THE COMPLEX COMMERCIAL LITIGATION LAW REVIEW

FOURTH EDITION

Editors
Oliver Browne, Ian Felstead and Mair Williams

THE LAWREVIEWS

THE COMPLEX COMMERCIAL LITIGATION LAW REVIEW

FOURTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in December 2021
For further information please contact Nick.Barette@thelawreviews.co.uk

Editors
Oliver Browne, Ian Felstead and Mair Williams

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADERS
Joel Woods, Jack Bagnall

BUSINESS DEVELOPMENT MANAGERS
Rebecca Mogridge, Katie Hodgetts, Joey Kwok

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Leke Williams

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Helen Sou

SUBEDITOR
Janina Godowska

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-765-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

BAKER & MCKENZIE PARTNERSCHAFT VON RECHTSANWÄLTEN UND STEUERBERATERN MBB

CAVENAGH LAW LLP

CHEN & LIN ATTORNEYS-AT-LAW

GASSER PARTNER ATTORNEYS AT LAW

GOODMANS LLP

GRANDALL LAW FIRM

HERBERT SMITH FREEHILLS

JONES DAY

KL PARTNERS

LATHAM & WATKINS

LUNDGRENS LAW FIRM P/S

MARTÍNEZ, ALGABA, DE HARO Y CURIEL, SC

PATRIKIOS PAVLOU & ASSOCIATES LLC

PINHEIRO NETO ADVOGADOS

SCHOENHERR ATTORNEYS AT LAW

THOUVENIN RECHTSANWÄLTE KLG

URÍA MENÉNDEZ

CONTENTS

PREFACE

Litigation is, on one analysis, all about telling stories to impartial decision makers. Complex commercial litigation means that those stories are more detailed, more involved and more intricate. That means that telling the best story, in the most effective fashion, requires an incredible amount of preparation, research and skill.

But telling the best story is only part of the battle: every good story requires a strong foundation.

That is the purpose of *The Complex Commercial Litigation Law Review*.

As the editor of previous editions has noted, the world is becoming increasingly small, and disputes increasingly cross national borders. That means that the stories we tell are increasingly multi-jurisdictional, and playing a proper role in litigation (which now often makes us venture into new and uncharted territory to serve our clients and other stakeholders properly) requires an understanding of the different approaches each jurisdiction takes to important issues.

Addressed in these pages are the components required to provide a strong foundation to allow us to enhance our understanding of the ways in which complex commercial litigation works in different jurisdictions. From contract formation and interpretation (contracts being at the heart of the overwhelming majority of complex commercial litigation) to explaining the dispute resolution process, the remedies that might be sought and the defences that might be presented in response, this volume details the different approaches taken around the world to the resolution of complex commercial disputes.

We are very fortunate to have had considerable assistance fulfilling the purpose of this edition of *The Complex Commercial Litigation Law Review* from colleagues around the globe who are leading practitioners in their various jurisdictions. They come from some of the most respected law firms, and we are privileged to have the benefit of their insight into the ways in which complex commercial litigation arises and is addressed, as well as recent developments, in the countries in which they practice.

Ultimately, whether you are a corporate counsel, a business executive, a private practitioner, a government official or simply an interested bystander, and whether you are facing litigation, arbitration, mediation or some other form of dispute resolution (or simply wanting to understand litigation risk), we hope this edition provides useful insight and guidance. If it makes your foundations stronger, and your stories more informed and more effective, then we will have achieved our objectives.

Finally, please remember Abraham Lincoln's wise words: 'Discourage litigation. Persuade your neighbours to compromise whenever you can. As a peacemaker the lawyer has superior opportunity of being a good man. There will still be business enough.'

Litigation is not always the answer – but where it is unavoidable, we hope this edition provides assistance.

Oliver Browne, Ian Felstead and Mair Williams
Latham & Watkins
London
November 2021

Chapter 6

CYPRUS

Stavros Pavlou, Katerina Philippidou, Andria Antoniou and Athina Patsalidou[1]

I OVERVIEW

Cyprus is a common law jurisdiction country, and its justice system is based on the adversarial model. Most of Cypriot law has been modelled after English common law and equity, the basic principles of which are directly applied by Cyprus courts under Section 29 of the Courts of Justice Law.

The general contract law of Cyprus is codified by the Contract Law, Cap. 149 (Cap. 149), which is identical in some respects to the Indian Contract Act 1872. The Cyprus courts may seek guidance from decisions of the English courts and principles of Indian case law in relation to contract law, as well as from recognised academic textbooks thereon.

The courts are bound by the doctrine of precedent, according to which the superior courts' (second instance) decisions bind subordinate courts. The Supreme Court has unlimited subject-matter jurisdiction, and its decisions when operating as an appeal court are final unless overturned by the European Court of Human Rights or the European Court of Justice. In Cyprus, the courts follow and apply the procedural rules adopted for each type of court. The Civil Procedure Rules (CPR) apply to all district court civil procedures and in civil procedures before other courts, in some instances *mutatis mutandis*.

