manzanos* [1879] 4 Ex. D. 104;

Hutcheson v. *Eaton* [1884] 13 Q.B.D. 861.

Appeal.

Appeal by defendant against the judgment of the District Court of Larnaca (Pikis, P.D.C.) dated the 31st March, 1980 (Action No. 707/78) whereby he was adjudged to pay to plaintiff the sum of £1,000.- for the recovery of the proceeds of a dishonoured bill of exchange.

A. Neocleous, for the appellant.

A. Andreou, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment of the Court. This is an appeal from the judgment of the then President of the District Court of Larnaca by which the appellant was adjudged to pay £1,000.- with interest at 6% per annum from the 5th January 1978 till final payment, and costs, given in this action for the recovery of the proceeds of a dishonoured bill of exchange issued on the aforesaid date. Both the issue and the dishonour of the cheque in question were admitted but the appel-

lant claimed by his defence that he was entitled to avoid liability thereunder on two grounds, first as payment of the cheque was subject to a condition precedent that was never fulfilled and secondly because the respondent company should have indemnified him for an equivalent sum in the context of their alleged relationship of principal and agent.

By way of counterclaim the appellant sought a declaration that the cheque was void and also raised a claim for the recovery of an amount of £1,700.- as money had and received or recoverable on the equitable principle of unjust enrichment or, as damages for breach of contract.

The facts of the case as appearing from the judgment of the learned President are as follows:

The respondent Company owned a plant at Ayios Minas where they bottled and packed water from a spring in the area. The appellant is a businessman from Limassol who mediated between the respondents, Sanotrade Ltd., a Lebanese firm for the supply of a quantity of bottled drinking water.

It was common ground that the respondent Company was not prepared to enter into a direct contractual relationship with the said Lebanese firm because, as they disclosed to the appellant, of their lack of confidence in Arab businessmen.

On the second November 1977 two agreements were executed, one (exhibit 2) between the appellant who, as a first party is described therein as "representing by agreement Messrs Charalambous and HadjiCosta Company Ltd., at 6, Mykinon Larnaca, bottlers of natural mineral water from their spring in Alones Ayios Minas, Cyprus, hereinafter called sellers", and Sanotrade Ltd., of St. Andrews street of 356 Limassol Cyprus, as the second party described as "sole owners of Sofresh brand, hereinafter called the buyers".

The second agreement, which is the one relevant to these proceedings (exhibit 13), was executed between the respondents as first party, described as "bottlers of natural mineral water from their spring in Alones, Ayios Minas, Cyprus, hereinafter called the sellers", and as second party the appellant "representing by agreement Sanotrade Ltd., of St. Andrews

street 356, Limassol Cyprus, sole owners of Sofresh brand hereinafter called the buyers". It is apparent that the appellant represented himself in exhibit 2, as the agent of the respondents and in exhibit 13 as the agent of the foreign principal. At the bottom of exhibit 2 and after the signature of the parties and their witnesses, there appears the phrase, "We have taken due notice of this agreement" and it bears the signature of the directors of the respondent Company.

The learned President then dealt with this issue as follows:

"It was argued on behalf of the defendant that plaintiffs accepted that defendant was their agent by taking cognizance of his agreement with Sanotrade (exh. 2), a fact signified on the agreement itself.

The relationship of plaintiffs with defendants was in no way modified by the provisions of exhibit 2 and was exclusively regulated by their agreement with defendant embodied in exhibit 13. The two agreements were independent the one from the other although entered into for the promotion of the same purpose, viz. the export to Lebanon of a quantity of bottled drinking water. The plaintiff became personally a party to both agreements removing thereby obstacles otherwise existing in the way of the export materializing for a consideration manifest on a comparison of the two agreements amounting to 20 U.S.A. cents for every case of bottled water exported. Not only were the plaintiffs unwilling to enter into an agreement with Sanotrade Ltd., but refused to have any direct dealings with them in the context of performing their part of the agreement, a fact manifest from the payment by the defendant himself of sums agreed to be paid to the plaintiffs under exhibit 13 such as the payment of a deposit for the purchase of carton boxes and payment for the goods to be supplied".

