

1988 May 13

(A LOIZOU P DEMETRIADES KOURRIS JJ)

C T C CONSULTANTS LTD ,

Appellants-Plaintiffs

v

GRINDLAYS BANK LTD

Respondents-Defendants

And by amendment pursuant to the Order of the Court dated 22 5 84

C T C CONSULTANTS LTD ,

Appellants-Plaintiffs,

v

1 GRINDLAYS BANK LTD ,
2 CYPRUS TRANSPORT CO LTD ,

Respondents-Defendants

(Civil Appeals Nos 7159 and 7161)

*Banking—Negligence of banker—Crediting cheque to wrong account—
Prerequisites for establishing negligence*

*Contracts—Quasi contract—Money had and received and money paid by
mistake*

Civil Procedure—Joinder of parties—Joinder of causes of action— 5
*Banker crediting cheque in wrong account—Action for negligence
against banker and action for the return of the money against owner
of such account*

Respondents 2 are generally known as «C T C LTD » The Grain
Commission issued a crossed cheque in respect of money due by them 10
to the appellants, but instead of making it payable to «C T C
Consultants Ltd , » they made it payable to C T C. Ltd

The appellants without indorsing it sent the cheque to be deposited with their bankers respondents 1 The cashier of respondents 1 credited the cheque to the account of respondents 2

5 When the mistake was discovered, the appellants filed an action against both respondents The cause of action against respondents 1 was negligence, whereas that against respondents 2 was unjust enrichment

The trial Court dismissed the action as against respondents 1, but gave judgment for the plaintiffs against respondents 2

10 As a result two appeals were filed, one by the plaintiffs and one by respondents 2 The two appeals were heard together

15 Held, dismissing both appeals (1) In the circumstances of the present case, there was nothing to suggest that when the chéque was being paid in the Bank it could arouse a query in the mind of the cashier or ought to arouse any (A passage relating to «negligence» from Law and Practice Relating to Banking by F E Perry cited with approval) The trial Court rightly concluded that the plaintiffs failed to establish negligence on the part of the Bank

20 (2) The amount of the cheque was money had and received and money paid to respondents 2 by mistake The appellants as plaintiffs established that the defendants themselves actually received the money in such circumstances that there is created privity between them

25 (3) In the circumstances the appellants as plaintiffs rightly joined the two respondents and the two causes of action in one

Appeals dismissed Appellant to pay the costs of respondent 1 No order as to costs as between appellants and respondents 1

30 Appeals.

35 Appeals by plaintiffs and defendants 2 against the judgment of the District Court of Nicosia (Laoutas, S.D.J.) dated the 3rd April, 1986 (Action No. 2116/81) whereby the plaintiffs' action for damages for negligence against defendants 1 was dismissed and defendants No. 2 were ordered to pay to the plaintiffs the sum of £838.068 paid by mistake to such defendants No. 2.

Ch. Ierides, for the appellants

X Clendes for respondents No 1

M Christophides for respondents No 2

Cur adv vult

A LOIZOU P gave the following judgment of the Court These two appeals have been heard together, as Civil Appeal No 7161, could in fact be described as cross-appeal

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The Company, C T C Consultants Ltd the appellants in Civil Appeal No 7159, instituted before the District Court of Nicosia proceedings against the two respondents respondent No 1 being Grindlays Bank Ltd , and respondent No 2 being the Cyprus Transport Co Ltd , claiming the amount of £838 068 mls which represented the amount of a crossed cheque issued by the Grain Commission for their benefit in payment of money due to them but issued in the name of «C T C Ltd» which is the name with which respondents No 2 are generally known

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The appellants, though they noticed that the said cheque did not bear the full name of their company, thought it unnecessary to have it corrected and sent it as it was with a female employee to the office of respondent No 1 to be deposited into their own account There, the lodgment form was filled in by the cashier of the Bank to the credit of «C T C Ltd» Respondents No 2 had also at that time a bank account and that cheque was deposited in their account and they were credited with the aforesaid amount

