1982 December 22

[L. LOIZOU, DEMETRIADES, PIKIS, JJ.]

TALYON LIMITED,

Appellants-Defendants,

v.

PANAYIOTIS SOTERIOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 6265).

Contract—Sale of goods—Passing of property of the goods—Principles applicable—Vendors received all they bargained for and did all in their power to facilitate buyer exercise dominion over the goods by consigning them in his favour—Property of the goods passed to the buyer—Sections 19 *and* 20 *of the Sale of Goods Law, Cap.* 267.

Costs—Discretion of the Court—Outcome of the case though the foremost consideration that bears with the exercise of the Court's discretion, not the sole consideration.

In mid 1977 the respondent agreed to buy a second-hand car from an English Company, ("the vendors"), which consigned the car to the respondent and furnished him with the relevant documents to enable him to claim a commonwealth preference rates for its importation. As the car was stranded en route at the Greek port of Patra because of the inability of the vendors to meet the cost of transportation of the vehicle to its destination the vendors asked the appellants to assist them for the discharge of their obligations. The appellants through their manager Mr. Mallourides, lent their assistance not only for the purpose of facilitating the vendors but also because of their interest in the safe transportation of a tractor they had themselves purchased from the vendors.

Upon arrival of the vehicles to Cyprus, the appellants omitted or refused to pay the freight amounting to £258.- and need arose for their storage at the port. The respondent, asserting owner-

ship over the car purchased from the vendors, took steps to secure their release paying, for the purpose, the freight for the transportation of both vehicles as the transporters demanded, plus £20.- storage dues.

The respondent instituted the present action, suing jointly appellants and their manager, Andreas Mallourides, seeking the recovery of:

(a) £258.- freight which he paid for the transportation of the two vehicles.

(b) £150.- advanced to the appellants through Mr. Mallourides.

(c) £20.- storage fees.

The appellants and Mr. Mallourides denied liability and they raised a counterclaim for £1,650.- a sum allegedly owing to appellants consisting of:

(a) £850.- expenses incurred by appellants for the release of the car and safe transportation to the Piraeus and

(b) £800.- owing to appellants as consignees of the car.

The trial Court found for the respondent and gave judgment against the appellants for £299.140 mils. The claim against Andreas Mallourides was dismissed for the reason that his participation in the transportation was found to have been in a representative and not personal capacity. The counterclaim was also dismissed as unfounded. Regarding costs the trial Court directed that each side should bear its own costs.

Upon appeal the appellants along with disputing the primary findings of the trial Court as well as the inferences drawn therefrom they disputed the correctness of the statement of the law on the subject of transfer of ownership of the goods sold.

By a cross-appeal the respondent challenged the order for costs in so far as it related to the appellants.

Held, (1) that the findings arrived at by the trial Court were open to it, if not inescapable; that the passing of ownership in a contract for the sale of goods is dependent on the intention of the parties; that in cases of unconditional contracts for the

sale of goods in a deliverable state, property passes to the buyer at the time the contract is made independently and irrespective of either delivery or the time of payment (see sections 19 and 20 of the Sale of Goods Law, Cap. 267); that since the vendors received all they bargained for, as the trial Court found and did all in their power to facilitate the buyer to exercise dominion over the goods, by consigning the goods in his favour and furnishing him with the necessary documents to claim reduced import rates, the trial Court correctly found that the property of the goods passed to the respondent; accordingly the appeal must fail (*Ouzounian v. HjiProdrómou* (1979) 1 C.L.R. 726).

(2) That though costs normally follow the event the outcome of the case is not the sole consideration, the conduct of the parties in relation to the litigation is always relevant; that in adjudicating upon the apportionment of the costs of litigation, the Court is entitled to take a broad view of matters pertaining thereto, with a view to doing justice to the merits of the claim of each party, for costs; that it is in this spirit that the trial Court exercised its discretion in this case and the outcome cannot be faulted as involving an erroneous exercise of discretionary powers; that the sum finally awarded, was less than that originally claimed, whereas the joinder of Andreas Mallourides inevitably added to the expense of litigation and probably protracted its course; that the final balancing may not have been as nice as it might be, is no reason for interfering; that the scales of justice are tipped by substantive considerations and to those, the trial Judge paid due heed; accordingly the cross-appeal must fail.

