[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

MEHMET DERVISH,

Appellant-Defendant,

v.

MELEK SAMI,

Respondent-Plaintiff.

(*Civil Appeal No.* 4416).

Civil Wrongs—Independent contractor—As a rule the employer is not liable for the negligent acts of an independent contractor—Exceptions to that rule in the instances where the employer owes a duty to a third person, not to be negligent, in which case he cannot escape liability of seeing that duty performed by delegating it to an independent contractor, or where the employer authorised or ratified the negligent acts of the independent contractor—The Civil Wrongs Law, Cap. 148, *sections* 12 *and* 51*—Should be interpreted and applied in accordance with common law precedents.*

Section 12 of the Civil Wrongs Law, Cap. 148 reads as follows :—

" 12 (1) For the purposes of this Law—

(*a*) any person who shall join or aid in, authorise, counsel, command, procure or ratify any act done or to be done by any other person shall be liable for such act ;

(*b*) any person who shall employ an agent, not being his servant, to do any act or class of acts on his behalf shall be liable for anything done by such agent in the performance of, and for the manner in which such agent does, such act or class of acts ;

(*c*) any person who shall enter into any contract with any other person, not being his servant or agent, to do any act on his behalf shall not be liable for any civil wrong arising during the doing of such act :

Provided that the provisions of this paragraph of this sub-section shall not apply if—

(i) such person was negligent in the selection of such contractor, or

(ii) such person interfered with the work of the contractor in such a way as to cause the injury or damage, or

(iii) such person authorised or ratified the act causing injury or damage, or

(iv) the thing for the doing of which the contract was entered into was unlawful.

(2) Nothing in this section shall affect the liability of any person for any act committed by such person."

The parties are the owners of adjacent shops in a town street. The defendant decided to pull down his shop and havea new one built and for this purpose he called in a contractor who undertook the whole work under a contract for an agreed sum. The respondent-plaintiff complained that appellant-defendant's workmen in carrying out the work failed to take the necessary precautions and worked so negligently and unskilfully as to damage the roof of his shop and claimed damages. The District Court gave judgment for the plaintiff. On appeal by the defendant the High Court allowing the appeal, ZEKIA and JOSEPHIDES, JJ., *dissenting*.

Held, per VASSILIADES, J., (WILSON, P. *concurring*) :

(1) The evidence is to the effect that the work was done by an independent contractor. And in this respect it stands uncontradicted and unchallenged.

(2) (*a*). The learned trial Judge says in his judgment that the defendant " entered into an agreement with a contractor to do all the construction in accordance with the plans and specifications for a fixed sum ". But he takes the view expressed in the last paragraph of his judgment " that the contractor is the agent and servant of the employer *i.e.* the landowner and there is nothing to discharge the defendant from liability of the acts of his contractor."

Upon this view of the law, the learned trial Judge found £17 damage to plaintiff's property, caused by the contractor, and gave judgment against the defendant for that amount with costs.

(*b*) But the liability of the defendant for his contractor's acts (and for those of the latter's workmen) is not a matter of pure law. It depends on the contract ; and particularly on whether the contract establishes in the case in hand, the alleged relationship of master and servant or that of principal and

agent, between the defendant and his contractor, through which relationship liability may attach to the master or principal for the servant's or agent's acts.

(3) As already pointed out there is no evidence in this case to establish such a relationship. The evidence is to the opposite effect. And the appellant-defendant is therefore, entitled to succeed in the appeal. On the evidence on record, plaintiff's action must fail and be dismissed with costs in the District Court and in the appeal.

Held, per ZEKIA, J., *dissenting :*

(1) I hold a different view in the matter. From the evidence it is clear that the person employed in the building operations of the shop of the appellant was an independent contractor. The trial judge considered him, however, an agent and servant of the employer and found the defendant liable for the acts of his contractor. Although the statement of claim, in the way it was drafted leaves a lot to be desired yet the liability of the appellant by employing a contractor has been pleaded and was a point in issue before the trial Court.

(2) The appellant in this case, as a proprietor of an adjoining immovable property, owed a duty not to be negligent and not to cause damage to the respondent, the owner of the adjoining shop, by failing to repair or maintain his own shop. The appellant also is liable for the acts of his independent contractor which caused the injury or damage when such acts are either authorised or ratified by the employer (see sections 51 and 12 of the Civil Wrongs Law).