II CONTRACT FORMATION

Section 10 of Cap. 149 provides that a contract is an agreement that is concluded with the free consent of parties competent to contract for a lawful consideration and with a lawful object, and that is not expressly declared by the law to be void. It may, subject to the provisions of Cap. 149, be made in writing, orally, or partly in writing and partly orally, or it may be implied by the parties' conduct.

In a few words, a contract under Cyprus law is an agreement between two or more people regarding a certain matter that creates specific obligations and rights and that is legally valid and enforceable. A contract need not necessarily be in writing, except where specifically provided so by law.

The fundamentals for the existence of a valid and enforceable contract are outlined in the following sections.

---

1 Stavros Pavlou is the senior and managing partner, Katerina Philippidou is a partner, Andria Antoniou is a senior associate and Athina Patsalidou is an associate at Patrikios Pavlou & Associates LLC.

i Offer and acceptance

It is a basic rule of contract law that for a contract to be valid and enforceable, there must have been an offer by one of the parties that was accepted by the other one.

An offer exists when one person signifies to another his or her willingness to do or to abstain from doing something, with a view to obtaining the assent of that other person to such act or abstinence.[2]

When the person to whom the proposal is made signifies his or her assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

An offer should be distinguished from an invitation to treat or an invitation to negotiate because the latter cannot be accepted as such and leads to a promise. The answer to such an invitation is in essence an offer.[3] For instance, a price list constitutes an invitation to treat or an invitation to negotiate, and an order is an offer that must be accepted to create a binding contract.

Acceptance is an absolute and unqualified approval of the terms of an offer with any terms that may be attached. It must be communicated to the offeror and can be made in writing, orally or by a stipulated method of acceptance, or be inferred by the conduct of the parties. Silence cannot be considered as acceptance, unless the parties have agreed otherwise.

ii Consideration

Valuable consideration is necessary to make a contract enforceable. Consideration need not be adequate but must be of some value and sufficient;[4] however, there are some exceptions,[5] including in the cases where a party provides a gratuitous assurance by a deed or gives a gratuitous promise. Past consideration is also considered to be valid consideration.

The contract is void when the consideration is illegal.

iii Intention to create legal relations

Mutual intention of the parties to create legal relations constitutes a significant factor in considering the validity and enforceability of a contract. Such intention is presumed to exist for commercial contracts, which is generally not the case for family, social and friendly settlements.

iv Capacity to contract

As a general rule, every person is deemed capable of entering into an agreement, except persons of unsound mind and those disqualified from contracting by any law. For parties who have not attained the age of 18 years at the time of formation of a contract, the law in force in England at the time is applicable.[6]

2 Section 2(2)(a) of Cap. 149.

3 *Irene Georgiou v. Cyprus Airways* (1998) 1 (C) CLR 1994; *Christodoulou v. Cyprus Airways* (1999) 1 (B) CLR 1295; *Georgiou v. Cyprus Airways* (2008) 1 (B) CLR 1159; *Mary Kontou v Cyprus Airways*, Civil Appeal 301/07 date 9/11/10.

4 *Panayiotou v. Solomou* (1979) 1CLR 779; *Iosifakis & others v. Chani* (1967) 1CLR 190.

5 Section 25 of Cap. 149.

6 Section 11 of Cap. 149.

v Law formalities

An agreement can be made in writing, orally, or partly in writing and partly orally, or it may be implied by the conduct of the parties.[7] Nevertheless, there are specific provisions that stipulate that certain formalities must be met. For example, in the case of leasing an immovable property for a period exceeding one year, the contract must be in writing and signed at the end thereof by each contracting party, in the presence of at least two witnesses who are competent to contract.[8]

vi Certainty of terms

Section 29 of Cap. 149 provides that 'agreements, the meaning of which is not certain, or capable of being made certain, are void'. The courts should try to consider a contract as valid when the uncertainty of a term does not affect the general clarity of the rest of the contract or the conditions of the contract are clear.[9]

vii Third-party beneficiaries

Applying the contractual doctrine of privity of contract to contracts to benefit third parties, a 'legal laguna' is created. More precisely, the third party who has suffered loss from the breach of contract has no claim and thus is not allowed to seek remedy. A specific legislative instrument has not been adopted in the Cyprus legal system; however, a third party is entitled to have the right to enforce a contract to which he or she is not a party in some circumstances, such as in a contract concluded by his or her agent, in cases of assignment or in cases of insurance claims.

These are not necessarily exhaustive but should be restricted to similar subjects that raise threshold questions about whether an agreement has been formed in a commercial context. Readers should be given an idea of the common features of commercial contracts under their jurisdiction's law. Where a formal contract has not been formed, authors may wish to refer to an alternative framework that may establish commercial rights and obligations, such as an implied-in-law or implied-in-fact contract, a quasi-contract, promissory estoppel and *quantum meruit*.

III CONTRACT INTERPRETATION

i Choice of law principles

The parties to a contract are free to choose the law to govern the whole or part of their contract, even where the chosen law has no connection, or no apparent connection, with the transaction in issue. Where the parties to a contract choose the governing law of the contract, the Cyprus courts will almost invariably respect such a provision, provided that that was clearly the intention of the parties.