Appeal and cross-appeal dismissed.

Cases referred to:

Ouzounian v. HjiProdromou (1979) 1 C.L.R. 726;

Evangelou and Another v. Ambizas and Another (1982) 1 C.L.R. 41.

Appeal and cross-appeal.

Appeal by defendants 2 and cross-appeal by plaintiff against the judgment of the District Court of Nicosia (Artemides, S.D.J.) dated the 31st March, 1981 (Action No. 1872/78) whereby the defendants were ordered to pay to the plaintiff the sum of £299.140 mils representing the freight for the transportation

of the car bought by plaintiff in the U.K. and plaintiffs counter-claim was dismissed.

X. Syllouris, for the appellants.

A. Indianos, for the respondent.

Cur. adv. vult.

L. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS J.: The purchase of a second-hand car, Leyland make, from an English company, i.e. *Michael Plant Export Limited,* owned and managed by persons of Cypriot origin according to all indications, proved most eventful and led to a series of complications that resulted in the present dispute between the appellants, a Cyprus company, and the respondent, the purchaser of the car. In mid 1977, respondent agreed to buy a second-hand car from the English company, hereafter referred as "vendors", to be delivered at the Piraeus. The vendors specifically assumed responsibility for its transportation to the port of delivery. To this end, they made arrangements, so far as it may be gathered from the evidence before the trial Court. For reasons that will be explained, the car was stranded en route at the Greek port of Patra. The reason was the inability or professed inability of the vendors to meet the cost of transportation of the vehicle to its destination. Nicos Michael, the manager of the vendors and, to all appearances its moving spirit, contacted Mr. Mallourides, the manager of the appellants, and brought to his notice their difficulties, soliciting, it seems, his assistance for the discharge of their obligations. The appellants, through Mr. Mallourides, lent their assistance not only for the purpose of facilitating Nicos Michael but also because of their interest in the safe transportation to the Piraeus of a scammel tractor they had themselves purchased from the vendors that was likewise blocked at Patra. The management of the English company was, as the trial Court found, on close terms with the management of the appellants. The brother of Mr. Mallourides was the accountant of the vendors, lending apparently a hand in the management of the English company. Mr. Mallourides contacted the respondent and brought to his notice the difficulties in the way of the vendors meeting their obligations to him, respecting delivery of the car and sought to enlist his collaboration in resolving the difficult situation that

arose. In response, the respondent advanced to Mr. Mallourides the sum of £150.- for the purpose, as the trial Court found, of meeting the freight for the shipment of the car from the Piraeus to the port of Limassol. Mr. Mallourides, as well as Mr. Michael, went to Greece to sort things out. Mr. Mallourides claimed to have gone into much trouble and to have incurred considerable expenses in order to secure the conveyance of the vehicle, sold to the respondent, to the port of destination. At Piraeus he arranged for the shipment of the car aboard a ferry-boat to Limassol. To save expense, the two vehicles travelled together, the Leyland car placed on top of the scammel tractor. The shippers issued a ticket in the name of the appellants, signifying the fact of transportation of the vehicles furnishing apparent authority to the appellants to claim the goods at Limassol.

Upon arrival of the vehicles to Cyprus, the appellants omitted or refused to pay the freight amounting to £258.- and need arose for their storage at the port. The respondent, asserting ownership over the car purchased from the vendors, took steps to secure their release paying, for the purpose, the freight for the transportation of both vehicles as the transporters demanded, plus £20.- storage dues.

