

1967
Oct. 10, 11

[VASSILIADES, P., JOSEPHIDES, LOIZOU, JJ.]

THEOFYLACTOS
MAVROMMATIS
AND 2 OTHERS
v.
CYPRUS HOTELS
Co. LTD.

THEOFYLACTOS MAVROMMATIS AND 2 OTHERS,
Appellants-Defendants,
v.
CYPRUS HOTELS CO. LTD.,
Respondents-Plaintiffs.

(Civil Appeal No. 4660).

Injunction—Breach—Disobeying interim order—Appeal against the said order—Whether party in breach entitled to be heard by the Court of Appeal on the merits of the appeal before complying with the order appealed against—Enforcing obedience to Court Order—Contempt of Court—Aiding and abetting—Sanctions.

Appeal—Appeal against interlocutory injunction—No right to be heard on the merits of appeal before complying with the said order (or injunction)—See above.

Contempt of Court—Disobeying Court order—See above under Injunctions; Appeal.

Practice—Injunctions—Disobeying interim order of the Court—See above under Injunctions; Appeal.

This is an appeal against an interlocutory injunction directed against the appellants and made by the District Court of Limassol on the 12th September, 1967, which injunction was made absolute on the 20th September, 1967. From the Bench it was intimated to counsel on behalf of the appellants by the Honourable President of the Supreme Court that the intention of the Court was to see that the interim order in question is complied with before it deals with the appeal against it; and to hear counsel for the appellants on the question whether any litigant who acts contrary to the order or in violation of its terms, should be committed for contempt, until the said order (or injunction) is complied with; and that the Court was not prepared to listen to any argument on the merits of the appeal, before they are assured that the said order of the District Court of Limassol appealed against has been complied with.

The facts sufficiently appear in the minutes of the proceedings on appeal which follow.

Appeal:

Appeal against an interim order made by the District Court of Limassol (Malachos P.D.C. & Loris D.J.) on the 12th September, 1967, (made absolute on the 20th September, 1967) whereby the defendants were ordered *inter alia* not to trespass with the hotel known as "Mira Mare".

Chr. Demetriades with H. Maounis and St. G. McBride
for the appellants.

A. Triantafyllides, for the respondents.

Mr. Demetriades : With the Court's leave, *Mr. McBride*. will open the appeal.

COURT : Yes, *Mr. McBride*.

Mr. McBride : Your, Honours, this is an appeal against the Order of the District Court of Limassol which was made on the 12th September, 1967, and which was made absolute on the 20th September.

VASSILIADES, P. : This being the 10th October, *Mr. McBride*, has the Order been complied with?

Mr. McBride : Your Honour, it is the contention of the defendants that the order has not been disobeyed.

VASSILIADES, P. : Has it been obeyed? Have your clients complied with the order? We would like to hear you on the question whether your clients can be heard in this appeal, if they have not complied with the order. Is it your contention that the order has been complied with? Or, is it that your clients can be heard in this their appeal against the order, even if they have not complied and are, therefore, found in contempt? Almost a month having elapsed since the making of the interim order on September 12, we would like to hear you on this point first.

Mr. McBride : Your Honour, you rather take me by surprise.

VASSILIADES, P. : We think you had ample time between the 12th September, and today to consider the position, *Mr. McBride*.

Mr. McBride : Your Honours, there was an Order made in the following terms : That the three defendants would not *illegally* trespass on to the said hotel and not *illegally* manage

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the hotel. I can state that all three respondents are not trespassing on the hotel, though I believe, that the first appellant lives in the hotel, and in fact he has been living in the hotel, or an apartment there, for some few years. He is not managing the hotel, Your Honour, neither are the other two defendants.

VASSILIADES, P. : Before you go into the details, Mr. McBride, as to the reasons why you take one or another view, I would like to have your answer on the question put to you. Is it the position that your clients have complied with the order made on the 12th and affirmed on the 20th September? Or, is it the position that they have not complied with the order?

Mr. McBride : They have complied with the order made on the 20th. These three defendants have complied.

VASSILIADES, P. : In other words, your clients are no longer interfering in any way with the hotel in question. Is that the position?

Mr. McBride : That is so Your Honour.

VASSILIADES, P. : Who is now in control of the hotel described in the order?

Mr. McBride : The Plaza Hotel Enterprises Ltd.

