

SUPREME COURT OF CYPRUS SECONDARY JURISDICTION

Civil Appeal No.. 343/10

December 23, 2015

[EROTOKRITOU, CHRISTODOULOU, FISHERMAN-MILTADOU, D / STES]

BETWEEN:

1. NAKERY TRADING LIMITED
2. SEMION SHPIGEL
3. MICHAEL AIZIN

Appellants / Plaintiffs

and

1. CHARALAMBOS SIALI
2. PANAGIOTAS SIALI
3. MARIOU SIALI
4. ANDRONIKIS bustle SIALI
5. SHIAELES CHAMBERS AND CO
6. AKI moss

Respondents / defendants

Mrs. D. cerium, for appellants / plaintiffs

Mr. St. Georgiadis, for respondent 1 and 2 / defendants

Mr. Mich. Mark, for respondent 6 / Defendant

EROTOKRITOU, D .: The unanimous decision of the Court will give Christodoulou, D.

A P A P A CASE

CHRISTODOULOU, D .: The defendants 1 and 2 (defendants 1 and 2) parents of lawyer Mario Siaili (defendant 3), who with his wife Androniki Siaili (defendant 4) retained in Limassol law firm Shiaeles Chambers and Co (defendant 5) are owners of the estate under no. 0/4255 recording, P / Fig. 45/60, pcs. 667, location "aspartame" of Anavargos Paphos village (the estate).

The defendant 3 counsel for the appellant 1 (applicant 1) which has as shareholders and directors of the appellants 2 and 3 (applicants 2 and 3), assured the appellant that 2 was plenipotentiary representative of his parents and proposed - according to the assertions of the appellants - to sell to the appellant one property at a reasonable price of US \$ 1.000.000 (US Dollars).

It is alleged that the appellants finally decided to buy the estate and, as is commonplace on 07.16.05 signed relevant document Shop (now the Museum Shop). In this presented as sellers respondents 1 and 2 by their son M. Siaili under the Special Power of Attorney Document dated. 07.16.05 buyer and the appellant one, with two key conditions. First, the appellant one will paralamvane possession and enjoyment of the property, which, as stated in the shop was free of any encumbrance or other charges, in which case 1.12.05 and transferred the property in the name of and, second, that the sale price of the property was paid by appellant 1 and if the respondents 1 and 2 would pay the appellant 1, or about 1.12.05, the amount of US \$ 1.300.000 and € 250,000, the agreement will cease to It is valid and will be canceled automatically.

It is an established fact that one appellant lodged Paphos Land Shop on 08/08/05 through the agent Akis Vryonis (respondent 6 / respondent 6) - to which the defendants accuse them misled by assuring them that the property was free of any weight and / or other charges and was not - and that the above conditions of sale not only fulfilled by the property vendors (defendants 1 and 2), but has since been added to this and further charges. But is an indisputable fact that the defendant 3 in December 2005, gave the appellant two four checks totaling L.K.600.000 (€ 1.025.160,86). Of these three, payment date 31.1., 8.3. and 1.6.06 for the total amount of L.K.590.000 (€ 1.008.074,85) issued by the law firm Shiaeles Chambers and Co (defendant 5) and the fourth day. 2/18/06 payment for the amount of L.K.10.000 (€ 17.086,01) was personal respondent 3. But all checks returned by the bank atimites as it was for nothing.

On the basis of the above (general) actual context, the appellants attributed the Paphos District Court lawsuit 3147/06, which charged the defendants with conspiracy to defraud, deception, fraud and / or illegal behavior, result of which was to their squeeze the amount of US \$ 700.000 and € 250.000 and on this basis they claimed against them: -

A. Decree for specific performance of the sales document dated. 07/16/05,

II. US \$ 700.000 and € 250.000 in damages for breach of agreement,

C. L.K.55.000 (€ 93.973,08) as special damages for loss of use and / or income from 1.12.05 to 1.12.06,

D. L.K.5000 (€ 8.543,01) as special damages for loss of use and / or income for each month from 1.1.07.

E. General, special and punitive damages and, alternatively

ST. L.K.600.000 (€ 1.025.160,86) under priceless checks, plus interest at 9% from 07.16.05 and costs.

H lawsuit was served on the defendants 1, 2 and 6 (defendants 1, 2 and 6), while not served on defendants 3, 4 and 5, since the night of 14.9.2006 was attempted murder defendant 3 and since then he and the wife of defendant four have disappeared and because of that the case against them was withdrawn as undeliverable without fault. It is noted here that against the respondent made three complaints to his office lawyer from customers that the police deceived him for outstanding arrest warrants.

