1987 January 30

[A LOIZOU, DEMETRIADES, PIKIS, JJ]

1 REA D KOROPOULLI,
2 ROULA L DEMETRIOU,

Appellants-Defendants,

v

SOFOKLIS AVRAAM,

Respondent-Plaintiff

(Civil Appeal 6867)

Architects and Civil Engineers—Supervising or overseeing implementation of architectural plans—Whether building technicians licensed as such under Law 41/62 entitled to supervise a building beyond their authority to sketch architecturally or civil engineering wise—Negative answer given—Relevant agreement void for illegality—The Architects and Civil Engineers Law 41/62 as amended by Laws 41/68 and 84/68—Section 10, 11(1) and the first proviso to s 11(1)—The Contract Law, Cap 149, sections 24 and 23(1)

Words and Phrases «Befitting» (Προσηκουσα) in section 11(1) of the Architects and Civil Engineers Law 41/62 as amended by Laws 41/68 and 84/68

The question in this case concerns the authority of building technicians licensed as such under Law 41/62 to supervise or oversee the implementation of architectural plans concerning buildings beyond their authority to sketch achitecturally or civil engineering wise

Though the claim of the respondent was only for an amount due for the supervision of building work, the supervision was but an aspect of a wider agreement between the parties involving preparation by the respondent of architectural plans, an act admittedly beyond his authority The trial Court confined its deliberation to the aspect of supervision as if it were a self-contained agreement and took the view that, in the absence of a definition of the compass of the profession of an architect or civil engineer and of evidence as to such compass, supervising or overseeing a building is not within the exclusive scope of such profession As a result judgment was given for the plaintiff/respondent

Held, allowing the appeal: (1) On proper analysis of the relevant legislative provisions (sections 10 and 11(1) of Law 41/62 as amended) the outcome is a general prohibition on any one undertaking the work of an architect or a civil engineer. The prohibition is subject to exceptions in the first proviso to s.11(1) Building technicians are specifically forbidden from undertaking work befitting (προσήκουσαν) an architect or a civil engineer, unless (which is not the case here) the height or volume of the building is limited as specified in the law.

(2) It is unlikely that the legislature intended to leave the penal provisions of the Law (section 10) subject to evidence dependent on knowledge and practice relevant to the profession of an architect or a civil engineer. More likely it was in the contemplation of the legislature to qualify the range of such profession by reference to the provisions of the law The word «befitting» (προσήκουσα) should not be read in isolation. The proviso to s.11(1) explicitly qualifies it by stating immediately thereafter that work concerning buildings of a specified height and volume may be undertaken by building technicians as well.

(3) Architectural and structural plans are the first step; their implementation on the land the second. The two aspects of the work are inextricably connected.

(4) In the light of the above the agreement leading to the work carried out by the respondent was prohibited by law and as such void (s.24 of Cap.149), involving the giving of an illegal consideration in the sense of section 23(1) of Cap.149.

Appeal allowed with costs.

Cases referred to:

Carney v. Herbert and Others [1985] 1 All E.R. 438.

Appeal.

Appeal by defendants against the judgment of the District Court of Larnaca (Constantinides, S.D.J.) dated the 17th January, 1985, (Action No.1036/79) whereby they were adjudged to pay to plaintiff the sum of £947.20 balance due for services rendered by plaintiff as a supervising building technician for the erection of a

multi-storey building.

A. Poetis, for the appellants.

Z. Mylonas, for the respondent.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS, J.: The focal point in this appeal, as before the trial Court earlier on, is the scope of the authority of building technicians licensed as such under the Architects and Civil Engineers Law (41/62), as amended, to undertake work incidental to the implementation of architectural plans. Specifically, the question concerns their authority to supervise or oversee the implementation of achitectural plans concerning buildings beyond their authority to sketch architecturally or civil engineering wise. If the answer is in the negative and they are entitled to undertake the supervision of the building or premises beyond their authority, the judgment must be upheld; otherwise it must be overruled for as the trial Court noted, and we are of the like opinion, if such supervision is, under the law, work exclusively befitting an architect or civil engineer, any agreement made in breach of the statutory prohibition is illegal and as such unenforceable in law. In fact, the assumption by a person unregistered as such of the work of an architect or a civil engineer is, by virtue of the provisions of s.10 of Law 41/62, a criminal offence, exposing the usurper to criminal sanctions.

Seemingly, the supervision assumed in this case by the respondent of the building of a multi-storeyed block of flats, was but an aspect of a wider agreement involving the preparation of the architectural plans, an act admittedly beyond the powers of the respondent. The claim of the respondent was confined to recovery of the amount due for the supervision of building work. Presumably the parties took the view the aspect of the agreement with regard to supervision was severable from the rest and could be litigated independently therefrom. The Court did not inquire

into the amenity of severance, particularly whether it was possible, in view of the manifest illegality of the contract to prepare the architectural plans*, and confined its deliberations to the part of the contract concerning supervision as if it were a self-contained agreement. Be that as it may, the appeal before us is confined to the question elicitated above which, reproduced in plain language, is the following:-

Does a building technician have authority under Law 41/62 to supervise the implementation of architectural plans he was unauthorised to make, not being either an architect or a civil engineer? Seemingly, an inference from the statement of claim, the plans transposed into a building under the supervision of the respondent were his own.