This principle is also specifically embodied in the 1980 Rome Convention on the law applicable to contractual obligations, which provides that the choice of law must be either expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case; however, Article 3(3) of the Rome Convention provides that in

7 Section 10 of Cap. 149.

8 Section 77 of Cap. 149.

9 See *Saab & Another v. Holy Monastery Ay. Neophytos* (1982) 1CLR 499.

cases where all other elements relevant to the situation at the time of the choice are connected with one country only, a choice of a foreign law shall not prejudice the application of rules of the law at the country that cannot be derogated by contract (i.e., the 'mandatory rules').

Additionally, the Cyprus courts can restrict the application of a foreign law if it is incompatible with public policy. A foreign law must be pleaded and proved as a fact; therefore, the parties bear the burden to prove the applicable foreign law. If they fail to do so, the foreign law is presumed to be similar to Cyprus law, and the courts will apply domestic law.[10]

ii Rules of construction

There are two approaches regarding contractual interpretation: literal and purposive. According to the literal approach, the interpretation process first focuses on the wording of the contract. If there is ambiguity, the process then refers to the context of the contract to interpret it based on the intention of the parties.

In contrast, the purposive approach promotes a commercially sensible construction based on the commercial reality.

The Supreme Court's judgment in the case of *Theologou a.o. v. Ktimatikis Etaireias Nemesis Ltd* (1998) 1 CLR 407 explains the approach Cyprus courts follow:

> *We should note that, there is a continuous tendency to harmonise the principles of interpretation of contract with the reality of everyday life. The criterion is the meaning which the text of the contract would convey to the average reasonable person. To this end, the knowledge may be enriched by revealing the background of the agreement, with the exception of negotiations, as well as unilateral declarations and subjective intentions of the parties. Evidence referring to subjective factors can only be admitted in actions for rectification. (See ICS v. West Bromwich BS [1998] 1 All ER 98 (HL)). The object of interpretation, of course, remains to be the meaning of the terms of the agreement according to the average reasonable person. The meaning, which is conveyed to him, for the agreed.*

Another significant interpretation rule is the *contra proferentem* rule, which provides that in a case of ambiguity of a term, the term must be interpreted against the party who has proposed or drafted it.[11]

iii Exclusion and limitation clauses

Although specific exclusion and limitation clauses are accepted, they are strictly interpreted. With regard to consumer contracts where terms, which were not individually negotiated, create a significant imbalance to the rights and obligation of the parties against the consumer, they may be considered unfair, taking into account the principle of good faith. A test of reasonableness or unfairness is applicable to all contracts except consumer contracts and where a clause is unreasonable as such or, according to the facts of the case, it can be voided.

10 *Royal Bank of Scotland v. Geodrill Co Ltd K.A.* (1993) 1 AAD 753; *Sat Vision Ltd v. Interamerican Property and Casualty Ins Co* (1999) 1(C) AAD 1811.

11 *Takis Xenopoulos v. Thomas Nelson* (1982) 1 CLR 674.

iv Implied terms

Terms in a contract may be either express or implied and can be established by custom, statute or the courts.[12] Construction contracts constitute a prime example of contracts encompassing implied terms. The following are examples of terms that may be implied in construction contracts (even though it is not specifically expressed therein): the work will be done in a good and workmanlike manner; he or she will supply good and proper materials; and the house will be reasonably fit for human habitation when built or completed.[13]

v Extrinsic evidence rule

As a general rule, extrinsic evidence cannot be taken into consideration for interpretation of a contract in way that they 'contradict, modify, remove or add to the content of the terms of the document'; however, it has been established that extrinsic evidence may be accepted to prove the validity of a contract,[14] the true nature of the contract[15] and the ambiguous capacity of the parties.[16]

IV DISPUTE RESOLUTION

A party to a commercial contract having any monetary or specific performance claim against another party may initiate legal proceedings to recover any money due thereunder or obtain an order for specific performance, as there are no threshold requirements regarding the amount claimed in order to be able to do so. A party may even sue solely for the purpose of obtaining a declaratory judgment on the rights of the respective parties.

i Jurisdiction

In Cyprus the most common method of resolving large commercial disputes is litigation, most often in the highest level of the district (first instance) courts where the judges (court presidents) have jurisdiction to try claims above €500,000. Apart from the presidents, district courts also offer senior district court judges with jurisdiction to try claims between €100,000 and €500,000, and district judges with jurisdiction to try claims below €100,000.

There is no separate commercial court; however, on 6 May 2019 the Council of Ministers approved a draft bill providing for its establishment. The Commercial Court will solely handle high-value commercial disputes and adopt fast-track procedures.

The Recast Brussels Regulation[17] applies in contracts as well.

12 *Agisilaou Tsiali v. Doras K. X Andreou* (Tsiali) mentally ill, dated 17/7/00 Civil Appeal 10174.

