

1975
April 24

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

ELENITSA PAVLOU STEFANIDOU,

Appellant-Defendant,

ELENITSA
PAVLOU
STEFANIDOU

v.

GEORGHIOS LOIZOU PIRGOTI,

Respondent-Plaintiff.

v.
GEORGHIOS
LOIZOU
PIRGOTI

(Civil Appeal No. 5312).

Jurisdiction—Territorial jurisdiction—Cause of action—Contract—Claim for services rendered—Nothing on record to show where contract was concluded—No place of payment specified in the contract either expressly or by implication—Creditor residing and having his place of business within Nicosia District—Debtor bound, in the absence of any agreement to the contrary, to seek his creditor at his place of residence or at his place of business—Objection as to jurisdiction of the District Court of Nicosia fails—Section 21 of the Courts of Justice Law, 1960 (Law 14 of 1960)—Theofanous v. Georghiou (1969) 1 C.L.R. 203 at p. 205 followed.

The respondent claimed C£302.500 mils as remuneration for services rendered by him to the appellant in the form of the preparation of the plans of a house to be built by the latter.

The appellant applied to set aside the writ of summons on the ground that the District Court of Nicosia lacked jurisdiction, inasmuch as the cause of action, if any, arose within the area of the territorial jurisdiction of the District Court of Larnaca. The Court below dismissed her application. Hence the present appeal.

It was submitted on behalf of the appellant that essentially the complaint of the respondent was that the appellant decided not to build the house for which he had prepared the plans and that, therefore, the cause of action, if any, arose in Larnaca District where the house was going to be built.

There was nothing on record to show where the contract was concluded and no agreement express or

implied, specifying a place of payment outside Nicosia District, has been alleged to exist.

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5 *Held*, in applying the provisions of s. 21 of the Courts of Justice Law, 1960 (Law 14/60), we are bound to hold that the cause of action, if any, has arisen in Nicosia District, as a debtor is bound, in the absence of any agreement to the contrary, to seek his creditor at his place of residence or at his place of business and the respondent resides and has his place of business within the limits of Nicosia District. (See *Theofanous v. Georghiou* (1969) 1 C.L.R. 203, at p. 205).

Appeal dismissed.

15 *Per curiam*: The proper remedy, in view of the appellant's contention that the action had been filed in the wrong District Court, was not to set aside the writ in the action, but to apply that the proceedings therein be stayed, in accordance with rule 10 of Order 33, of the Civil Procedure Rules.

Cases referred to:

20 *Theofanous v. Georghiou* (1969) 1 C.L.R. 203, at p. 205.

Appeal.

25 Appeal by defendant against the judgment of the District Court of Nicosia (Pierides, Ag. D.J.) dated the 30th April, 1974 (Action No. 3181/72) dismissing her application for setting aside the writ of summons in an action brought against her by the plaintiff for the sum of £302.500 mils as remuneration for services rendered.

A. Demetriou, for the appellant.

A. Emilianides, for the respondent.

30 The judgment of the Court was delivered by:-

35 TRIANTAFYLIDIS, P.: In this case the appellant—(who is the defendant in action No. 3181/72 before the District Court of Nicosia)—appeals against a decision of a judge of such District Court by means of which there was dismissed an application by her for the setting aside of the writ of summons in the said action on the ground that the District Court of Nicosia lacked jurisdiction, inasmuch as the cause of action, if any, arose within

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the area of the territorial jurisdiction of the District Court of Larnaca.

The claim of the plaintiff in the action—(who is the respondent in the present appeal)—is for an amount of C£302.500 mils as remuneration for services rendered by the respondent to the appellant in the form of the preparation by him of the plans of a house to be built by her. 5

The appellant denies that she ever instructed the respondent to prepare such plans, but we are not concerned in this appeal with the merits of the action. 10

Counsel for the appellant has submitted that, essentially, the complaint of the respondent is that the appellant decided not to build the house for which he had prepared the plans and that, therefore, the cause of action, if any, arose in Larnaca District where the house was going to be built. 15

We cannot uphold the above submission: This is a case in which it is claimed by the respondent that a sum of money is due, to him under a contract; as there is nothing on record to show where the contract was concluded and as no agreement, express or implied, specifying a place of payment outside Nicosia District, has been alleged to exist, it follows, in accordance with what has been stated in *Theofanous v. Georghiou* (1969) 1 C.L.R. 203, at p. 205, that in applying the provisions of section 21 of the Courts of Justice Law, 1960 (Law 14/60), we are bound to hold that the cause of action, if any, has arisen in Nicosia District, as a debtor is bound, in the absence of any agreement to the contrary, to seek his creditor at his place of residence or at his place of business, and the respondent resides and has his place of business within the limits of Nicosia District (see, too, section 49 of our Contract Law, Cap. 149; Dutt on the Indian Contract Act, 4th ed., p. 428—section 49 of the said Indian Act being the same as section 49 of Cap. 149; as well as Chitty on Contracts, 23rd ed., vol. 1, p. 552, paragraph 1166). 20 25 30 35

In the light of the foregoing we cannot uphold the contention that the Nicosia District Court did not possess 40

territorial jurisdiction to deal with the action concerned and this appeal is dismissed accordingly with costs.

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5 Before concluding we would like to observe that it seems to us that the proper remedy, in case the appellant's view that the action had been filed in the wrong District Court was correct, was not to set aside the writ in the action, but to apply that the proceedings therein be stayed, in accordance with rule 10 of Order 33, of the Civil Procedure Rules.

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Appeal dismissed with costs.