In service of the application against the respondents 1, 2 and 6 have registered Display memo and then Defense Report. With this denied any knowledge or involvement in the contract at issue, or that mandated in any way the defendant three their son to sell the estate. however alternatively and put forward the claim that the contested transaction involved illegal lending and that the purchase and sale of the property was a sham and counterclaim demanded removal from the Pafos District Land Office Museum Shop of dated. 07.16.07. In what it concerns the six respondent (respondent 6) is the Advocacy Report first alleged that the only involvement that was the case was the testimony of the Museum Shop in the Land and, secondly, that advised the appellant to two not to pay the purchase price before submitting documents to the Land Registry, but the answer I got from the appellant 2 was that already had paid a large sum of money as a deposit.

Upon completion of the proposals document, as above, the case led to a hearing in which submitted for the appellants the efeseiontas 2 (ME1) and the assessor property I. Polybius (ME2), while for the defendants submitted by respondent 2 (defendant 2) 6 and the respondent (respondent 6).

The first instance Court, after evaluating the agonizing material put before him, considered unreliable testimony of appellant 2 and fully credible testimony I appraiser. Polybius (ME2) and 2 and 6 respondents (defendants 2 and 6). Thus dismiss the action with costs against the appellants and accepted the counterclaim of the respondents 1 and 2, by issuing a decree on cancellation of sale dated.

07.16.05. And this on the basis essentially four critical for case findings or conclusions. The first, that the appellants have failed to demonstrate the authenticity of the power of attorney, unlike the defendants 1 and 2 who through the testimony of respondent 2 satisfy the Court that the signatures are in the power of attorney was not theirs. The second, that the plaintiffs 1 and 2 shall not at any time have authorized their son respondent 3 to sell the property, which we learned for the first time when the efeseiontas 2 visited in March 2006, the respondent one in his office of lawyer in Paphos . Third, that there were objective data that the main transaction between plaintiffs and defendant 3 concerned borrowing and Shop dated. 07.16.07 constitute a guarantee in the form of a kind of collateral available to the appellant 1 and the fourth, the two efeseiontas not instructed the six respondent (respondent 6) to investigate whether there were liens on the property, but only made the respondent 6 was the preparation of the Assessment Report on the property and the deposit of sale in the land Registry.

The plaintiffs consider wrong the first instance judgment, which he challenged in this appeal with eight grounds of appeal. Of these the first three are in the crosshairs of the conclusions of the first instance Court to regard the proxy, the fourth is concluded that the main transaction covered loan and not a property purchase, the fifth reject the appellant two witness (ME1), the sixth accepting the testimony of appellant 2 / defendant two that never authorized her son to sell the estate and the last two non attributing negligence to the respondent 6 / respondent 6 in the performance of his duties as an agent and therefore the non conviction in damages to plaintiffs for the damage caused by them.

To examine the first three grounds of appeal when it useful to refer to evidence that was before the first instance Court concerning the Proxy, how approached and what errors charge the appellants.

It is assumed that the proxy document certified by the certifying officer Vasken Metzavorian, who testified that the respondents 1 and 2 are personally known and signed before the Plenipotentiary Saturday 07/16/05.

The testimony of appellant 2 on the subject matter was that, before signing the shop asked the respondent 3 as his father (respondent 1) confirm that to delegation was real and for this purpose the defendant 3 telephoned the presence of to his father and asked him in English «Please confirm me that I can sign this contract to sell the property» and his father replied "Yes, I confirm». Further stated that in March 2006 visited the respondent 1 at the law office in Paphos and at the meeting were the respondent 1, after he confirmed that the Proxy was valid, asked him weeping not to proceed with criminal complaints against his son and he promised it

would do everything possible to make the transfer of the property in the name of the appellant 1. these affirmations stressed efeseiontas 2, in conjunction with the fact that the Power of Attorney was certified by certifying officer and accepted by the Land Registry they convinced him that the defendant actually three had to delegation sell the property.

In turn, the two respondent claimed that she never authorized her son to sell the property and never signed the disputed Proxy, which neither husband signed if knows his signature and signatures of both the Proxy not made by them. Regarding not the meeting had efeseiontas 2 with her husband in March 2006, he claimed that as informed by her husband during this meeting the efeseiontas two did not report anything to shop, but the requirement was to repay money he had lent their son.