13 Hugh Beale, *Chitty on Contracts*, Vol. I, 30th edn., Sweet & Maxwell Ltd, 2008, paragraph 1015.

14 *Mavrou v. Theodorou* (1984) 1 CLR 635.

15 *Kypio (ITH) Company v. Kassapi* [1980] 2 JSC 259.

16 *Loizidou v. Georgiou* (1973) 9 JSC 1219; *Marketrends Finance Ltd v. Perdikou a.o.* (2006) 1B CLR 1042.

17 Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

ii Alternative dispute resolution methods

Arbitration

Arbitration has long been used as a means of dispute resolution for, among other things, construction or building contract disputes or disputes relating to cooperative institutions. Arbitration clauses have increasingly been used in all forms of contracts as the means of resolving disputes arising out of those contracts. A dispute submitted to arbitration may be resolved quicker and more cost-effectively than one submitted to litigation.

Arbitration is a private and out-of-court dispute resolution method based on the agreement of the parties. The dispute is resolved by an impartial arbitrator or arbitral tribunal, and the decision is final and binding.

Domestic arbitration is governed by the Arbitration Law 1944 (Cap. 4), which is based on the older version of the English Arbitration Act 1950. The International Arbitration in Commercial Matters Law (Law 101/1987) applies exclusively to international commercial disputes and is almost identical to the UNCITRAL Model Law of 1985. The amendments of the UNCITRAL Model Law in 2006 have not been adopted by the Cypriot legislator.

Cyprus is also a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (ratified in Cyprus by the Ratification Law (84/1979)).

Mediation

Mediation is an alternative, out-of-court and voluntary dispute resolution mechanism. Mediation in Cyprus is not a compulsory step prior to resorting to court. It is a non-binding, private, confidential and low-cost procedure through which the parties attempt with the help of a mediator to reach an agreement by which to settle their dispute in a binding manner.

It is a rather new concept in Cyprus and, according to the Cyprus Mediation Association, 'there is strong opposition from legal circles, who loathe mediation because it bypasses legal proceedings'. This is one of the least preferred methods of alternative dispute resolution since the parties may feel somewhat insecure about resorting to it as its outcome depends on the parties' personal and business interests and common sense rather than the relevant law.

On the other hand, it may be argued that parties have little to lose by choosing mediation since, even if a settlement is not reached, the process facilitates the designation of the facts and issues of the dispute, thus preparing the ground for any potential court proceedings.

V BREACH OF CONTRACT CLAIMS

Where a contracting party breaches terms of the contract, the burden for proving the breach lies on the plaintiff on the balance of probabilities.

i Termination

The innocent party in some cases has the right to either insist on the performance of the contract that has been breached or accept the breach and affirm the termination of the contract. If the innocent party fails to terminate the contract within a reasonable time, it may be considered as having waived its right to terminate, especially if it continues to perform its obligations according to the contract or act in a manner incompatible with an intention to terminate thereof.

Not every breach of a contract entitles the innocent party to terminate a contract. If a party breaches a condition (i.e., a term of significance and essential importance going to

the root of the agreement of the parties), the innocent party may terminate the contract and seek damages. In cases where a party breaches a warranty (i.e., a term of lesser importance and collateral to the basic scope of the contract), the innocent party cannot terminate the contract; it can only seek compensation.

In the case of innominate terms, the non-breaching party is entitled to terminate the contract when the effect of the breach is sufficiently serious. Its right to terminate depends on the consequences of the breach.[18]

The filing of an action itself can be considered as a termination of a contract.[19]

ii Anticipatory breach

Where a party reveals with his or her behaviour or statements that it will not fulfil its obligations arising from the contract, the innocent party can consider itself as discharged and terminate the contract before performance is due or insist on performance thereof and sue for specific performance.[20]

The Supreme Court in *Neophytou Neophytos a.o. v. Elma Holdings Ltd (previously named Portfolio Investment Company Hra Limited)* (2013) 1 AAD 1807 held that it was not necessary for the respondent to prove her readiness and willingness to fulfil her obligation owing to a prior breach conducted by the appellants.

VI DEFENCES TO ENFORCEMENT

i Void and voidable contracts

The parties to a contract may avoid enforcement thereof, if the prerequisites for the formation of a valid contract are not met and, more specifically, if the parties do not enter into the agreement by their free consent. Cap. 149 exhaustively provides the cases where the consent of the parties entering into a contract is not given under their free will.[21] Specifically, the parties do not enter into a contract under their free will if their consent is given owing to the following reasons.

Coercion

A contract is deemed to be to have been entered into by coercion if someone, with the intention to force another to enter into a contract, commits or threatens to commit any act forbidden by the Penal Code or unlawfully detains or threatens to unlawfully detain any property, to the prejudice of any person.[22]

Undue influence

A contract is deemed to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. A person is deemed to be

18 *Hong Kong Fir Shipping Ltd v. Kisen Kaisha Ltd* (1962) EWCA Civ 7.

