

Egged Co-operative Society Ltd. - - - - *Appellant*

v.

Levi Geffen - - - - - *Respondent*

FROM

THE SUPREME COURT OF PALESTINE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 10TH OCTOBER, 1946

Present at the Hearing:

LORD NORMAND

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from the judgment of the Supreme Court of Palestine sitting as a Court of Appeal dated 30th November, 1943, reversing the judgment of the District Court of Tel Aviv dated 30th June, 1943, and ordering judgment to be entered for the respondent for L.P.500 with costs.

In the year 1940, the appellants wished to acquire the majority of the shares in a company called Abir Company Limited. The respondent was one of the shareholders in that company, and the appellants thought that he could influence other shareholders. Accordingly an agreement was entered into between the appellants and the respondent, the terms of which are to be found in a letter from the appellants to their solicitor, Dr. Ishayevitz, which was admittedly shown to the respondent. The letter is Exhibit D.2. and contained the following provision: "We hereby instruct you in your capacity as our advocate to communicate to Mr. Levi Geffen on our behalf that after we shall have procured the majority of shares in the Abir Company Limited either in our name or in the name of a trustee on our behalf, we shall pay him an amount of L.P.250 for his help in procuring the majority of these shares". After some other provisions not now material to be stated, the letter continued: "We shall pay him a further amount of L.P.250 after completion of all the matters between ourselves and the Cohenstak Brothers who are the owners of the remaining shares in the above company." It is not now in dispute that the amount which became payable under this letter was L.P.500.

On the 7th November, 1941, a memorandum of agreement, which is Exhibit D.1. was entered into between the parties whereby the appellants agreed to pay the respondent L.P.201 for his shares in the Abir Company Limited, and the respondent agreed to perform various services in connection with such company and the transfer of its shares to the appellants.

On the 28th November, 1941, Dr. Ishayevitz on behalf of the appellants paid to the respondent by cheque the sum of L.P.1,000, and the respondent signed a document (the draft of which had been prepared by Dr. Ishayevitz), described as an agreement between himself and the appellants, which is Exhibit D.6. In that document the parties confirm that the agreement was in addition to the agreement signed by the parties on the 7th November, 1941, and that the consideration stated in such last-mentioned agreement

was a merely formal consideration, and the agreement now being stated then contained the following paragraph: "The parties hereby confirm that the true consideration for the aforesaid shares and for all the other undertakings of Geffen in the said agreement of the 7th November, 1941, is L.P.1,000 and Egged shall pay this amount by cheque to the order of Geffen drawn on the Anglo-Palestine Bank, Tel Aviv, No. 57353 12951 and Geffen hereby confirms the receipt of this cheque".

On the same date, i.e. 28th November, 1941, but after the interview at which the cheque was handed over, the respondent wrote to Dr. Ishayevitz a letter, which is Exhibit P.2. The letter was headed "without prejudice", but it was given in evidence by the respondent without objection and he was cross-examined upon it. The said letter contained 3 paragraphs which are material:—

"(1) My rights in Abir Ltd. are 10 per cent. of the value and selling price of the whole business. Therefore I have to receive from Egged 10 per cent. of the sum paid for Abir. Compared to the sum which for example Konstock family received (50 per cent. = L.P.5600) that means a sum of L.P.1120.

"(2) In addition to the above sum, there is due to me a further L.P.500 the sum which you promised to pay me—you and Egged—and bound yourselves to pay in accordance with the letter of 15th March, 1940, which was deposited with you as a trustee.

"(3) On the basis of all the promises and according to your request in the office of Dr. Bernard Joseph, Jerusalem, and out of complete confidence, I signed all documents which were handed to me for signature without any dispute or argument and without even examining them, and that was in order to lighten the work of the Egged people and to hurry on the conclusion of the business. Among the other promises you authorised me to make promises to others and that must be carried out." No written answer was sent to this letter.

In the suit giving rise to this appeal, the respondent sued for L.P.500 due under the agreement of the 15th March, 1940, being Exhibit D.2. The defence of the appellants was that they were under no liability in law to pay to the plaintiff the amount claimed by him, but that nevertheless the appellants did pay to the respondent on the 28th November, 1941, the sum of L.P.500 as if they were liable to do so.

Both the lower Courts held that the debt due under Exhibit D.2. was legally payable, and their Lordships see no reason to differ from this view. The only real question calling for decision in this appeal is whether the monies due under Ex. D.2. were paid on the 28th November, 1941, being included in the L.P.1,000 paid on that date, as the appellants allege; or whether the L.P.1,000 included only the price of the respondent's shares and the value of services to be rendered by him under the agreement of 7th November, 1941, as alleged by the respondent and expressly stated in Ex. D.6.