As has already been noted, the first instance Court - although it accepted the testimony of the appellant was convinced that two of the three representations of the defendant that he had to delegation for sale of the property and how efeseiontas 2 ". like a valid property purchase agreement to serve their purposes. "and this regardless of the". true nature of the transaction between the plaintiffs and the company only and the defendants 1-3. "- nevertheless concluded that the attorney was not genuine. cites unchanged reflection of efpaideftou President which was the basis of the justification of the report conclusion: -

"Given the dikografimeni position of defendants 1 and 2 and the inherent weakness of the case of the company against the defendant at least 2, it would be expected that the side of the plaintiffs would have to witness the certifying officer before whom signed the power of attorney which exousiodoteito attorney to sell the property, sign the relevant document of sale and make the transfer.

The applicants did not call as a witness the certifying officer, they gave no explanation for his absence from the dock of the witness and closed their case without even presenting the power of attorney as evidence.

Asks the lawyer plaintiffs' (p. 9 of his written speaking) because the defense of the defendants 1 and 2 did not call as a witness the certifying official. Escape seems the attention that the defense denies the authenticity of the proxy. For the defense of the defendants 1 and 2 the logical explanation is that the certifying officer colluded with the lawyer and intentionally or misled by the lawyer and negligently and in breach of statutory duties testified falsely. There would call as a witness a person whose not espouse honesty and sincerity. obviously expected to call the side of the plaintiffs if attending as a witness and insisted on position to the cross-examination to disprove him.

A copy of the proxy document accompanying the contested document of sale, as filed in the District Land Office for Paphos skopous_eidikis execution presented by respondent 2 (M Voluntary Service. 1) (Presumption Written declaration 21). The husband purchased from the Land Registry at a later time. The defendant testified that the two alleged own signature is not his own and that neither she claimed to be the signature of her husband, he knows it is his.

Article 9 of Law Cap. 39 Certifying Officer provides that certificates allegedly prepared by certifying staff in accordance with the provisions of the law will be accepted in the Court as a witness of events attest.

The word "acceptable" imparted the importance of integrating the acceptance martyr material and in evaluation sequence. «Receivable» is the word used in the English text. Of course it can challenge the authenticity and validity of a document alleged to be certified by certifying official.

The fact that the defendants 1 and 2 did not make a complaint to the police and denouncing the certifying official does not indicate that they accepted that the attorney was genuine. It is understood that any complaint would involve the defendant three son in the commission of serious criminal offenses. Not only it would not any complaint at the time, but as Semion martyred one defendant begged him not to proceed with criminal complaints against his son.

The revocation or withdrawal of a power of attorney from the Land Registry no practical importance would. The defendants 1 and 2 were pre faits accomplis. Such action may be pushed consequently the Semion terminate. After the introduction of the claim any effort or withdrawing the delegate from the Land Registry will eklamvaneto rather as an attempt to create impressions and staginess. Pundits referred to by counsel for the plaintiffs (Bank of Cyprus Ltd. V. Floridis etc. (1999) 1 (A) AAD 508 Protopapa v. Protopapa etc. (2002) 1 (B) AAD 1329 and James v. Zapri (2008) 1 (B) AAD 926) relate to cases where the proxy was valid and binding.

The certification of the signatures of the defendants 1 and 2 allegedly made by the certifying officer Vasken Metzavorian on 16.7.2005 in Limassol.

It is curious because the defendants 1 and 2 from Paphos to visit in Limassol certifying official to certify their signatures. But they went to Limassol on 16.7.2005, which is the signature of the contract for sale, why not visited the law firm of their son in Limassol and sign the document of sale itself. I_martyria of Semion is recalled, that the document of sale signed in the defendant's office 3. Imagine the office of B.

Metzavorian to the particular chosen must not be too far from the lawyer's office and in any case was the same city."

On the basis of prosachtheisas testimony, claim the plaintiffs incorrectly the first instance Court reached a finding that there was a valid Power of Attorney (first appeal plea) mistakenly not shifted the burden of proof of non-validity and authenticity of Attorney on the shoulders of the respondents 1 and 2 (2nd appeal appeal) and incorrectly antinomy turned himself into an expert in deciding that the respondents 1 and 2 not signed the Power of Attorney (third ground of appeal). This is for reasons justified with great detail in efetirio and who developed and detailed outline of speaking efpaideftous counsel of the appellants.

The first instance decision on the question, countered the efpaideftoi advocates of the respondents 1 and 2, is entirely correct and drew the attention of the Court of Appeal in the temporal law according to which no justification for intervention in the findings and conclusions of the first instance Court if they find support in the given testimony and do not depart logic. They also claimed that the first instance Court correctly approached the legal provisions of article 9 of the Certifying Officers Law Cap. 39 in that regard the burden of proof of the authenticity of Attorney, submitting that on the basis of prosachtheisas testimony concluded that the signatures on the Form of Proxy respondents 1 and 2 did not come from them was correct.