The learned trial Judge found for the building technician holding that as a matter of construction of the relevant proviso to s.11(1) - Law 41/62 (as amended)**, supervision of the implementation of architectural plans, including the civil engineering aspects of them, was not work that necessarily befitted an architect or a civil engineer and as such its assumption by a building technician was not prohibited by law. Secondly, the Court ruled that to the extent that the nature of work befitting an architect or a civil engineer fell to be considered by reference to the compass of the work of these two classes of professionals, the appellants failed to satisfy the Court that supervision was work exclusively in their domain. Viewed from either of the two angles the appellants failed to make out their case of illegality of the agreement. And judgment was given for the agreed amount of £947.20 cents, representing agreed or reasonable remuneration for the supervision of building work in question. In order to appreciate the question posed in its true context, it is essential to refer to the legislative scheme given effect to by the Architects and Civil Engineers Law, a process apt to throw light on the nature of the restrictive provisions of the first proviso to s.11(1) of the law. The principal object of the law was to confine the exercise of the profession of an architect and a civil engineer to qualified persons

* *See, inter alia, Carney v. Herbert and Others [1985] 1 All E.R. 438 (PC).*

** *Law 41/68 and Law 84/68.*

registered as such in the statutory roll. To this arrangement there were exceptions. Architects by occupation, licensed building technicians and sub-engineers were authorised to undertake work befitting (προσήκουσαν) an architect or a civil engineer subject to an important qualification: Work to be undertaken by them should be limited by reference to the height or volume of the building. In every other respect they were in the same position as everyone else who was neither an architect nor a civil engineer.

The prohibition to the assumption of architectural or civil engineering work is coupled with criminal sanctions. Section 10 of the law makes it an offence for anyone to carry out the profession of an architect or civil engineer or render services incidental to either profession or hold himself out as entitled to render such services. Significantly, s.10 makes no reference to any class or persons other than architects or civil engineers. On proper analysis of the legislative provisions the outcome is a general prohibition on anyone undertaking the work of an architect or a civil engineer. The prohibition is subject to exceptions, those contained in the first proviso to s.11(1). Building technicians are specifically forbidden from undertaking work befitting (προσήκουσαν) an architect or a civil engineer, unless the height or volume of the building is limited, as specified in the law. Here it is admitted that the building, the erection of which the respondent supervised was, in height and volume, beyond the limitations above referred to.

The learned trial Judge took the view, as may be inferred from the tenor of his judgment, that in the absence of a definition of the compass of the profession of an architect or a civil engineer, supervising or overseeing a building is not within the exclusive scope of their profession. The Court rested its judgment on the literal meaning of «προσήκουσα» (befitting) and in the absence of a clear definition of the compass of the profession of an architect or a civil engineer, or satisfactory evidence that supervision of the implementation of architectural plans on the ground must necessarily be treated as an aspect of the work of an architect or a civil engineer, concluded the agreement was not tainted with illegality.

We consider it unlikely that the legislature intended to leave the scope of the penal provisions of the law subject to evidence dependent on knowledge and practice relevant to the profession of an architect or a civil engineer. It is more likely it was in the contemplation of the legislature to qualify the range of the profession of an architect and a civil engineer by reference to the provisions of the law. In our judgment they accomplished this task. The word «προσήκουσα» (befitting), if read in isolation, might render the restrictive provisions of the law dependent on the adduction of evidence respecting the range of the profession of an architect or a civil engineer. The proviso however to s.11(1) explicitly qualifies the word «befitting» (προσήκουσα) by stating immediately thereafter that work concerning buildings of the specified height and volume may be undertaken by building technicians as well. In other words, such work befits not only architects and civil engineers but licensed technicians, too. Hence the word «προσήκουσα» (befitting) is defined without distinction by reference to the buildings planned and built.

The competence of architects and civil engineers and those licensed, subject to restriction, to carry out architectural and civil engineering work, is solely defined by reference to the height and volume of the building. Architectural and structural plans are the first step; their implementation on the land the second. The two aspects of the work are inextricably connected. The implementation of the plans is a direct sequence of the architectural and structural planning, vital for the sustenance of the standards of architecture and structural safety set by the law. This is the meaning in which the compass of architectural and civil engineering work is referred to in the provisions of s.10 prohibiting the assumption of such work by anyone other than a registered architect or a civil engineer.

In our judgment, the agreement leading to the work carried out by the respondent was prohibited by the law and as such void (s.24) involving the giving of an illegal consideration in the sense of s.23(1) of the Contract Law - Cap.149.

The appeal is allowed with costs. The judgment of the trial Court is set aside, substituted by an order dismissing the action.

Appeal allowed with costs.