19 See *Company J.K. Vavlites (Hotels & Leisures) Ltd v. Administration Comission of the Governmental Customer Welfare Fund*, Civil Appeal No. 31/2013, 30/1/2019.

20 *Hochster v. De La Tour* (1853) 2 E & B 678.

21 Sections 14–22 of Cap. 149.

22 Section 15 of Cap. 149.

in a position to dominate the will of another if he or she holds a real or apparent authority over the other; he or she stands in a fiduciary relation to the other; or he or she makes a contract with a person whose mental capacity is temporarily or permanently affected because of age, illness, or mental or bodily distress. The burden for proving that a contract was not entered into with undue influence lies upon the party who is in a position to dominate the will of the other.[23]

Fraud

A contract is deemed to be to have been entered into by fraud if any of the following acts are committed by a party to a contract or by his or her agent, with the intent to deceive another party thereto or his or her agent or to induce him or her to enter into the contract:

a a suggestion regarding an untrue fact by a party who does not believe the fact to be true;
b the active concealment of a fact by a party that has knowledge or belief of that fact;
c a promise made without any intention of performing it;
d any other act fit to deceive; and
e any act or omission that the law specifically declares to be fraudulent.

Mere silence in respect of facts that are likely to affect the willingness of a person to enter into the contract is not fraud, unless the person keeping silence has a duty to speak or unless his or her silence is equivalent to making a representation.[24]

Misrepresentation

Misrepresentation includes the following:

a a positive assertion, in a manner not warranted by the information of the person making it, that is not true, even though he or she believes it to be true;
b any breach of duty that, without an intent to deceive, offers an advantage to the person committing it or anyone claiming under him or her, by misleading another to his or her prejudice or to the prejudice of anyone claiming under him or her; and
c causing, however innocently, a party to an agreement to make a mistake in respect of the substance of the thing that is the subject to the agreement.[25]

Where a person entered into a contract under the above circumstances, the contract is voidable at the option of the party whose consent was so induced.[26] The party may insist that the contract be performed and that he or she be put in the position in which he or she would have been had the representations made been true.[27]

Mistake

Mistake refers to cases where both parties entered into the agreement under a mistake regarding a matter of fact essential to the agreement. In that case, the agreement is void.[28]

23 Section 20 of the Law on Contracts, Cap. 149.
24 Section 17 of Cap. 149.
25 Section 18 of Cap. 149.
26 Sections 16 and 19 of Cap. 149.
27 Section 19(2) of Cap. 149.
28 Section 21(1) of Cap. 149.

The parties are not competent to contract

A person is considered competent to contract if he or she is not disqualified from contracting by any law and is of sound mind (i.e, if at the time of making the contract he or she is capable of understanding it and of forming a rational judgment on its effect upon his or her interests).[29] It is irrelevant if he or she is occasionally of unsound mind as long as he or she was of sound mind at the time he or she made the contract.

The consideration and the purpose or object are not lawful

An agreement with unlawful consideration or object is void and cannot be enforced by Cyprus courts. Sections 23 and 24 of Cap. 149 provide that the consideration or object of an agreement is deemed to be unlawful where:

a it is forbidden by law;
b it is of such a nature that if permitted it would defeat the provisions of any law;
c it is fraudulent;
d it involves or implies injury to the person or property of another; and
e the court regards it as immoral or opposed to public policy.

As a general rule, an agreement without consideration is void unless it is:

a expressed in writing and signed by the party to be charged therewith and is made on account of natural love and affection between parties standing in near relation to each other;
b a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor or something that the promisor was legally compellable to do; or
c a promise made in writing and signed by the party to be charged therewith, to pay wholly or in part a debt of which the creditor might have enforced payment but for any law for the time being in force relating to prescription or the limitation of actions.[30]

Limitation periods

The parties to a contract may also argue that the claim is statute-barred (i.e., that the time within which the parties could have initiated legal proceedings in relation to the breach of contract has elapsed). Since 1964[31] and until 1 January 2016,[32] the limitation periods in Cyprus were suspended; therefore, no limitation periods applied.

The law that currently regulates limitation periods is the Limitation of Actions Law 66(I)/2012, which came into force on 1 July 2012, with a transition period of one year. Pursuant to the provisions of Law 66(I)/2012, the limitation period begins to run from the creation of the claim or cause of action; however, the limitation period for causes of action that arose prior to 1 January 2016 begins to run therefrom.

The general limitation period provided is 10 years from the date the cause of action was perfected.[33] The limitation period differs depending on the nature of the cause of

29 Sections 11 and 12 of Cap. 149
30 Section 25 of Cap. 149.
31 Law on Suspension of Limitation of Actions, No. 57/1964.
32 Law on Limitation of Actions No. 66(I)/2012.
33 Section 4 of Law on Limitation of Actions No.66(I)/2012

action. Common contract claims are statute-barred six years from the creation of the cause of action (i.e., from the breach of contract), while claims brought in relation to contracts or quasi-contracts for an agreed or reasonable fee for the services rendered by a lawyer, doctor, dentist, architect, civil engineer, contractor or any other independent professional are statute-barred after three years from the creation of the cause of action.

