

APHOS DISTRICT COURT

Before: M.Mattheou, Senior District Court Judge

No.1671/10

Between:

ALPHA BANK CYPRUS LTD, from Nicosia  
AND

Plaintiffs

1. CHRISTOPHER MANNING (Passport No. GB800341271), from United Kingdom or Paphos.
2. ROSEANN MANNING (Passport No. 800341270), from United Kingdom or Paphos.
3. J.ARISTODEMOU IDEAL HOMES LTD (Reg.No. 31893), from Paphos, 77 Poseidonos Street.

Defendants

EX-PARTE APPLICATION BY: ALPHA BANK CYPRUS LTD, from Nicosia

Plaintiffs - Applicants

Following the hearing of the application in the presence of Mrs. Karayiannidou on behalf of Messrs Chryssafinis & Polyviou LLC, advocates for the plaintiffs - applicants, this Court having read the application and the affidavit accompanying the application hereby

ORDERS AND DECIDES that substituted service for the service of the writ of summons to defendants 1 and 2 is hereby allowed via publication in the press, in an English speaking daily or weekly newspaper.

AND THIS COURT HEREBY FURTHER ORDERS that the defendants 1 and 2 file an appearance within 30 days from the publication date.

AND THIS COURT HEREBY FURTHER ORDERS that in case of failure to file an appearance within the above mentioned period, any subsequent application, will be considered as served if a copy thereof is posted on the bulletin board of the District Court of Paphos for a period of 5 days.

The expenses of this application will follow the result of the lawsuits' against defendant 1 and 2.

Issued: 27/10/10

Typed: 16/11/10

M.Mattheou, Senior District Court Judge

True Copy

THE REGISTRAR

FORM No 2.

SPECIALLY INDORSED WRIT (0.2, r.6).

€100,000.00 - €500,000.00

V.A.T. Registry No. 1023968OC

In the District Court of Paphos, No. 1671/2010.

Between Alpha Bank Cyprus Ltd,

Plaintiffs

and

1. CHRISTOPHER MANNING (PASS. NO. GB 800341271), 1 Anstey Grove, Acocks Green, B 27 7 QR, Birmingham, Uk. or 8D Spyrou Kyprianou, Lake View Villa, 8560 Paphos.
2. ROSEANN MANNING (PASS. NO. 800341270), 1 Anstey Grove, Acocks Green, B 27 7 QR, Birmingham, Uk. or 8D Spyrou Kyprianou, Lake View Villa, 8560 Paphos.
3. J. Aristodemou Ideal Homes Ltd (Reg. No. 31893), 77 Posidonos, 8042 Paphos.

Defendants.

To C. D. of (a), (b)

This is to command you that within ten days after the service of this writ you enter an appearance in an action against you by Alpha Bank Cyprus Ltd of Nicosia, Stylianos Lena Square, P.O. BOX 21661.

The Plaintiff's claim in the action is set out in the statement of claim overleaf.

The Plaintiff's address for service is *Chryssafinis & Polyviou LLC*, 8 Michalaki Karaoli Street, Anemomylos Building, 4th Floor Nicosia, *C/O Agapios Kakoyiannis Law Office*, Corner of Kinira & Nikolaide, Center Point, Block A, 2nd floor, Paphos.

And take notice that, in default of your entering an appearance in the manner specified below, the Plaintiff may proceed in the action and judgment may be given in your absence.

Filed and sealed on the (e) 17th day of May 2010

(Signed) Chryssafinis & Polyviou LLC

(f) Advocate(s) for Plaintiffs.

N.B. - (1) An appearance may be entered either personally or by advocate by delivering to the Registrar at (g) Paphos a memorandum of appearance, and on the same, day by delivering at the Plaintiff's address for service a duplicate of such memorandum 'dated, signed and sealed by the Registrar.

(2) If the Defendant failed to deliver a defence within fourteen days after the last day of the time limited for his appearance, he may have judgment entered against him without notice, unless he has in the meantime been served with a summons for judgment.

(a) Give full address, including street and number of premises, if any.

(b) State Defendant's occupation, if know.

(c) State Plaintiff's occupation.

(d) Give the full name, occupation, and address of a person within the municipal limits of the town or village in which is situated the Registry in which the action is filed, with whom documents intended for Plaintiff may be left.

(e) The date should be filled in by the Registrar.

(f) Strike out the words 'Advocate for' if suing for person and enter the word 'Plaintiff.

(g) State the town or village in which is situated the Registry described in (d) above.

N.B. - In drawing up a writ regard should be had to the provisions of Order 2 and the provisions governing statements of claim.

*Note for Defendant.* - A Defendant summoned for a claim exceeding CYP25 who wishes to employ an advocate should bear in mind that, except with the leave of the Judge, an advocate cannot enter appearance for him unless he has a retainer in writing in Form 12A given him by the Defendant.

