

Litigation - Cyprus

Supreme Court affirms and distinguishes hire-purchase contracts

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In January 2011 the Supreme Court reaffirmed the validity of hire-purchase contracts, stating that:

"It has been repeatedly decided that in its legal sense, hire-purchase is effectively construed by two distinct contracts, as indicated by the term itself (hire plus purchase)... The one is a type of bailment during which the subject-matter remains in the use and possession of the hire-purchaser provided that he consistently pays the instalments; the second is of a type of sale of the subject-matter to the hire-purchaser by the payment of an additional, usually nominal, amount... Hire-purchasing derives from English law as a means of circumventing the provisions of the Factors Act 1889 so that upon delivery of the subject-matter it cannot be deemed that good and legal title is transferred in order for the person having possession to be able to sell it to a third party acting in good faith."

Referring to English case law, the Supreme Court held that the two elements distinguishing hire-purchase agreements from direct sale contracts are:

- the right of return of the subject matter before, during or subsequent to the payment of the instalments and before the exercise of the right of purchase; and
- the absence of an obligation on the part of the hire-purchaser to purchase the goods.

The court went on to state that:

"In parallel, it is deemed that there will always be an owner of the goods that will be financed with or without the intermediation of a trader who has the goods in his ownership. Within the context of a valid hire-purchase there is also the possibility of refinancing, which effectively differs in the manner and time of payment of the whole of the previously owed amount by the addition of new hire-purchasing rights, fees and expenses."

Simple hire-purchase transactions generally involve the financing institution buying the goods concerned from the trader and selling them on to the trader's customer, with a view to ownership being transferred to the customer at the end of the hire-purchase term, subject to compliance with the terms of the contract.

Referring to the Court of Appeal's decision in *Eastern Distributors v Goldring*,⁽¹⁾ the court also stated *in obiter* that more complex forms of hire-purchase agreement may exist - for instance, where the subject matter of a hire-purchase contract may belong to the hire-purchaser from the start which, for the purpose of raising capital, sells it to a financial institution against an agreed consideration and returns the relevant amount by instalment.

Aspects of the Court of Appeal decision in *Eastern Distributors v Goldring* were criticised in later English cases.

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Endnotes

(1) (1957) 2 All ER 525.

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