Claims in respect of a mortgage or pledge are statute-barred after 12 years after the breach of obligation contained in the mortgage or pledge, while claims in relation to loan agreements are statute-barred after six years from the perfection of the cause of action.[34]

ii Frustration of contract

The parties to a contract may invoke the doctrine of frustration to resist enforcement thereof. This doctrine is applied by the Cyprus courts when a contract after its conclusion becomes, without the fault of either party, impossible or unlawful to perform owing to circumstances that are beyond the control of the contracting parties or owing to a change of circumstances that makes the performance of the contract impossible or unlawful.[35]

A defendant cannot avail himself or herself of the doctrine of frustration when the non-performance of the contract is clearly attributable to his or her own default. When frustration of a contract occurs, the contract is automatically terminated, and the parties do not have an option regarding whether the contract will be performed.[36]

The element of what the parties had foreseen at the time of the contract plays a key role in whether the doctrine of frustration will be applied. Specifically, if the parties, at the time of concluding the contract had foreseen the event that could have led the contract to be frustrated, but they did not include any relevant provision to the contract in respect of that event, the doctrine of frustration cannot be invoked.

On the other hand, the doctrine of frustration may be invoked and applied if the event could have been foreseen by the parties (but was not actually foreseen) at the time the contract was concluded.

iii Force majeure

Force majeure occurs when a random event occurs that could not have been foreseen and that is beyond the control of the parties (e.g., war, strike, hurricanes, earthquakes, government or legislative action). The occurrence of those events cannot be prevented by the parties, even if they exercise reasonable diligence; therefore, the parties can invoke force majeure circumstances to avoid enforcement of the contract.

Even though Cap. 149 does not explicitly provide for those instances, contracting parties may choose to include in their contract a clause providing for force majeure instances that may lead to the non-performance of a contract. Even if they do not include this in the contract, it will be implied by operation of law, under the principles of common law and equity.

34 Sections 5 and 7 of the Law on Limitation of Actions No. 66(I)/2012.

35 Section 56(2) of Cap. 149 and *KIER (Cyprus) Ltd v. Trenco Construction* (1981) 1 CLR 30.

36 See *AN Stasis Estates Co Ltd v. Waldner a.o.* (1998) 1 AAD 250.

VII FRAUD, MISREPRESENTATION AND OTHER CLAIMS

i Fraud and deceit

A plaintiff alleging the commission of fraud should generally prove that the defendant acted with dishonesty or provided false statements or false representations. Owing to the serious nature of the offence of fraud, and the fact that it contains criminal characteristics, the evidence to be provided must be precise and clear; general allegations will not suffice.[37]

The following are the essential elements of the civil tort of fraud:

a a representation of fact, either orally or by conduct is required; an expression of opinion or intention does not constitute a representation, unless the opinion or intention were never held;

b the person making the representation must be aware that the representation is false;

c the person making the representation intends the plaintiff to rely on the representation and to suffer damage owing to such reliance;

d the plaintiff relied on and acted in accordance with the false representation; and

e the plaintiff suffered loss, because he or she acted in accordance with the false representation.

A person commits deceit if he or she presents a false fact as being true, knowing that it is false and it includes any other action that is intended to deceive another person. If the other person relies upon the representation and, owing to such reliance, suffers damage or loss, the defendant is liable for the damage or loss.

The burden for proving that the tort of fraud or deceit were committed lies on the plaintiff, who must provide and prove the details of the fraud and deceit respectively.

ii Procuring breach of contract

The following are essential elements for proving that the civil tort of procurement of breach of contract has been committed:

a the defendant caused the breach of contract between two other parties (the plaintiff must show a causal link between the conduct of the defendant and the breach of the contract);

b the plaintiff must prove he or she suffered damage because of the procured breach of contract; and

c the defendant had an intention when procuring or inducing the breach (i.e., the defendant must have known the existence of the contract and without any reasonable justification he or she procured the parties to breach the contract).[38]

For a civil tort to be committed, the contract must be legally binding as it is a violation of legal right to interfere with contractual relations recognised by law if there is no sufficient justification for the interference. A defendant who was reckless or shut his or her eyes to facts may be held liable for procuring breach of the contract.[39]

37 *Jonesco v. Beard* (1930) AC 298.

38 Section 34 of the Law on Civil Wrongs, Cap.148

39 *British Industrial Plastics Ltd v. Ferguson* (1940) 1 All ER 479, pp.482–483.

iii Unlawful means conspiracy

The tort of unlawful means conspiracy is not expressly provided for in the law; however, it is a common law tort recognised by the Cyprus courts.[40] The essential elements of the aforementioned tort are the following:

a the existence of an agreement between two or more parties; and

b where the means are:
- lawful – an agreement of which the real and predominant purpose is to injure the claimant; or
- unlawful – an agreement of which the purpose is to injure the claimant; and

c damage to the claimant resulting from acts done in execution of that agreement.