STATEMENT OF CLAIM

The Plaintiffs' claim is:

(a) CHF271,305.94 plus interest from 09.12.2009 at the rate of 3 months Libor, plus margin at a rate of 3.12% per annum plus default interest at a rate of 5% per annum until full and final settlement with capitalization of interest twice a year on 30th June and 31st December.

(b) Accrued interest of CHF4,975.81 from 06.06.2009 until 08.12.2009.

(c) Sale of mortgaged property.

(d) Expenses, plus V.A.T. and service expenses.

PARTICULARS:

1. The Plaintiffs are a Banking Organization duly registered according to the Laws of the Republic of Cyprus and conduct all types of banking operations.

2. By virtue of a decision/approval dated 21.08.2006 made in Paphos and a written agreement dated 21.08.2006 it was agreed that the Plaintiffs would grant to Defendants 1 and 2 a loan (ALPHA HOME) for the amount of CHF284,000 under the following terms:

(a) The loan was granted, in order to facilitate the purchase and/or construction and/or alteration and/or addition and/or the improvement of buildings.

(b) The disbursement of the loan granted shall be gradually effected by the Plaintiffs to the Defendants who shall receive sums according to the approval of the supervising architect (or any other person satisfying the Plaintiffs) as necessary for the payment of work executed to this part and/or for the purchase of materials. Provided that the Plaintiffs have the right to deny payment of any amount and that payment of any amount is deemed at the absolute discretion of the Plaintiffs.

(c) The repayment of the loan shall be made on first demand unless the Plaintiffs decide otherwise and shall be made by 180 consecutive monthly instalments of CHF2,006. The first instalment shall be payable one month after withdrawal of the total amount of the loan or two- years after the date of the first withdrawal of any part of the loan, whichever occurs first. Each subsequent instalment shall be payable one month after the date on which the previous instalment was payable until full and final settlement of the loan. Without prejudice to the above, the last instalment shall be of such an amount that will completely repay the balance of the loan.

(d) The above amount shall be charged with interest at the rate of 3 months (Libor, plus margin at 1.75% per annum. Provided that the Plaintiffs have the right at any time with a written notice to the Defendants to vary either upwards or downwards the interest rate, within the framework of the law.

(e) All charges referred to in the loan agreements including interest, the Libor, the margin, the 'fixed rate of interest, commissions, rights and default rate of interest will be capitalized if not paid every 6 months on 30th June and 31st December of each year and will be charged both before and after any demand and/or court decision until full and final settlement.

3. The Plaintiffs shall refer to the full terms of the signed agreement during the hearing of the action.

4. By virtue of an amending agreement dated 02.10.2008, signed by Defendants 1 and 2 on the 03.10.2008, clause 3 of the initial agreement was replaced by the new clause 3, as described in the amending agreement dated 02.10.2008, which was signed by the Defendants on the 03.10.2008. The remaining terms and conditions of the initial agreement shall remain in full force and effect. Specifically, the debit balance of the loan on or around 02.10.2008 was CHF266,327.49 plus interest from 01.07.2008. This balance shall be payable on first demand, unless the Plaintiffs decide otherwise, in which case (the due balance) shall be payable by the debtors by 156 monthly instalments. The first instalment shall be payable one month after withdrawal of the total amount of the loan or two years after the date of the first withdrawal of any part of the loan, whichever occurs first. Each subsequent instalment shall be payable one month after the date on which the previous instalment was payable, until full and final settlement of the loan. The amount of the monthly instalments shall be as follows: for the first 155 instalments the amount payable shall be CHF1,406.75 and the 156th instalment shall be of such an amount that will completely repay the balance of the loan, interest, commissions, rights and expenses.

5. As further security and guarantee for all the obligations of Defendants 1 and 2, Defendants 3 mortgaged in favour of the Plaintiffs the following immovable property by virtue of mortgage numbered Y.4299/2006 as follows:

DESCRIPTION OF IMMOVABLE PROPERTY

Mortgage Y.4299/2006, registered at the District Land Registry in Paphos, dated 07.09.2006 for the amount of CBE340.800.00

Plus interest, J. Aristodemou Ideal Homes Ltd.

Paphos, Peyia, field, with reg. no. 34996, Sheet/Plan 45.17, Plot 375; the whole, mortgaged share: 1/4.

Provided that the maximum amount for which the said mortgaged immovable property is charged, is the final balance, which at the date of forced sale of the mortgage remains unpaid with respect to the obligations for which the said mortgage was registered up to the maximum amount, not exceeding the amount of CHF340,800 plus interest and expenses.

6. Defendants 1 and 2 by virtue of a written agreement dated 27.08.2006 between the Plaintiffs and Defendants 1 and 2 assigned to the Plaintiffs their right which derive from the sale agreement dated 22.08.2006 which was entered into between Defendants 1 and 2 and the Company J. Aristodemou Ideal Homes Limited, Defendants 3 by virtue of which they bought a 2-bedroom house part of the 'Peyia Lakeview Development' Project in Peyia, Paphos, with reg. no. 34996, Sheet/Plan 45/17, Plot 375, as described in the said agreement, and the said Defendants 3 undertook the obligation to register a mortgage in favour of the Plaintiffs as security for the obligations of Defendants 1 and 2. Specifically, reference is made to clause 7(b) of the agreement. Full reference to the terms of the assignment shall be made at the hearing. The said assignment was accepted by Defendants 3.