To the aforesaid it has to be added what he said with regard to the introductory part of the two agreements earlier referred to in this judgment:-

"Notwithstanding this introductory part of the agreements it is expressly stipulated in both contracts that Defendant was personally a party thereto executing the one in the

capacity of a purchaser and the other as a vendor. On any construction of the agreements the inevitable inference is that Defendant became personally a party thereto and acquired rights and undertook liabilities thereunder. Even if we were to look outside the agreements in order to discern the intention of the parties, an impermissible course for the construction of an agreement subject to certain exceptions that need not concern us here, it emerges that it was all along the intention of the parties that defendant should enter into the agreements personally and not in a representative capacity, for as the defendant explained plaintiffs were totally unwilling to enter into a direct contractual relationship with the foreign importers".

Having considered the totality of the circumstances we find no reason to interfere with the conclusions reached by the learned President in construing the subject agreement. He has rightly directed himself on the law applicable in such cases by expressly stating that it is an impermissible course to look outside the agreement in order to discern the intention of the parties, a principle which is subject to certain exceptions but which in any event do not come into play in this case. It is well settled that where it appears from the terms of a written contract made by an agent that he contracted personally, extrinsic evidence is not admissible to show that, notwithstanding the terms of the contract, it was the intention of the parties that he should not be personally liable thereon, because such evidence would be contradictory to the written contract (see *Higgins* v. *Senior* [1841] 8 M. & W. 834; and *Sobell Industries* v. *Cory Bros.* [1955] 2 Lloyd's Rep. 82).

Moreover it should not be ingnored that the appellant signed the agreement in question in his own name without qualification, in which case there is authority that "though known to be an agent, is understood to contract personally, unless a contrary intention plainly appears from the body of the instrument, and the mere description of him as an agent, whether as part of the signature or in the body of the contract, is not sufficient indication of a contrary intention to discharge him from the liability incurred by reason of the unqualified signature". (See *Hough* v. *Manzanos* [1879] 4 Ex. D. 104; *Hutcheson* v.

Eaton [1884] 13 Q.B.D. 861), referred to in Pollock and Mulla Indian Contract and Specific Relief Acts 9th edition p. 779).

For all the above reasons the first ground of appeal that "the trial Court erred in law and fact in holding that the appellant was not an agent but a party to the said contract and personally liable thereto", should fail. It remains now to consider the second ground of appeal, namely "that the trial Court was wrong in holding that the said bill of exchange viz. cheque, was not issued subject to a condition precedent".

The learned President after dealing exhaustively with the facts of the case and the circumstances under which this personal cheque was issued by the appellant, came to the following conclusion:

> "I have carefully considered the facts before me and had occasion to see the defendant and Mr. Charalambous testify before me. I find as a fact that the cheque in question was issued by the defendant to the plaintiffs without any qualification intended to compensate them for the default of defendant to fulfil his part of the agreement, exhibit 2, by not taking delivery of the merchandise prepared by plaintiffs. The remedy of the defendant for the dishonour of a cheque for an equivalent amount by Sanotrade lay elsewhere and he can sue Sanotrade. Nor were in my judgment the rights of the defendant under exhibit 1 settled by the agreement of the parties reached towards the end of January 1978; indeed no such contention is put forward either in the defence or in the counterclaim. The sum of £1,700 was paid in part performance of the obligations of the defendant under exhibit 13 for a lawful and valid consideration and cannot be recovered as money had and received. The non delivery of the goods is solely due to the default of the defendant for which he cannot blame the plaintiffs. We cannot divorce the payment of this amount from the agreement (exh. 13) under the terms of which it was paid. And no averment is made by the defendant that plaintiffs are guilty of any breach of the terms of the relevant agreement. On the contrary he seeks to be recompensed from the plaintiff, on a broad view of his counterclaim, as an agent. The claim therefore collapses with our finding that defendant was not, at least

for the purposes of the agreement (ex. 13), the agent of the plaintiffs but personally a contracting party. Although it is possible in law for a person to be the agent of more that one principal, with the consent of both principals, the defendant was not in this case the agent of either but a contracting party himself vis-a-vis both. (see *North and South Trust Co.* v. *Berkerly* [1971] 1 All E.R. 980).

We agree fully with the aforesaid approach of the learned President and we consider it unnecessary to enter into a lengthy analysis of either the factual side or the legal aspect relevant to the issues raised by this ground of appeal, as both have been clearly dealt with by him and we agree and adopt fully his reasoning.

For all the above reasons this appeal is dismissed with costs.

Appeal dismissed with costs.