1984 July 19

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU AND DEMETRIADES, JJ.]

BARCLAYS BANK INTERNATIONAL LTD.,
Appellants-Defendants,

v.

STELIOS SHIAKALLIS,
Respondent-Plaintiff.

(*Civil Appeal No.* 5915).

Bank—Cheque—Capacity in which a banker receives a cheque, whether an agent for collection or as holder for value is a question of fact—Finding of trial Court that appellants received cheques as holders in due course and gave value for them perfectly open to it.

The trail Court gave judgment for the respondent-plaintiff in the sum of £2,160 being the equivalent of cheques which he deposited with the appellants-defendants at their Famagusta branch on 13th August, 1974, i.e. on the eve of the second round of the Turkish invasion.

The trial Court accepted as a fact that on the aforementioned day the respondent lodged with the appellants cheques, issued in his favour by the Co-operative Society of Prastion and Trypimeni villages drawn on the Central Co-operative Bank. The appellants accepted the deposit and issued a receipt evidencing a 13th month's deposit with interest payable on 13th September, 1975. The trial Court refuted allegations of the appellants that the cheques were received conditionally subject to verification or that they were received by the Bank as agent for the collection; and concluded that they received the cheques as holders in due course and gave value for them by crediting the respondent with an equivalent amount.

Upon appeal by the defendants:

Held, that the capacity in which a banker received a cheque whether as agent for collection or as holder for value, is a question of fact; that there is no room for interference with the findings of the trial Court and the legal basis on which judgment was

given; and that, on the contrary, the findings made were perfectly open to the trial Court and the conclusions drawn therefrom cannot be faulted; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Cyprus Import Corporation Ltd. v. Kaisis (1974) 1 C.L.R. 16.

Appeal.

Appeal by defendants against the judgment of the District Court of Larnaca (Pikis, P.D.C.) dated the 25th November, 1978 (Action No. 35/77) whereby judgment was given in favour of the plaintiff as depositor of cheques for £2,160.- with the defendants at their Famagusta Branch.

X. Clerides, for the appellants.

A. Poetis, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: This is an appeal against the decision of the District Court of Larnaca delivered by Pikis, P.D.C., as he then was, giving judgment in favour of the respondent, the depositor of cheques for £2,160.- with the appellants at their Famagusta branch on 13th August, 1974, i.e., on the eve of the second round of the Turkish invasion.

The trial Court accepted as a fact that on the aforementioned day the respondent lodged with the appellants cheques, issued in his favour by the Co-operative Society of Prastion and Trypimeni villages drawn on the Central Co-operative Bank. The appellants accepted the deposit and issued a receipt evidencing a 13th month's deposit with interest payable on 13th September, 1975.

The trial Court refuted allegations of the appellants that the cheques were received conditionally subject to verification or that they were received by the Bank or agent for the collection.

After a searching analysis of the evidence, Pikis, P.D.C., as he then was, concluded as follows:

"Without overlooking the discrepancy between the alle-

gations of the plaintiff as originally framed, in comparison to his amended claim, I accept his evidence and find as a fact that the defendants accepted the cheques without reservation and credited him with a sum equivalent to the cheques less the amount paid over in cash. The non issuing of a signed deposit receipt was due to the pressure of work at the Famagusta branch of the defendants on 13th August 1974 and the desire of everyone to finish his business as early as possible. Thus I find that defendants became holders of the cheques having given value for them by crediting the plaintiff with an amount equivalent to that named in the three cheques. The money was deposited on terms embodied in exh. 1."

Consequently the trial Court found the appellants accountable to the plaintiff for the return of the money upon the terms of the deposit received that though the receipt was not signed on account of great pressure of work on that fateful date. Furthermore, the trial Judge continued as follows:

"In my judgment the plaintiff is entitled to recover the sum of £2,160 plus interest thereon at the rate of 8 per cent per annum up to 13th September 1975 and thereafter interest on the capital sum at the rate of 6 per cent per annum, the commercial rate of interest prevailing after the tragic events of 1974 (see the evidence of D.W.1). Notwithstanding the expiration of the agreement between the parties in September 1975 the plaintiff is entitled to interest by way of compensation for the deprivation he suffered by the non payment of moneys due to him at the time of maturity of the deposit account. In the words of Pollock C.B. in *Newton* v. *Grand Junction Railway Company* (1846) 16 M. & W, 139, at 144, interest is payable in such circumstances because it is in truth a compensation for delay'. This proposition was accepted as validly stating the law on the subject by Ackner J. in *Parsons* v. *Mather & Platt Ltd.* [1977] 2 All E.R. 715 at 719 (see also K. v. K. [1977] 1 All E.R. 576). Accordingly judgment is given for the plaintiff as above, with costs to be assessed by the scale of claims between £1,000 and £3,000."

It is a settled principle of law that the capacity in which a banker receives a cheque whether as agent for collection or as

holder for value, is a question of fact. (see *Cyprus Import Corporation Ltd.* v. *Aristos Kaisis*, (1974) 1 C.L.R. p. 16.

The trial judge directed his mind to the principle issue in the matter, that is the capacity in which the appellants received the money. He concluded they received it as holders in due course and gave value for them by crediting the respondents with an equivalent amount.

Having perused the printed records we find no reason to disturb either the findings of the trial Court or draw any conclusion other than that drawn by the learned trial Judge.

Appellants argued before the trial Court that as they never cashed the cheques they could claim the equivalent from the respondent. The trial Judge correctly observed that no such claim was raised by the pleadings of the appellants. Moreover he pointed out that such a claim could not conceivably succeed in the absence of evidence that the cheques were dishonoured upon presentation.

We have given due consideration to every aspect of the appeal directed against the findings of the trial Court and the legal basis on which judgment was given, but we remained unpersuaded that there is any room for interference. On the contrary, we conclude that the findings made were perfectly open to the trial Court and the conclusions drawn therefrom cannot be faulted.

The appeal is dismissed with no order as to costs.

Appeal dismissed with no order as to costs.