VASSILIADES, P. : In view of the fact that your clients in the appeal, have presented themselves, according to the record, as having acted in this case on behalf of this company, The Plaza Hotel Enterprises Ltd., is it the position that the Company having sent your clients to act as they did on the 11th September and having kept them there until the 20th September, acting in the way they did until then, is it the position that the Plaza company have now altered their arrangements and have appointed other persons to continue acting as your clients did between the 11th and 20th in order to avoid the consequences of disobeying the order, but in fact continue doing so?

Mr. McBride : Your Honours, the order which was given against the first three defendants was given to stop them *illegally* trespassing and *illegally* interfering.

VASSILIADES, P. : Apparently the use of the word 'illegally' in the application and, subsequently, in the order has scandalized you right from the beginning, regardless of whether it was, or was not, required there. The way I read it, is that it was intended to add colour to the word 'trespass'; it can make

no difference to the substance. So, it may perhaps help you if you forget all about it. The complaint is interference— physical interference—with the management of the hotel and trespass. That is the complaint. Don't let the word 'illegally' worry you.

Mr. McBride : I don't quite follow which question you want me to answer.

VASSILIADES, P. : The question whether the Plaza Company, being connected with your clients in the way your clients have stated on oath, they (the Plaza company) have replaced your clients (the three defendants) by other employees or agents for the purpose of getting round the interim order? For the purpose of continuing to do precisely what the interim order was intended to stop them doing? Is this the position?

Mr. McBride : The three appellants in this case, or rather the first appellant, in fact ceased being the Managing Director of the Plaza Company before the order had been made absolute. He was replaced before.

VASSILIADES, P. : How long before?

Mr. McBride : The day before; the 19th September.

VASSILIADES, P. : So on the 19th September the Plaza Company have replaced their Managing Director who had acted in the way he did for them between the 11th and the 19th September, and then put in his stead somebody else, who happens to be his wife. Is that the position?

Mr. McBride : Yes, Your Honour.

VASSILIADES, P. : In that case are not the Plaza Company accomplices, or, if you prefer it, aiding and abetting in the violation of this order? As the matter is of importance in these proceedings, and as apparently you were not ready for it, we will take a recess to enable counsel to consult on the point. But let us make it quite clear : it is our intention to see that the order made provisionally on the 12th, and made absolute on the 20th, is complied with before we deal with the appeal against it. It is also our intention to hear you on the question whether any litigant who acts contrary to the order or in violation of its terms, should be committed for contempt, until the order is complied with. We are not prepared to listen to any argument in this case, before we are assured that the order of the Court has been complied with.

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Court orders in civil suits, declare and enforce the parties' legal rights. If we allow people to treat such orders with contempt and violate them as it may fit their own interests, the very foundation of law and order is undermined. It is, we think, our duty to see that this does not happen in this country. We will give you half-an-hour to consider the matter; and we shall then hear you on it, before we decide what to do.

After the half-hour adjournment :

Mr. Demetriades : Your Honours, we have considered the point you have raised; and before saying anything else, I wish to assure Your Honours that it was never the intention either of the original counsel who appeared, or the present counsel of the appellants, or, of the appellants themselves, to wilfully disobey the order of the Court.

VASSILIADES, P. : We are very glad to hear this assurance, Mr. Demetriades; and we are glad to accept it. We could hardly imagine that counsel of the experience and standing of Mr. Houry would ever think of acting in disregard, let alone in disobedience, of a Court order.

Mr. Demetriades : Your Honours, the position was that the legal situation as envisaged by the parties at the time, was that legally there was no possible disobedience to the orders of the Court. This was not arbitrarily considered; it was considered from the fact that the Court below when making absolute the interim order, the only finding which it made at the time was that certain persons, *a, b, c*, not as Plaza, they have forcibly entered and took control of the hotel. Really the decision of the Court below is mainly centred around this forcible entry, which, even if we take it that these three people went on behalf of the Plaza Company, it does not mean that the Plaza authorised forcible entry. The position was that the Plaza Company, not being a party to these proceedings, it was fully entitled to change the management which in a way was involved in this unfortunate incident.

