

1983 June 13

[A. LOIZOU, DEMETRIADES AND LORIS, JJ.]

MONTEDISON S.P.A.,

Appellants-Plaintiffs.

NEOPLAST LTD.,

Respondents-Defendants.

(Civil Appeal No. 6317)

*Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79)—
Action for recovery of debt against displaced debtor—The latter
can invoke the provisions of the Law without filing an application
for relief under the Law and without admitting the debt.*

5 The following issues arose in this appeal:

(a) Whether in an action against a displaced debtor for
the recovery of a debt the latter could invoke the provi-
sions of the Debtors Relief (Temporary Provisions)
Law, 1979 (Law 24/79), without filing an application
10 for relief under such law; and

(b) Whether for a relief to be granted under Law 24/79,
even within the context of an action, the defendant
must admit the existence of the debt and/or that the
debt was due as provided by the definition of the terms
15 "debt" and "debtor" in sections 2 and 3(1) of the Law.

Held, (1) that where it is admitted, as in this case, that the
debtor is displaced it is unnecessary that these facts should
first be declared or acknowledged by the Debtors Relief Court
before a displaced or stricken debtor can validly set up the
20 provisions of Law 24/79 as a shield in an action for the recovery
of a debt covered by the provisions of the Law.

(2) That the suspension of the right of recovery of debts is
in no way restricted to judgment debts or to debts the existence
of which has been admitted by the debtor.

25 *Appeal dismissed.*

Appeal.

Appeal by plaintiff against the judgment of the District Court of Famagusta (Pikis, P.D.C.) dated the 11th September, 1981 (Action No. 305/80) whereby his claim for the recovery of a debt owing by a displaced company was considered as premature and dismissed in accordance with the provisions of the Debtors Relief (Temporary Provisions) Law, 1979 (Law No. 24 of 1979). 5

A. Scordis, for the appellants.

A. Adamides, for the respondents. 10

A. LOIZOU J. gave 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 action of the appellants—plaintiffs before him—was considered as premature and dismissed on the ground that the Debtors Relief (Temporary Provisions) Law 1979 (Law No. 24 of 1979) “suspends for all purposes the enforcement of debts coming within the ambit of the Law and the action of the plaintiffs is but an attempt to bypass the plain statutory provisions”. 15

The relevant facts of the case and the issues raised appear in the judgment of the learned President. They are as follows:— 20

“This is an action for the recovery of a debt owing, as admitted, by a displaced company, contracted prior to the relevant date, envisaged by s. 2 of the Debtors Relief Law—24/79, that is prior to 14th August, 1979. The identity of the debtor and the nature and particulars of the debt are also manifest from a perusal of (a) the title of the proceedings and (b) the particulars of the debt. The defendants are a Famagusta company and the debt, subject matter of the action, arose prior to the operative date mentioned above. In the light of these admissions and this state of affairs the Court is moved by the defendants to dismiss the action for the reason that the debt, even if owing, is not presently recoverable and therefore no judgment can be given in the cause. The plaintiffs do not really quarrel with this reality; It is common ground that plaintiffs cannot obtain a judgment presently enforceable. Nevertheless they argued that it is not competent 25 30 35

for the Court at this stage to take cognizance of the objections of the defendants and that the only valid way of pursuing their cause for relief under Law 24/79 is through an application under the provisions of Law 24/79”.

5 It was the case for the appellants that a declaration under the Debtors Relief Law was a prerequisite to the invocation of its provisions by the beneficiaries of the Law, namely displaced and stricken debtors. This contention was dismissed by the learned President who found that proceedings under
10 this Law were not made a condition precedent to the conferment of its benefits. Only when there exists a dispute as to whether the debtor is entitled to the protection of the provisions of the Law necessity arises for a determination by a competent Court set up under section 8 of the Law to pronounce on the
15 subject.

He based his conclusions on a consideration of a number of provisions of the Law and he said:

20 “Section 7 of Law 24/79 lays down that the provisions of the law are to have a direct bearing on subsisting actions, therefore when it is either admitted or proved that the debtor is displaced or stricken the proceedings should invariably be discontinued. Furthermore certain fetters are imposed on a displaced debtor under the provisions of s. 5 of the law with regard to the disposition of his
25 property; these restrictions are imposed independently of any reference to the Court set up under Law 24/79. Therefore where it is admitted, as in this case, that the debtor is displaced it is unnecessary that these facts should first be declared or acknowledged by the Debtors Relief
30 Court before a displaced or stricken debtor can validly set up the provisions of Law 24/79 as a shield in an action for the recovery of a debt covered by the provisions of the law. I cannot subscribe to the submission that the operation of the provisions of s. 6, Law 24/79, is made in
35 any way dependent on any prior declaration by the Debtors Relief Court. Any such argument runs counter to the plain provisions of the law and no more need be said on the subject. The plaintiffs, so it seems, seek to ventilate their rights prematurely under the guise of a declaration signifying such rights. This cannot be pursued for it is
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well established that it is impermissible to make a declaration in advance of a monetary claim of the plaintiff. A monetary claim can only be made the subject of a judgment presently enforceable. What is material is whether the debt claimed is owing (a) by a displaced debtor; and (b) whether the debt was contracted prior to 14th August 1974". 5