VIII REMEDIES

Breach of contract gives the right to the innocent party to claim a number of remedies against the party who breached the contract. The innocent party may seek most of the remedies usually available under common law and the principles of equity, while the Cyprus courts have discretion in awarding those remedies to the successful claimant.

The remedies may be either monetary or non-monetary. The following are the most typical remedies awarded by the Cyprus courts within the context of claims for breach of contract.

i Damages

The primary remedy awarded by Cyprus courts within the context of claims for breach of contract are damages, namely special and general damages. The damages awarded in those cases aim to compensate the innocent party for the loss it suffered and put him or her in the position he or she would have been in had the breach not occurred or had the contract been performed. The damages are calculated in accordance with the extent and type of loss suffered by the injured party.

The party who rightly rescinds a contract is also entitled to compensation for any damage he or she sustained because of the non-fulfilment of the contract;[41] however, the innocent party should not be placed, through the award of damages, in a better position than the position he or she would have been in had the contract not been breached.

Prior to awarding this type of damages, Cyprus courts take into consideration the following factors.

Causation

The claimant or innocent party must prove a causal link between the breach of contract and the loss suffered; in other words, the loss or damage naturally arose from the breach in the usual course of things, or the parties could have reasonably contemplated, when they made the contract, that such loss was likely to result from the breach thereof.[42]

40 *Christoforou v. Barclays Bank PLC* (2009) 1 AAD 25.

41 Section 75 of Cap. 149 and *Metaxas Loizides Syrimis & Co v. LK Globalsoft com Ltd*, Civil Appeal No. 250/2005, Supreme Court judgment dated 19 January 2007.

42 Section 73(1) of Cap. 149.

Remoteness

Cyprus courts will not award damages if the loss or damage suffered is too remote from the breach of contract or for any indirect loss or damage caused owing to the breach of contract.[43]

Mitigation

The plaintiff will not be entitled to compensation for the damage he or she suffered owing to the breach of contract to the extent that he or she could have taken reasonable steps to mitigate the damage or loss.[44]

Amount of damages

The measure for estimating the amount of damages that will be awarded by the courts for breach of contract is the amount required to put the innocent party in the position it would have been in had the breach not occurred or had the contract been performed. The time for determining this loss is the time the contract was breached (i.e., the time the actionable right arose).[45]

It is essential that the plaintiff not only satisfy the court in respect of the fact of damage, but also in respect of its amount. If the plaintiff fails to satisfy the court, his or her action will be dismissed, or he or she will be awarded nominal damages for the right that was infringed.[46]

ii Restitutionary damages

Cyprus courts have the power to award restitutionary damages in favour of the innocent party to prevent unjust enrichment of the party liable for the breach of contract. The damages may be awarded when the plaintiff did not suffer any loss or damage because of the breach of contract, but the defendant has gained some type of profit or benefit owing to the breach. In that case, the Court has the power to award restitutionary damages in favour of the plaintiff thereby allowing the plaintiff to receive any profit the party liable for the breach of contract received because of the breach.

iii Punitive or exemplary damages

Cyprus courts do not have any power to award punitive or exemplary damages within the context of claims for breach of contract to punish the behaviour of the party liable for the breach. Exemplary damages may be awarded mainly within the context of civil tort, including cases for procuring breach of contract, but not for the breach of contract itself.[47]

43 Section 73(1) of Cap. 149.

44 *George Charalambous Ltd v. Kalos Kafes Ltd a.o.* (1997) 1 AAD 199.

45 *Evelthon Developments Ltd a.o. v. Ethniki Trapeza tis Ellados Kiprou*, Civil Appeal No. 281/2008, Supreme Court Judgment dated 12 November 2012.

46 *Pontiki v. Constantinidi* (2004) 1 AAD 875.

47 *Constantinides v. Pitsillou and Another* (1980) JSC 279.

iv Orders for specific performance

Cyprus courts have discretion to order the party liable for the breach of contract to comply with his or her obligations pursuant to the contract. Only the following contracts are capable of being specifically enforced:

a the contract is not void;
b the contract is expressed in writing;
c the contract is signed at the end thereof by the party to be charged therewith; and
d the court considers, considering all the circumstances, that the enforcement of specific performance of the contract would not be unreasonable or otherwise inequitable or impracticable.[48]

v Interim orders

Apart from the final orders, Cyprus courts have jurisdiction to issue interim orders within the context of claims filed with the court, according to Section 32 of the Courts of Justice Law, No. 14/1960. Interim orders aim to preserve the status quo until the final adjudication of the case or to prevent one of the parties from acting in a way that would alienate the object of the claim.

IX CONCLUSIONS

The Cyprus legal system is not particularly complex in the sense that it does not impose any strict requirements for the initiation of legal proceedings by an aggrieved party for breach of contract, including any minimum amounts in dispute.

One of the most remarkable changes in the sector of commercial litigation that will be effected soon is the establishment of a separate commercial court that will handle only high-value commercial disputes. The court will enable faster and more efficient adjudication of the claims brought before the Cyprus courts by a specialised bench.