VASSILIADES, P. : This is the second leg of the question. Are the Plaza Company and their officers—Directors, Managers, clerks or other servants—acting in the way they did, are they aiding and abetting wilfully third persons to act in contempt of Court? If they are, the position as we understand it at this stage, is that they identify themselves with the contempt; they put themselves in contempt.

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Mr. Demetriades: As I told Your Honours, we have seriously taken into consideration your views as expressed on this particular point. But the reason why the Plaza Company thought all along that they were not acting in contravention of the interim order is based on a certain passage from Annual Practice, 1958, Order 50, Rule 6, para. 1208, "Breach of Injunction". (reads)

"A person not a servant or agent of the party against whom an injunction has been obtained may be committed for contempt in assisting such party to disobey it (*Seaward v. Paterson*, [1897] 1 Ch. 545); but where an injunction has been obtained against an individual, acts by a company of which he is a director do not amount to a breach for which he is punishable unless his actual complicity is shown....."

JOSEPHIDES, J. : What is the case given in support of this passage?

Mr. Demetriades: There is no reference to a particular case. It goes on to a further comment; there are 4-6 references, but it seems that this is not from any particular case—it is the observation of the Editors themselves. In addition to that, Your Honour, there is provision in our Constitution enabling this Court to punish for contempt, Article 162, and also provision in the Courts of Justice Law enabling the Courts to enforce obedience to their orders, section 42. In English Common Law.....

VASSILIADES, P. : Again here, Mr. Demetriades, I hate to interrupt you, but I am only trying to keep you within the limits of the question now before us. We are here concerned with the question whether one of the remedies, or rather one of the sanctions which this Court can use in enforcing obedience to a Court-order, is to refuse to hear a party who acts in disobedience to such order? And, before hearing his appeal against the order, to call upon such party to show cause why he should not be committed to prison for contempt until he complies with the order. This is really the question we are considering at this stage. Because, after all, a court-order in an action, declares a party's legal rights; and attachment is the most effective way of bringing the other party down to earth, when he appears to think that he can act in violation of such rights, and in disobedience of an order made to enforce them.

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Mr. Demetriades : I fully agree—the only thing, it seems, is that you are giving us the opportunity to say what, in our view, is that the Court may do to enforce obedience.

VASSILIADES, P. : If the District Court, on the 16th September, when all the parties were before the Court, put the question to them whether the interim order made *ex-parte* on the 12th September had been complied with; and refused to listen to the party in disobedience until he complied with the order, or until he was punished for disobedience, probably a lot of what has happened between the 16th September, and today, would not have happened. This is why today we took the point as soon as we had the parties before us. And we mean to give all concerned, every reasonable opportunity to comply with this order; and then come to us, or to the Court of competent jurisdiction to pursue their rights.

Mr. Demetriades : Your Honours, I wanted to say a few words about the rights of this Court to punish somebody for disobeying an order, but I don't think it is necessary.

JOSEPHIDES, J. : We have not reached that stage yet.

Mr Demetriades : I am not going into these matters now. Considering what was said today by Your Honours, we have in this short interval—the three counsel—consulted with one of our clients. Mr. Houry unfortunately had to take another case in another Court. We have decided to request Your Honours to grant us two days adjournment so that we may reconsider the whole matter in the light of what was said today by Your Honours' Court.

VASSILIADES, P. : Well, Mr. Demetriades, after consultation with my brother Judges on the Bench, I can tell you that, fully appreciating the stand which you are now taking, together with your colleagues, in advising your clients, we wish to give you every possible facility. And to give the parties concerned, a further opportunity to act on their advocates' advice. Subject to what the other side may have to say, and without prejudice to any party's rights, we would favourably consider your application for a short adjournment. But there is a difficulty in giving you the 48 hours you have asked. On Thursday morning we have a list to take which cannot be pushed aside. Subject to what Mr. Triantafyllides may have to say on the point, we could give you until tomorrow noon. We can take this case tomorrow at 12 noon, or even 12.30 to hear the developments in the position.

Mr. Triantafyllides : I wish to facilitate the other side; and I leave the matter to Court.

COURT : Adjourned till to-morrow, October 11th, at 12 noon.
Costs reserved.

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Appearances as on the 10th October, 1967.

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12.30 noon.

Mr. Demetriades : We have pleasure, Your Honours, in being able to inform the Court that at 9.45 today, our clients delivered the physical possession of the hotel and the business to the respondents in this appeal. Of course, it was not possible to complete the checking of the stores, the cash etc., but this has already started between the two sides.

