

1986 December 9

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

ARISTIDES COSTEA,

Appellant-Plaintiff,

v.

MORPHOU CO-OPERATIVE CREDIT SOCIETY,

Respondents-Defendants.

(Civil Appeal No. 6876).

*Stricken Debtors—The Debtors Relief (Temporary Provisions)
Law 24/79, section 2—Public Officer spending borrowed
money in order to manage the orange grove of his children
situated at Morphou—Said fact does not entitle him to be
declared a “stricken debtor.”*

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The first wife of the appellant, who is a Public Officer, came from Morphou and was the owner of an orange grove situated in Morphou. This grove was transferred to her children before her death in 1971. In 1970 the appellant opened a current account with an authorised overdraft ceiling of £2,000. On the day of the Turkish invasion the said account showed a debit balance of £1,237. The appellant gave evidence to the effect that the said account was used for payments in respect of the cultivation of the said grove. The appellant admitted that he was never engaged in agriculture, but he simply managed the grove for his children.

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In the light of the above facts the trial Court having concluded that the work or business of the appellant had not been affected by the abnormal situation dismissed appellant's application for a declaration that he is a stricken debtor under Law 24/79. Hence the present appeal.

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Held, dismissing the appeal: (1) In Christys v. Yiorgalli (1982) 1 C.L.R. 492 it was held that in a case of joint venture between husband and wife, the husband

contributing his know how and the wife financing the projects by mortgaging her immovable properties, the wife could be properly found in law to be a stricken debtor.

(2) The aforesaid case is distinguishable from this case 5
as no question of a joint venture arises in the present case. The mode of spending the money withdrawn from a personal current account cannot be held to entitle the borrower to be declared a stricken debtor within the meaning of section 2 of Law 24/79. 10

Appeal dismissed with costs.

Cases referred to:

Tryfonos and Another v. Famagusta Shipping Co. (1957) Ltd., (1981) 1 C.L.R. 137;

Christys v. Yiorgalli (1982) 1 C.L.R. 492. 15

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Demetriou, Ag. P.D.C.) dated the 14th January, 1985 (Appl. No. 68/82) whereby applicant's application to be declared as a stricken debtor under the provisions of the Debtors Relief (Temporary Provisions) Law, 1979 (Law No. 24/79) was dismissed. 20

Chr. Kitromelides, for the appellant.

A. Pandelides, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. 25
This is an appeal from the judgment of Demetriou, Acting P.D.C. by which the application of the applicant to be declared as a stricken debtor under the provisions of the Debtors Relief (Temporary Provisions) Law, 1979, (Law No. 24 of 1979), was dismissed with costs. 30

The facts of the case are briefly these. The appellant is a Physicist in the Government service working in the Nicosia General Hospital with a monthly salary of about £760.-, married with six children of which five from his previous marriage, the first wife having died some time 35

in 1971. The present wife of the appellant is a dentist also in the Government service with a salary of about £550.- per month. The late wife of the appellant came from Morphou and was the owner of an orange grove of an extent of twenty donums which had a value of about £30,000.-. This grove which had been given to her as a dowry was transferred to her children before her death.

The appellant contracted in 1970 a personal debt in the form of a current account from the respondent Co-operative Credit Society of Morphou with an authorised overdraft ceiling of £2,000.-. This account presented on the day of the Turkish Invasion a debit balance of £1,237.-, as against which he paid £160.- after that event.

The only evidence before the trial Court was that of the appellant himself, the other side having elected not to call any evidence. According to the uncontradicted evidence of the appellant this current account was used for payments in respect of the cultivation of the said grove. Moreover in view of the heavy expenses burdening him regarding the upbringing and education of his children he is not in a position to pay anything as against this debt. Moreover this current account was not always in the debit. There were instances when it had a credit balance as the applicant was paying therein whatever income he had.

The sole issue for determination in this appeal is whether the fact that the appellant spent the whole or part of the amounts due under this debt for the cultivation and development of the orange grove in question, brings him within the ambit of a stricken debtor as defined in Section 2 of the aforesaid Law. The learned President concluded that as the applicant could not be considered a displaced person, there being no such allegation in any event, in order to succeed to be declared a stricken debtor he had to establish that his "work or business has been affected by reason of the abnormal situation to such an extent so as to render him unable to meet his contractual obligations out of which the debt arose, or a debtor who is missing as a result of the Turkish Invasion and includes

a co-debtor and a guarantor of any such debtor”, as the term stricken debtor is defined in Section 2 of the Law.

The appellant admitted in his evidence that he never engaged himself in agriculture but he simply managed the orange grove of his children, consequently the learned President concluded that the work or business of the appellant had not been affected by the abnormal situation.

As held in *Tryfonos and Another v. Famagusta Shipping Co., (1957) Ltd.*, (1981) 1 C.L.R. 137 in relation to the definition contained in Section 2 that in an application under Section 3 what are determined are the rights between the parties in relation to a particular debt, the subject of such application and not the status of a person vis a vis all his creditors. Useful reference may also be made to the case of *Christys v. Eve Yiorgalli* (1982) 1 C.L.R. 492, in which it was held “that since the respondent and her husband were acting in concert, himself contributing his know how and herself financing the projects through borrowing money by mortgaging her immovable property she could properly be found in Law to have been a stricken debtor inasmuch as the losses incurred from the joint venture fell on her as well as on her husband if not solely on her as it appears from the facts of that case....”

This latter case is clearly distinguishable from the present case, the facts of which are entirely different. The mode of spending the money withdrawn from a personal current account in the circumstances of this case cannot be held to entitle the borrower to be declared a stricken debtor within the meaning of Section 2 of the Law, as no question of a joint venture arises in this case.

This appeal therefore should fail, there being also no merit in the argument advanced that the learned President failed to make the necessary findings of fact in the present case.

For all the above reasons the appeal is dismissed with costs.

Appeal dismissed with costs.