At the trial the appellants' evidence was to the effect that at the interview on the 28th November, 1941, between Dr. Ishayevitz and the respondent, when the cheque for L.P.1,000 was given, Dr. Ishayevitz wrote at the bottom of Ex. D.2. a memorandum which now appears thereon in the following terms: "I hereby confirm that I have received from Egged the sum of L.P.500 mentioned in the contract. I received the amount in the sum of L.P.1,000 referred to in the agreement between me and Egged of this date in consideration for my shares in Abir Ltd." It was the appellants' case that the respondent signed this memorandum, and that thenceforth Ex. D.2. with the memorandum remained on the file in the office of Dr. Ishayevitz and that at some subsequent date the respondent managed to secure possession of Ex. D.2 and obliterated his signature on the memorandum by putting stamps over it. It may be noted that no fraud or forgery by the respondent was pleaded. The respondent's case was that after reading the memorandum on Ex. D.2. he refused to sign it.

The Trial Court held that the forgery alleged by the appellants had not been proved, but the Court found that the respondent had agreed to sign the said memorandum and pretended to sign it. They held therefore that the L.P.500 sued for had been paid, and dismissed the plaintiff's suit. In appeal the Supreme Court held that once the charge of forgery failed, the Trial Court erred in allowing oral evidence to be adduced to show that the real intention of the parties was different from the plain and unequivocal language of the agreement, Ex. D.6., and that it was not competent for the appellants to challenge this document by oral evidence.

Their Lordships are not prepared to go as far as the Supreme Court. The document Ex. D.6. was signed only by one of the parties and is not therefore a written agreement, and their Lordships have not been referred to any provision in the law of Palestine which would render the evidence tendered at the trial inadmissible. But in their Lordships' view the evidence provided by the written documents far outweighs in cogency the conflicting, and in many respects unsatisfactory, verbal evidence tendered at the trial. Exhibit D.6 states in clear terms that the L.P.1,000 was paid as consideration for the respondent's shares in Abir Ltd. and for his other undertakings in the agreement of 7th November, 1941. The letter Exhibit P.2. written by the respondent on the same date suggests that at that time he was disposed to challenge the price paid for his shares, a position which he has not persisted in, but the letter makes it perfectly plain that the L.P.500 was, in the respondent's view, still due to him under Ex. D.2. If the L.P.1,000 was to include the L.P.500 payable under Ex. D.2. it would have been easy to have said so in Ex. D.6. which was drafted by Dr. Ishayevitz. It is suggested that the appellants were anxious that their arrangement with the respondent for securing his services in connection with the acquisition of shares in Abir Ltd. should not be made public. Even if this be so, Ex. D.6. could have been expressed to include any monies payable under the agreement of the 15th March, 1940, without mentioning the services for which such monies were payable.

Their Lordships are quite unable to appreciate the finding of the Trial Court that the respondent agreed to sign, and pretended to sign, the memorandum at the foot of Ex. D.2. Once the allegation of fraudulent manipulation by the respondent with his signature on the said memorandum failed, it seems to follow that the memorandum was not in fact signed by the respondent, and Dr. Ishayevitz could see this for himself.

It is idle to suggest that Dr. Ishayevitz was deceived by the respondent pretending to execute the memorandum, or that he would have been satisfied to accept an agreement to sign a document which, if it was to be signed at all, should have been signed there and then. Moreover, if the cheque for L.P.1,000 was handed over on the terms that the respondent should sign the memorandum on Ex. D.2., it is strange that Dr. Ishayevitz did not demand the return of the cheque when the respondent refused to sign, and made no attempt to stop payment of the cheque. Nor did he take any action when he received the letter Ex. P.2. written on the same date in which the respondent made a claim wholly inconsistent with the suggestion that he had signed a receipt for the L.P.500 due under Ex. D.2.

In their Lordships' opinion the appellants have failed to prove that the monies payable under Ex. D.2. were paid on the 11th November, 1941, as alleged, and the respondent's suit is entitled to succeed. On this finding it is unnecessary to consider whether the charges of fraud and forgery set up at the trial were open upon the pleadings.

Their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellants must pay the respondent's costs of this appeal and his costs in both the Courts in Palestine.

In the Privy Council

EGGED CO-OPERATIVE SOCIETY, LTD.

v.

LEVI GEFFEN

DELIVERED BY SIR JOHN BEAUMONT

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