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Some two years later this mistake was discovered as respondents No 2 did not have to receive any amount from the Grain Commission, the person entitled to it being the appellants After an exchange of letters the case reached the District Court of Nicosia which had to decide (a) whether respondents No 1 were negligent in the discharge of their duties as bankers towards the appellants and (b) whether there had been undue enrichment of respondents No 2 and, therefore they had to refund the amount in question to the rightful owners, the appellants

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The learned trial Judge after examining the evidence, mainly documentary, as respondents No 2 adduced no evidence, concluded that no negligence had been proved against respondents No 1 and dismissed the action against them with no order as to costs and gave judgment against respondents No 2 for the amount of the cheque with legal interest and costs

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On appeal today before us learned counsel for the appellants argued that negligence had been established and that the

conclusion of the learned trial Judge was erroneous on this point. On the other hand, counsel for respondents No. 2, the appellants in appeal No. 7161, in arguing on the appeal against the Bank and further in arguing their appeal against the judgment of the trial judge, contended in fact that there is no nexus between respondents No. 2 and the appellants and if there was any issue for determination, that is between themselves and respondents No. 1.

As regards the question of negligence we have come to the conclusion that on the evidence before the learned Judge, the result arrived at by him was duly justified as there was nothing in the evidence to suggest that the attention of the cashier was drawn or could be drawn to the effect that C.T.C. Ltd. were not respondents No. 2 but instead they were C.T.C. Consultants Ltd., the appellants. In fact the cheque itself had not even been signed by the said appellants so that a discrepancy between their signature at the back of the cheque and the name of the payee on the cheque would arouse the cashier to proceed and carry out an examination any further than merely have the lodgement form prepared to the credit of C.T.C. Ltd.

We have been referred to a passage from the *Law & Practice Relating to Banking* by F.E. Perry, Fourth Edition at p. 83, where, under the heading «Negligence» it is stated that «negligence may be defined in this context as the failure to make inquiry in cases when a reasonably competent cashier would make an inquiry, or, when such an inquiry has been duly made, failure to appreciate that the answer obtained is an unsatisfactory one». And it goes further to say that: «The inquiry referred to is that which should be made by the cashier, or, perhaps by a more senior officer of the bank, when a cheque being paid in, arouses a query in the mind of the cashier or ought to arouse it. This obligation stems from the duty of the collecting banker to collect the cheque for the person rightfully entitled to it and for no other». We agree fully with this statement based on the case law on the issue.

In the circumstances of the present case, there was nothing to suggest that when the cheque was being paid in it could arouse a query in the mind of the cashier or ought to arouse any.

We therefore, find no merit in this appeal against the judgment in so far as respondents No. 1 are concerned.

We have now to examine as to whether judgment could have been entered against respondents No. 2, a matter contested by

appeal No. 7161. In the Statement of Claim the cause of action is that of money received by Respondent 2, to which they were not entitled and they were unduly enriched by that amount and they refused to return it. There is no difficulty in this case to conclude, as the learned trial Judge did, that respondents No. 2 did really receive by the crediting of their account with the amount of the cheque the benefit of that money to which they were not entitled and in fact at no stage they have raised any claim to them. They are money had and received and money paid to the respondents by mistake, and the appellants as plaintiffs established, as they ought to in such cases, that the defendants themselves actually received the money which was sought to be so recovered and that the money was received by the defendants in such circumstances that there is created privity between them. 5 10

The other question whether the appellants could in law join respondents No. 2 as defendants No. 2 in the action, must be answered in the affirmative because they were seeking to recover their lost money by one action, by joining two persons who were the likely ones to be in law answerable and depending which one of the two causes of action was established, one of them would be liable to refund the money to which they were entitled. 15 20

For all the above reasons both appeals are dismissed. The appellants to pay the cost of respondents No. 1 but there will be no order as to costs as between the appellants and respondents No. 2 either on the appeal or the cross-appeal. 25

*Appeals dismissed.
Order for costs as above.*