

Litigation - Cyprus

Abuse of process in private criminal prosecutions

Contributed by **Andreas Neocleous & Co LLC**

June 09 2015

Introduction

Facts

Decision

Introduction

The Supreme Court recently gave its judgment in an appeal against a first-instance decision in which the respondents had faced criminal charges for issuing cheques which had failed to clear.⁽¹⁾ During the lower court hearing, the director of the complainant company, which was the appellant in the subsequent appeal, stated that the cheques had been issued by the defendants – the respondents in the appeal – to settle civil actions and other private criminal cases regarding unpaid cheques.

After the prosecution's evidence had been given, at the stage of submission of no case to answer, the first-instance court examined the matter of abuse of process on its own initiative and without the matter being raised by the defendants. From the testimony before it, the court concluded that the complainants had "used the criminal justice system with ulterior motives, in order to receive the owed amount and not to punish the offenders". Although bringing a criminal prosecution does not give the complainant any right to reclaim its money, it exerts pressure on the defendant to pay the amount owed, as the offence of issuing cheques which do not clear carries a prison sentence. To avoid abuse of process, the court acquitted the defendants and ended the proceedings.

Facts

The complainants appealed against the court's decision, on the basis that it had exceeded its powers in acquitting the defendant, as under Article 74(1) of the Criminal Procedure Law (Chap 155) regarding the submission of no case to answer, it should have limited itself to determining whether the conditions were met to call the defendant to present a defence. A further ground for appeal that the appellant put forward was that the court's conclusion was incorrect as a matter of law.

Considering the first ground, the Supreme Court stated that the court was entitled to raise the issue of abuse of process at any stage. The fact that it had done so at the closure of the prosecution's case was not significant. There was no requirement for the court to examine any submission of no case to answer before considering the issue of abuse of process. The matter of abuse of process was fundamental and determinative of the entire case.

Instead, the real question for the Supreme Court to determine was the matter of abuse, the answer to which was to be found in *Charalambides v Komodromou*, where the Supreme Court had held that the existence of a parallel civil action with a private criminal case – involving the same facts and circumstances – did not constitute an abuse of process.⁽²⁾ Even if the prosecution had an ulterior motive – to recover the funds concerned – the manner in which the prosecution views the criminal procedure cannot have a determinative outcome. In *Charalambides* the Supreme Court decided that a complainant is entitled to exercise its right to bring a criminal prosecution, irrespective of other court proceedings. The complainant's motives cannot determine the right or alter the purpose of the proceedings, as the prosecution of the defendant in a criminal case does not give the complainant the right to reclaim money owing as a result of non-payment of the cheques concerned. That can only be accomplished in a civil case.

Decision

As a consequence, the Supreme Court disagreed with the court of first instance on the matter of abuse. It overturned the acquittal and remitted the case to the same court of first instance to resume from the stage at which it had been halted.

For further information on this topic please contact Marios Aristou at Andreas Neocleous & Co LLC by telephone (+357 25 110 000) or email (marios.aristou@neocleous.com). The Andreas Neocleous & Co LLC website can be accessed at www.neocleous.com.

Endnotes

⁽¹⁾ *Charilaou Bros Ltd v Magnior Ltd*, Criminal Appeal 70/2014.

⁽²⁾ *Charalambides v Komodromou*, (2002) 2 AAD 522.

The materials contained on this website are for general information purposes only and are subject to the disclaimer.

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Author

Marios Aristou



© 1997-2015 Globe Business Publishing Ltd

Online Media Partners