The respondent instituted the present action, suing jointly appellants and their manager, Andreas Mallourides, seeking the recovery of the freight paid–

(a) £258.- freight paid for the transportation of the two vehicles,

(b) £150.- advanced to appellants through Mr. Mallourides and,

(c) £20.- storage fees.

In the course of the trial, the claim was reduced by £129.- representing approximately the freight for the transportation of the car bought by respondent.

The appellants, as well as their co-defendant and manager Andreas Mallourides, denied liability. They raised a counterclaim for £1,650.- a sum allegedly owing to appellants, consisting of -

(a) £850.– expenses incurred by appellants for the release of the car and safe transportation to the Piraeus and

(b) £800.- owing to appellants as consignees of the car.

At no stage was it made clear whether this claim was pressed on behalf of the vendors or for the direct benefit of the appellants. As the trial Judge noted, Nicos Michael, who testified at the trial, very much regarded himself as a counterclaimant. What appellants put forward at the trial, was in essence that they stepped into the shoes of the vendors who authorised them to retain the car sold to the respondent until all transport expenses were paid. The trial Judge was poorly impressed by this union of forces between vendors and appellants and concluded that the two sides colluded to recover the loss incurred by the vendors, emanating from the sale of the car to the respondent.

The trial Court found for the respondent and gave judgment against the appellants for £299.140 mils. The claim against Andreas Mallourides was dismissed for the reason that his participation in the transaction was found to have been in a representative and not personal capacity. The counterclaim was also dismissed as unfounded. It arose, as the Court found, from an attempt made by Nicos Michael in collaboration with Andreas Mallourides to reap from the respondent the loss made by the vendors from the sale of the car to respondent. Whereas respondent testified that the agreement was, £1,000.- for the car plus £500.- for its conveyance to the Piraeus, Nicos Michael maintained that only the sale price had been fixed and that the additional amount of £500.- paid by the respondent, represented an advance made towards transport expenses not otherwise agreed.

The appellants contested virtually every part of the judgment, the primary findings as well as the inferences drawn from the findings made. Also, they disputed the correctness of the statement of the law, inferred from the judgment, on the subject of transfer of ownership of goods sold. In their submission, the trial Court's view of the law is misconceived.

By a cross-appeal the respondent challenged the order made for costs. The trial Court directed that each side should bear its own costs. It is the case for the respondent that though the order made was correct - so far as the dismissal of the action against Mallourides and the counterclaim are concerned

there was no justification for extending the order to embrace the action against the appellants as well. So, to that extent, we were invited to set aside the decision given.

Mr. Syllouris took pains to persuade us that the primary findings of the Court are unwarranted, particularly the finding as to lack of credibility of witnesses for the defence. Also, our attention was drawn to certain discrepancies between the evidence of the respondent and that of Thoukis Loucaides, an employee of the shippers as to the circumstances under which the firm of Solomonides released the car in question to the respondent, casting doubts on the veracity of the respondent.

We have directed ourselves to every part of the judgment and the evidence allegedly rendering the findings of the Court unsafe and, the least we can say is that the findings arrived at by the trial Court, were open to it, if not inescapable. The contradictions in the evidence of Nicos Michael and Andreas Mallourides, if nothing else, sapped their evidence of every element of reliability and lent force to the view expressed by the trial Judge that vendors and appellants concerted to extract from the respondent what was due to neither of them.

We shall concern ourselves no further with this aspect of the appeal.