(3) The independent contractor in this case, on account of the nature of the work undertaken, interfered with the roof of the respondent's shop with the result that rain water leaked into the shop of the plaintiff and caused some damage to the furniture stored therein. Some damage appears to have also been caused to the wall separating the two shops.

(4) The work undertaken by the contractor was to be executed according to an approved plan ; in other words it was within the knowledge and with the authority of the owner that the roof of the plaintiff's shop was to be interfered with in one way or the other owing to the new construction.

(5) The nature of the new work undertaken by the contractor was known and also authorized by the appellant. In the circumstances it could not be taken to be otherwise. I further

consider that the omission by the contractor to repair the damaged roof of the respondent was also ratified by his employer because after the completion of the work the appellant, the employer, accepted delivery of the new shop in a faulty and incomplete condition.

(6) I am of the opinion, therefore, that the appellant could be held liable for the damage by the acts or omissions of his independent contractor and that, therefore, the appeal ought to have been dismissed.

Held, per JOSEPHIDES, J., in his dissenting judgment :

(1) This is the case of two owners of adjoining properties and, on the assumption that the contractor was an independent contractor, the employer, that is to say, the appellant in this case, would still be liable for the damage caused by the contractor to the respondent's premises as he (the appellant) owed a duty to his neighbour not to cause any damage to him.

(2) In my judgment the appellant cannot escape from the responsibility of seeing that duty performed by delegating it to an independent contractor. In the present circumstances the principle enunciated in the speech of Lord Blackburn in *Dalton* v. *Angus* (1881), 6 App. Cas. 740 at p. 829, is applicable. I am of the view that sections 51 and 12 of our Civil Wrongs Law, Cap. 148, with regard to negligence, have to be interpreted and applied in accordance with common law precedents (Cf. *Vassiliou* v. *Vassiliou* (1939) 16 C.L.R. 69 ; *The Universal Advertising and Publishing Agency* v. *Vouros* (1952) 19 C.L.R. 87 ; *The Queen* v. *Erodotou* (1952) 19 C.L.R. 144 ; *Markou* v. *Michael* (1952) 19 C.L.R. 282 ; *The Electricity Authority of Cyprus* v. *Kipparis* (1959) 24 C.L.R. 121).

I would dismiss the appeal.

Appeal allowed with costs.

Cases referred to :

Dalton v. *Angus* (1881), 6 App. Cas, 740, at p. 829. *Per* Lord Blackburn ;

Vassiliou v. *Vassiliou* (1939) 16 C.L.R. 69 ;

The Universal Advertising and Publishing Agency v. *Vouros* (1952) 19 C.L.R. 87 ;

The Queen v. *Erodotou* (1952) 19 C.L.R. 144 ;

The Electricity Authority of Cyprus v. *Kipparis* (1959) 24 C.L.R. 121.

1963
March 14
—
MEHMET DERVISH
v.
MELEK SAMI

Appeal.

Appeal against the judgment of the District Court of Larnaca (Ekrem D.J.) dated the 5.12.62 (Action No. 654/62) whereby judgment was given for plaintiff in the sum of £17 for damages caused to his property by the defendant.

H. C. Yilmazoglou for the appellant.

S. Demetriou for the respondent.

The facts sufficiently appear in the judgments delivered by VASSILIADES and ZEKIA, JJ.

WILSON, P. : There will be more than one judgment in this case and I agree in the result of my brother Mr. Justice Vassiliades. The appeal is, therefore, decided accordingly.

VASSILIADES, J. : This is an appeal against the judgment of the District Court of Larnaca in an action for damage to property, alleged to have been caused by the negligence of defendant's " servants and/or his agents ".

The claim was contested on the ground that the damage, if any, was caused by an independent contractor for whose acts the defendant was not liable.

The parties are the owners of adjacent property : two old shops in a town street, when defendant bought his property about two years ago. He (the defendant) then decided to pull down his shop and have a new one built in its place. He called in a contractor who undertook the whole work under a contract for an agreed sum.

The plaintiff complains that in carrying out this work, defendant's workmen failed to take the necessary precautions and worked so " negligently and unskilfully " as to damage the roof of his shop for which he claimed £30 damages.

It is clear that the main issues raised by the parties' pleadings are two : (*a*) the legal relationship between the defendant and the workmen who caused the alleged damage ; and (*b*) the extent of the damage.

The evidence on the first issue is that of the defendant and his contractor. It is to the effect that the work was done by an independent contractor. And in this respect it stands uncontradicted and unchallenged.