We fully agree with the aforesaid approach of the learned President but we consider it essential that we should deal with the appeal which turned mainly on one ground namely that the trial Court did not take into consideration, or did not accept that for a relief to be granted under Law 24/79, even within the context of an action, the defendant must have admitted the existence of the debt and or that the debt was due as provided by the definitions of the terms "debt" and "debtor" in section 2 of the Law and by the provisions of section 3 subsection 1 of the Law. 10 15

These two words are defined in section 2 of the Law as follows:

" 'debt' includes all monetary liabilities of a debtor of any nature whatsoever, secured or unsecured, whether payable under a judgment or order of a Court or under any agreement or hire-purchase agreement or credit sale agreement of any property and whether payable presently or not but does not include amounts— 20 25

- (a) recoverable as a tax or duty under the Tax Collection Law, 1962;
- (b) due as a penalty imposed under the Criminal Procedure Law;
- (c) an action for the recovery of which is barred under the provisions of any Law relating to Limitation of Actions in force for the time being; 30
- (d) due as compensation for personal injury or death caused as a result of the commission of any offence;
- (e) due as insurance premium for the insurance of any motor vehicle required under the provisions of the Motor Vehicles (Third Party Insurance) Law; 35

(f) in respect of a debt incurred after the 14th August, 1974;

5 'debtor' means any debtor of a debt and includes a judgment debtor, or mortgagor, a co-debtor and a guarantor;"

10 It is obvious from the aforesaid definitions that a distinction is made between debts payable under a judgment or order of the Court and liabilities under any agreement or hire purchase agreement or credit sale of any property and whether payable presently or not. Therefore, the law applies to both categories of debts, namely, judgment debts and debts arising out of an ordinary contractual relationship. Furthermore, section 3(1) of the law provides as follows:-

15 "3.- (1) Notwithstanding the provisions of any other Law and subject to the provisions of section 4, during the abnormal situation and in any case during the period beginning as from the 15th August, 1974, and ending on the 31st December, 1980, the right of every creditor to recover a debt due by a displaced or stricken debtor is suspended and all forced sales pending or fixed on the date of the coming into operation of this Law shall be stayed if they relate to-

- 20 (a) immovable or movable property situate within a stricken area;
- 25 (b) immovable or movable property not situate within a stricken area but subject to sale in satisfaction of a debt resulting from the sale, mortgage, pledge or other encumbrance of other property situate within a stricken area".

30 The very wording of this section clearly shows that the suspension of the right of recovery of debts is in no way restricted to judgment debts or to debts the existence of which has been admitted by the debtor and we take this latter argument to mean that they have been admitted in proceedings which have led to a judgment because otherwise any admission of a debt without a consequential judgment entered therein can surely be disputed in the same way, as a bond or other documentary evidence which is in itself an admission of the debt can be disputed in the future or restricted in proceedings taken on

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the alleged debt. It would thus mean that the suspension provided by this Law affects only judgment debts, which is not clearly the case.

On the contrary in addition to everything else said an examination of section 6 of the Law shows clearly that the Law suspends also the right to file an action, otherwise it would have been unnecessary to make provision for the suspension of the period of limitation of a right of action. 5

This section reads as follows:

“Notwithstanding the provisions of any other Law, in computing the period of limitation of a right of action, the period during which the right of action is suspended under the provisions of this Law shall not be taken into account”. 10

Before concluding, however, reference may be made to the anxiety expressed by counsel on both sides with regard to the risks that the aforesaid interpretation may entail, namely that the suspension of the filing of actions and the adjudication of disputed debts may operate adversely on litigants through the loss of evidential material and the ultimate inability to prove a claim or a defence through the lapse of time. This, however, is not a matter that could influence the correct interpretation of an otherwise clear statutory provision, as Courts cannot legislate, that is the function of another power of the State. 15
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For all the above reasons this appeal is dismissed with no order as to costs as none have been claimed.

*Appeal dismissed with no order
as to costs.*