A more substantive submission is that made with regard to the conclusions reached by the Court as to the passing of ownership of the car - a mixed question of fact and law. The trial Court held that ownership in the car passed to the respondent, as one may infer from the judgment, at the time of sale or shortly afterwards, when the vehicle was dispatched to the respondent, the vendors consigning the car to the respondent, while furnishing him with the relevant documents to enable him to claim a commonwealth preference rates for its importation. This conclusion is associated with the finding of the Court, that the agreement between vendors and respondent was for a sum certain, viz. £1,000.- for the car plus £500.- for its transportation to the Piraeus. For the appellants it was submitted that the vendors had never parted with their property in the goods on any view of the evidence, therefore, it was open to them to consign the vehicle, as they purported to do, to the appellants who could thereafter legitimately claim reimbursement for a sum of £1,650.-

before delivering it to the respondent. Consequently, the interference of the respondent with their property taking possession of it at the port of Limassol, was unauthorised and lacked justification in law. The passing of ownership in a contract for the sale of goods, is dependent on the intention of the parties. This is abundantly clear from the provisions of s.19 of the Sale of Goods Law, Cap. 267, modelled on the corresponding provisions of the English Sale of Goods Act, 1893. In the absence of an express provision on the subject in the contract of sale, the law itself provides a comprehensive code for distilling the intention of the parties on the subject. It is based on common sense and mercantile experience. The primary rule is that set out in s.20 of Cap.267 providing that, in cases of unconditional contracts for the sale of goods in a deliverable state, property passes to the buyer at the time the contract is made, independently and irrespective of either delivery or the time of payment. *Atiyah* in his work on the sale of goods, summarizes the law on the subject with clarity. He concludes that where the goods sold are ascertained and in a deliverable condition, little else is needed to pass ownership to the buyer. It passes as a result of the implied intention of the parties that it should so pass to the buyer. This will normally be the result where no reservation is attached by the vendors to passing of ownership in the goods to the buyer, which, indeed, was the case in hand. The vendors received all they bargained for, as the trial Court found and did all in their power to facilitate the buyer to exercise dominion over the goods, by consigning the goods in his favour and furnishing him with the necessary documents to claim reduced import rates. That they did not furnish him with the log-book of the car, still in the name of third parties, in no way qualifies, in the circumstances of this case, the intention of the parties that the property should pass to the respondent. Nowhere in the agreement of the parties was a stipulation made reserving ownership pending the supply of the log-book.

The case of *Ouzounian* v. *HadjiProdromou* (1979) 1 C.L.R. 726, is distinguishable from the present one because, in that case, as the Court found, the goods sold were never unconditionally appropriated for the discharge of the obligations of the vendors under the contract of sale. Consequently, the Court was not concerned to pronounce on the passing of owner-

ship in a case of sale of ascertained or specific goods. In our judgment, this part of the appeal fails and with it the appeal collapses in its entirety.

Costs: Mr. Indianos referred us to a number of decided cases revealing the principles governing the exercise of the Courts' discretion with regard to costs. We need not recite them. The principles are well known and, their application, part of the Courts' daily routine. The discretion must be exercised judicially. Costs normally follow the event. The outcome of the case is the foremost consideration that bears with the exercise of the Courts' discretion but, as we noticed in the case of *Evangelou and Another v. Ambizas and Another* (1982) 1 C.L.R. 41, it is not the sole consideration. The conduct of the parties in relation to the litigation is always relevant. Also, the result must not be narrowly viewed but broadly examined in juxtaposition to the claim originally raised. In other words, the successful outcome cannot be invoked as a rubber stamp for the approval of costs improperly created or occasioned.

In adjudicating upon the apportionment of the costs of litigation, the Court is entitled to take a broad view of matters pertaining thereto, with a view to doing justice to the merits of the claim of each party, for costs. It is in this spirit that the trial Court exercised its discretion in this case and the outcome cannot be faulted as involving an erroneous exercise of discretionary powers. The sum finally awarded, was less than that originally claimed, whereas the joinder of Andreas Mallourides inevitably added to the expense of litigation and probably protracted its course. That the final balancing may not have been as nice as it might be, is no reason for interfering. The scales of justice are tipped by substantive considerations and to those, we feel that the trial Judge paid due heed.

The appeal and the cross-appeal are dismissed.

The appellants are adjudged to pay two thirds on the costs of appeal.

Appeal and cross-appeal dismissed.
Order for costs as above.