The learned trial Judge says in his judgment that the defendant " entered into an agreement with a contractor

to do all the construction in accordance with the plans and specifications for a fixed sum ". But he takes the view expressed in the last paragraph of his judgment " that the contractor is the agent and servant of the employer *i.e.* the land-owner and there is nothing to discharge the defendant from liability of the acts of his contractor ".

Upon this view of the law, the learned trial Judge found £17 damage to plaintiff's property, caused by the contractor, and gave judgment against the defendant for that amount, with costs.

But the liability of the defendant for his contractor's acts (and for those of the latter's workmen) is not a matter of pure law. It depends on the contract ; and particularly on whether the contract establishes in the case in hand, the alleged relationship of master and servant or that of principal and agent, between the defendant and his contractor, through which (relationship) liability may attach to the master or principal for the servant's or agent's acts.

As already pointed out there is no evidence in this case to establish such a relationship. The evidence is to the opposite effect. And the appellant-defendant is, therefore, entitled to succeed in the appeal. On the evidence on record, plaintiff's action must fail and be dismissed with costs in the District Court and in the appeal.

ZEKIA, J. : I hold a different view in the matter. In the statement of claim and in the particulars of negligence it was stated that damage was caused by the defendant (appellant) and/or by his servant and/or agent. The word " agent " in my view is wide enough to cover an independent contractor.

In the statement of defence it was pleaded that the appellant employed an independent contractor. From the evidence it is clear that the person employed in the building operations of the shop of the appellant was an independent contractor. The trial Judge considered him, however, an agent and servant of the employer and found the defendant liable for the acts of his contractor. Although the statement of claim, in the way it was drafted, leaves a lot to be desired yet the liability of the appellant by employing a contractor has been pleaded and was a point in issue before the trial Court.

The appellant in this case, as a proprietor of an adjoining immovable property, owed a duty not to be negligent and not to cause damage to the respondent, the owner of

the adjoining shop, by failing to repair or maintain his own shop. The appellant also is liable for the acts of his independent contractor which caused the injury or damage when such acts are either authorised or ratified by the employer (see sections 51 and 12 of the Civil Wrongs Law).

The independent contractor in this case, on account of the nature of the work undertaken, interfered with the roof of the respondent's shop with the result that rain water leaked into the shop of the plaintiff and caused some damage to the furniture stored therein. Some damage appears to have also been caused to the wall separating the two shops.

The work undertaken by the contractor was to be executed, according to an approved plan ; in other words it was within the knowledge and with the authority of the owner that the roof of the plaintiff's shop was to be interfered with in one way or the other owing to the new construction.

The nature of the new work undertaken by the contractor was known and also authorized by the appellant. In the circumstances it could not be taken to be otherwise. I further consider that the omission by the contractor to repair the damaged roof of the respondent was also ratified by his employer because after the completion of the work the appellant, the employer, accepted delivery of the new shop in a faulty and incomplete condition.

I am of the opinion, therefore, that the appellant could be held liable for the damage by the acts or omissions of his independent contractor and that, therefore, the appeal ought to have been dismissed.

JOSEPHIDES, J. : I am of the same opinion. This is the case of two owners of adjoining properties and, on the assumption that the contractor was an independent contractor, the employer, that is to say, the appellant in this case, would still be liable for the damage caused by the contractor to the respondent's premises as he (the appellant) owed a duty to his neighbour not to cause any damage to him.

In my judgment the appellant cannot escape from the responsibility of seeing that duty performed by delegating it to an independent contractor. In the present circumstances the principle enunciated in the speech of Lord

Blackburn in *Dalton* v. *Angus* (1881), 6 App. Cas. 740 at page 829, is applicable. I am of the view that sections 51 and 12 of our Civil Wrongs Law, Cap. 148, with regard to negligence, have to be interpreted and applied in accordance with common law precedents (Cf. *Vassiliou* v. *Vassiliou* (1939) 16 C.L.R., 69 ; *The Universal Advertising and Publishing Agency* v. *Vouros* (1952) 19 C.L.R., 87 ; *The Queen* v. *Erodotou* (1952) 19 C.L.R., 144 ; *Markou* v. *Michael* (1952) 19 C.L.R., 282 ; and *The Electricity Authority of Cyprus* v. *Kipparis* (1959) 24 C.L.R., 121).

I would dismiss the appeal.

Appeal allowed with costs.