In complex commercial litigation, it is somewhat usual for the plaintiff to seek from the court interim relief, including freezing injunctions against the defendant's assets, until full and final hearing of his or her case, to ensure that in the event he or she succeeds, he or she will be able to recover the damages to be awarded in his or her favour.

The courts are reluctant to issue such orders on an *ex parte* basis unless certain requirements set out by the law and case law apply, such as full and frank disclosure of all relevant matters, the existence of urgency or of other exceptional circumstances. Even in cases where interim relief is granted on an *ex parte* basis, a full *inter partes* hearing will subsequently take place where the court, after having heard both sides, will decide whether it is just and reasonable under the circumstances to render the orders issued absolute or to dismiss them.

48 Section 76 of Cap. 149 and *ALPAN (Adelfoi Taki) Ltd a.o. v. Trifonidou* (1996) 1 AAD 679.

Appendix 1

ABOUT THE AUTHORS

STAVROS PAVLOU

Patrikios Pavlou & Associates LLC

Stavros Pavlou is the senior and managing partner of Patrikios Pavlou & Associates LLC. He is an extensively experienced litigator and arbitrator, regularly praised as one of the top litigators in Cyprus, with an impressive portfolio of representing major international organisations, groups of companies, banks and high net worth individuals in complex commercial and other dispute resolution matters, including judicial and arbitration proceedings in the courts of Cyprus and abroad.

Stavros represents shareholders in internal company disputes, such as derivative actions for oppression of minority shareholders, and he has issued, defended or opposed numerous local and worldwide interlocutory injunctions, such as freezing and disclosure orders, either before or after the filing of an action, including stand-alone injunctions, orders in aid of arbitration, *Norwich Pharmacal*-type orders, *Chabra* orders, anti-suit injunctions and injunctions for the appointment of receivers.

He is a fellow of CIArb, a member of the LCIA and the ICCA, and he has led the firm in becoming a member of the Russian Arbitration Association, among many other organisations. Recently, he has been individually registered as a practising barrister before the Dubai International Financial Centre (DIFC) Court. He actively participates in highly regarded international seminars and conferences as a keynote speaker or panellist and authors numerous articles in international publications. Furthermore, he promotes ADR practices in Cyprus by participating in relevant podcasts and webinars.

KATERINA PHILIPPIDOU

Patrikios Pavlou & Associates LLC

Katerina Philippidou is a partner in the dispute resolution department of Patrikios Pavlou & Associates LLC. Katerina obtained her law degree from the University of Leicester in 2006 and continued to become a barrister at law at Lincoln's Inn in 2007. After her studies in the United Kingdom, she returned to Cyprus and was admitted to the Cyprus Bar Association the following year. She subsequently returned to the United Kingdom and acquired an LLM in international financial law from King's College London in 2009.

She has authored several articles on anti-money laundering, international arbitration and dispute resolution matters. Katerina specialises in civil and commercial local and

multi-jurisdictional litigation, including shareholder disputes, recognition and enforcement of foreign judgments and arbitral awards, injunctive relief and arbitration proceedings, as well as insolvency and receivership proceedings.

ANDRIA ANTONIOU

Patrikios Pavlou & Associates LLC

Andria Antoniou is a senior associate at Patrikios Pavlou & Associates LLC. Andria has an LLB in law from the University of Cyprus and an LLM in corporate and financial law from the University of Glasgow. She was admitted to the Cyprus Bar in 2014 and has practised with the law firm since.

Andria specialises in banking and finance, as well as in civil and commercial litigation. She is engaged in numerous litigation cases, involving both local and international clients, in the field of civil, corporate and commercial litigation, including shareholder disputes, interim injunctive relief, claims for fraud, recognition and enforcement proceedings, contractual disputes and recovery of assets. She participated at the Kyiv Arbitration Days conference in Ukraine. She also successfully completed 'Module 1: Law, Practice and Procedure (International)' of the Chartered Institute of Arbitrators (CIArb) programme on international commercial arbitration and was accepted as an associate member of the CIArb.

ATHINA PATSALIDOU

Patrikios Pavlou & Associates LLC

Athina Patsalidou is an associate at Patrikios Pavlou & Associates LLC. She has a university degree in law from Aristotle University of Thessaloniki and an LLM in international business law from London School of Economics and Political Science. She was admitted to the Cyprus Bar in 2017, and she is a member of the CIArb (MCIArb).

Athina specialises in civil, commercial and banking litigation and advises clients on alternative dispute resolution methods. She has a particular interest in international commercial arbitration, and she has attended seminars on various subjects, including the law of equity and recognition and enforcement of foreign judgments and arbitral awards.

PATRIKIOS PAVLOU & ASSOCIATES LLC

Patrician Chambers
332 Agiou Andreou Str
3035 Limassol
Cyprus
Tel: +357 25 871 599
Fax: +357 25 344 548
spavlou@pavlaw.com
kphilippidou@pavlaw.com
aantoniou@pavlaw.com
apatsalidou@pavlaw.com
www.pavlaw.com

an LBR business

ISBN 978-1-83862-765-2