7. By virtue of a power of attorney dated 21.07.2006 which was signed by Defendants 1 and 2, Defendants 1 and 2 appointed Mrs. Myria Savidou from Paphos, I.C. number 837458 as their legal representative. Full reference to the terms of these documents will be made at the hearing.

8. Furthermore Defendants 1 and 2 by virtue of a power of attorney dated 21.08.2006 appointed the Plaintiffs as their attorneys for the actions and measures stated and described in these documents. Specifically, the Plaintiffs are entitled to mortgage the property in their favour, sell the property to any person for any amount, appear before any District Land Office of the Republic of Cyprus and sign any documents, statements necessary for the actions and measures stated in the said Power of Attorney. Full reference to the terms of these documents will be made at the hearing.

9. The Plaintiffs granted to Defendants 1 and 2 the said loan which in breach of the agreement shows a due balance of CHF271,305.94 plus accrued interest from 09.12.2009 at a rate of 3 months Libor, plus Margin at a rate of 3.12% per annum, plus default interest at a rate of 5% per annum plus CHF4,975.81 accrued interest from 06.06.2009 until 08.12.2009 until full and final payment with capitalization of interest two times per year on 30th June and 31st December.

10. The Plaintiffs repeatedly notified Defendants 1 and 2 and through a letter dated 18.12.2008 and 05.06.2009 informed Principal debtors 1 and 2 of the change in the interest rate, the arrears shown in the repayment of the loan and through letters dated 09.12.2009 and 01.07.2009 from their legal representatives, terminated the agreement between them and demanded from the principal debtors the repayment of all sums owed but until today they have neglected and/or omitted to do so. Furthermore, the aforementioned letter dated 09.12.2009 was also sent to Mrs. Myria Savidou as the legal representative of Defendants 1 and 2 by which she took notice of the arrears shown in the repayment of the facilities which were granted by the Plaintiffs to Defendants 1 and 2.

11. The plaintiffs through a letter dated 09.12.2009 requested from Defendants 3, as mortgagors, to proceed and repay the amount for which, they are liable by virtue of their mortgage.

10. The Plaintiffs claim from Defendants 1, 2 and 3:

(a) CHF271,305.94 plus interest from 09.12.2009 at the rate of 3 months Libor, plus margin at a rate of 3.12% per annum plus default interest at a rate of 5% per annum until full and final settlement with capitalization of interest two times per year on 30th June and 31st December.

(b) CHF4,975.81 accrued interest from 06.06.2009 until 08.12.2009.

(c) A Court Order for the sale of the mortgaged property as described in paragraph 4 above for the satisfaction of the claim and of the expenses.

(d) A Court Order for the specific performance of the sale agreement by virtue of Chapter 232 when separate title deeds are issued for the property, for the transfer of the property in the names of Defendants 1 and 2 or in the name of the Plaintiffs or in the name of any person indicated by the Plaintiffs.

(e) A Court Decision which recognises the Plaintiffs' right to mortgage the property in their favour when it is transferred in the names of Defendants 1 and 2.

(f) A Court Order which authorizes the Plaintiffs to mortgage the property in their favour when it is transferred in the names of Defendants 1 and 2.

(g) A Court Decision which recognises the Plaintiffs' right to cancel the sale agreement and to withdraw in from the Land Registry.

(h) A Court Order which authorises and/or allows the Plaintiffs to cancel the sale agreement and to withdraw it from the Land Registry.

(i) A Court Decision which recognises the Plaintiffs' right to take possession of the property.

(j) A Court Order for a writ of possession of the property by the Plaintiffs.

(k) A Court Decision which recognises the Plaintiffs' right to sell and/or dispose of the property and/or their rights which arise from the assignment of the sale agreement to any person and for any Price, by private sale and/or through tenders and/or through public auction, for the repayment and/or towards the payment of the judgment debt and the sale expenses and return of any excess amount from the product of sale to Defendants 1 and 2.

(l) A Court Order which authorizes the Plaintiffs to sell and/or allows the Plaintiffs to dispose of the property and/or their rights which arise from the assignment of the sale agreement to any person and for any price, by private sale and/or through tenders and/or through public auction, for the repayment and/or towards the payment of the judgment debt and the sale expenses and return of any excess amount from the product of sale to Defendants 1 and 2.

(m) Expenses incurred with respect to the present legal action plus V.A.T. and service expenses.

N.B.: In the event that the Defendants pay to the Plaintiffs or to their legal representative the amount of the claim plus expenses at €1,326.00 plus V.A.T. plus €33.00 service expenses within 10 days from the service of this claim all further proceedings shall cease.

Chryssafinis & Polyviou LLP  
Advocates for the Plaintiffs

True copy

Registrar