



Georgia
Eleftheriou

Dismissal of application due to delay in implementing enforcement measures



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Litigation, Cyprus

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In a recent case, the Supreme Court upheld a lower-court judgment to dismiss an application under Order 40(8) of the Civil Procedural Rules requesting enforcement measures 18-and-a-half years after an initial judgment had been handed down. **(1)**

However, the appeal was dismissed on two grounds. First, the debt had not been established and second, there had been such a long delay in applying for the adoption of the enforcement measures.

Facts

On 31 May 1993 the appellants secured a judgment against the respondents (Action 679/1992), jointly and separately, for C£18,432 plus interest at 6% per annum and costs. This action concerned a car loan agreement. The first respondent was also ordered to hand over the vehicle in question to the appellants for sale by public auction.

The debtor paid various amounts between 31 May 1993 and 18 October 1999. When an enforcement application was submitted in 1999, a balance of €15,010 remained with interest at 6% per annum from 8 November 1993. In addition, on 24 September 1999 it was stated before the courts that the order against the first respondent to hand over the vehicle to the appellants had been complied with. On the basis of the above statement, it was reasonably assumed that the vehicle had been delivered to the appellants as ordered.

Supreme Court judgment

The Supreme Court first dealt with the common law legal framework under which:

a judgment creditor is in general entitled to enforce a money judgment which

*he has lawfully obtained against a judgment debtor by all or any of the means of execution prescribed by the relevant rules of court.***(2)**

The Supreme Court further stated that creditors have this right when a debtor's judgment fails to comply with the judgment given against them. Further, it may be exercised within 10 years from the date of the judgment without court permission,**(3)** after which it is exercised via leave of court pursuant to Order 40 of the Civil Procedural Rules. The court then grants leave for enforcement measures, exercising its discretion, provided that the creditors in question have demonstrated that:

- a part of the debt still exists;
- the enforcement methods used at the time were unfruitful, so additional measures are necessary; and
- new measures could lead to the recovery of the debt and satisfy the judgment.

The Supreme Court added that a creditor's inactivity in the execution of enforcement measures must be specifically substantiated in order for the courts to justify leave after the 10-year period.

The Supreme Court held that in examining this aspect of the application, the lower court had observed that no determination had been made regarding the fate of the vehicle in question (ie, whether it had been sold and if so at what price and whether any money received had been lodged to repay all or part of the debt). Thus, the first-instance court rightly raised the issue of the failure to satisfy the condition of whether the debt still existed, as no evidence had been provided to the court in this regard. As a result, the above condition could not be satisfied.

Finally, the Supreme Court addressed the second ground for dismissing the appeal (ie, the delay in taking measures to recover the debt). Although the court accepted that some action had been taken during the first six years following the first-instance decision, for almost 13 years the appellants had done nothing to execute their judgment against the respondents and no explanation was put forward for this.

The Supreme Court saw no reason to intervene in how the first-instance court had exercised its discretion and the appeal was dismissed with costs against the appellants.

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Endnotes

(1) *Cyprus Popular Bank Public Co Ltd v 1 PK 2 SL 3 AS 4 GL 5 LL*, Civil Appeal 219/2012, 31 January 2019.

(2) *Roberts Petroleum v Bernard Kenny Ltd* [1982] 1 All ER 685, p 690.

(3) With a relevant amendment to Order 40(8) on 9 September 2011, the six-year period

was replaced by a 10-year period.

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