VASSILIADES, P. : I suppose that this was done to comply with the Order of the District Court, and without any prejudice whatever to the parties' respective rights.

Mr. Demetriades : Definitely, Your Honours. In this respect a protocol has been signed by the advocates of the two sides; it was in handwriting with signatures and we prepared a copy for Your Honours' information.

VASSILIADES, P. : Thank you very much—we will have it on the record if you think it necessary.

Mr. Demetriades : I wanted also to mention that this delivery of control today, was the result of a letter which we addressed yesterday to the other side, in which we made clear our whole position—(Letter from appellants' advocates to respondents' advocate)—. We think that it is appropriate for me to read to the Court the contents :

(Letter read).

To this letter we received a cable—I don't have a copy—to the effect that the other side would take delivery at 9 o'clock this morning; they reserve their rights, and will reply in detail. As regards control we are about to discuss the details out of Court. So that is what we achieved in the peculiar circumstances of this case.

At the same time I wish to mention that after these developments we are withdrawing this appeal.

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LOIZOU, J. : You are referring to Appeal No. 4660?

Mr. Demetriades : Yes, Your Honour.

Mr. Triantafyllides : I confirm that at 9.45 a.m. today, we have taken possession of the Miramare Hotel, and in the meantime the checking is going on to ascertain what the actual position is. We are, of course, fully reserving our rights regarding damage to goodwill or the effects of our clients. I would, moreover, like Your Honours, to say this : That as a lawyer practising in Cyprus, I noted with great satisfaction that law and order has asserted its authority; and that the rule of law was re-established, because it was something which considerably disturbed me, to see that for a month we were deprived of the hotel, in such circumstances.

Regarding our appeal, No. 4661, we have agreed with the other side that both these appeals will be withdrawn, with costs in our favour for the first appeal and with costs in cause for the second appeal.

JOSEPHIDES, J. : You withdraw appeal 4661?

Mr. Triantafyllides : Yes, Your Honour. The arrangement for costs in the first appeal is for costs in our favour and in the second, for costs in cause.

VASSILIADES, P. : The cause in which the appeal was made?

Mr. Triantafyllides : That is so.

Mr. Demetriades : It means action No. 1921/67.

VASSILIADES, P. : It is very gratifying for this Court to see once again, how valuable services counsel, as officers of the Court, can give to the Court in administering justice; and also what valuable services counsel can give to their clients.

This is a case where all counsel involved have undoubtedly co-operated in the interest of all concerned; and have reached, as a result, an arrangement which is definitely the best in the circumstances; an arrangement which serves the best interest of their respective clients. A litigation should never be allowed to move on the feelings of the parties; it should only be carried out for the purposes of ascertaining their legal rights; and when these are ascertained, they must be respected by all.

The position as far as the parties are concerned, in these two appeals is : Appeal No. 4660 is abandoned in the

circumstances stated by Mr. Demetriades, and is, therefore, to stand dismissed with costs for the respondents.

Appeal No. 4661 is likewise abandoned and shall stand dismissed with costs in the cause between the parties in action No. 1921/67, in the District Court of Limassol.

We do not think that we need say anything more in this case which will now take its course before the competent Court where the two sides will pursue their respective rights. But I think I should, perhaps, say a few words to the statement made by Mr. Triantafyllides regarding his anxiety from certain developments in this case between the obtaining of the interim order and today.

It is true that such developments could cause anxiety to law-abiding citizens; but we must bear in mind that this kind of case is, fortunately, very rare in Cyprus. And, if I may use the expression, the Court of Limassol was taken by surprise. This explains why they were rather hesitant in going straight for the bull's horns, instead of catching the bull by the tail. Fortunately the source of trouble and danger is now under control.

Well, we only have to thank counsel again, and congratulate them and their respective clients on their achievement. We wish them the same measure of success in dealing with the rest of this complicated and difficult case until the end; not only the end of the litigation, but also the end of the whole period of the contract.

The result of the two appeals is as stated earlier. There will be orders accordingly.

*Appeal No. 4660 dismissed
with costs for the Respondents.
Appeal No. 4661 dismissed
with costs in the cause between
parties in Action No. 1921/67
of the District Court of
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