

1981 November 27

[TRIANTAFYLIDES, P.]

IN THE MATTER OF THE CHARITIES LAW, CAP. 41.

“ORPHANAGE AND TRAINING SCHOOL, DEMETRAKIS
G. DIANELLOS OF LARNACA”,

Plaintiff,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Defendant.

(Charity Application No. 3/81).

Charitable trusts—Charity property—Application for approval of additions and alterations thereto—Trustees failing to comply with previous Court Orders for filing, inter alia, audited accounts of the trust—Such failure rendering meaningless exercise of relevant supervisory powers under the Charities Law, Cap. 41—Pronouncement on merits of application deferred in order to afford plaintiff opportunity to comply with above orders.

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This was an application for approval of the carrying out of additions and alterations to a building (“the Sun Hall Hotel”) in which the plaintiff charity was one of two equal partners. The additions and alterations applied for entailed the contracting of a loan for C£275,000 and the mortgaging of the building in question. The project for the erection of the building in question was approved by means of a judgment of this Court given in 1971 whereby it was, also, directed that the trustees of the charity should file annually with the Court copies of their audited accounts and that the property of the plaintiff charity should not be mortgaged without an order of the Court. The plaintiff charity, in disregard of the above direction, mortgaged the said property, as security for two loans of C£100,000 each. On August 31, 1973, this Court approved both the loans and mortgages and, also, directed that relevant accounts of the two loans should be filed annually.

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Up to the time when the above application was lodged there was no compliance with the above directions of this Court, for the filing of annual audited accounts and for the filing of accounts of the two loans.

5 *Held*, that, notwithstanding that this Court has no reason at all to doubt the good faith of the trustees of the plaintiff charity, it cannot overlook the failure to comply with the afore-
 10 said two orders, and that it will, indeed, render meaningless the exercise of relevant supervisory powers of this Court under the Charities Law, Cap. 41, in relation to the charity in question, if the present application is granted without, first, securing due
 15 compliance, even belatedly, with the above orders; that, therefore, irrespective of the merits of the present application, on which this Court is not pronouncing at this stage, the plaintiff will be afforded an opportunity to comply duly with the afore-mentioned two orders and for this purpose, an extension of time of one month from today is granted which can be further extended, on good grounds, if necessary.

Order accordingly.

20 Cases referred to:

Bishop of Kitium (No. 1) v. Attorney-General of the Republic
 (1971) 1 C.L.R. 92.

Charity Application.

25 Application by the Trustees of the charity known as "Orphanage and Training School, Demetrakis G. Dianellos of Larnaca" under section 13(c) of the Charities Law, Cap. 41 for an order sanctioning the carrying out of additions and alterations to the "Sun Hall Hotel" in which the plaintiff charity is one of two equal partners.

30 *G. Nicolaidis*, for the plaintiff.

R. Gavrielides, Senior Counsel of the Republic, for the defendant.

Cur. adv. vult.

35 TRIANTAFYLIDIS P. read the following interim decision. By means of this charity application approval is being sought for the carrying out of additions and alterations to a building which may conveniently be described as the "Sun Hall Hotel"

in Larnaca and which belongs to the Sun Hall partnership, in which the plaintiff charity is one of two equal partners, the other one being the Archbishopric of Cyprus.

The project for the erection of the said building was approved by means of the judgment given in charity application No. 1/70 (see *The Bishop of Kitium and Others as Trustees of the Dianellos Charity (No. 1) v. The Attorney-General of the Republic*, (1971) 1 C.L.R. 92).

Paragraphs 4 and 5 of the order made in the aforementioned charity application No. 1/70 (see at p. 107 of the report of the case) read as follows:-

“4. The partnership formed under the said Agreement shall be subject to the provisions of the Charities Law for the time being in force, as provided under clause 6 of the Agreement; and, having regard to the wish expressed in clause 10(e) of the will of the late D.G. Dianellos, the part of the property on which the old ‘Sun Hall’ building stood (which forms part of the permanent endowment of the Dianellos charity), after transfer to the partnership, shall not, without an order of the Court, be mortgaged or charged by way of security for the repayment of money borrowed, nor be sold or otherwise disposed of.

5. The partnership shall keep books of account and render audited accounts in compliance with the provisions of clauses 5 and 6 of the Agreement and pursuant to the provisions of section 10 of the Charities Law, Cap. 41, or any statutory modification or re-enactment thereof for the time being in force. Copy of such accounts shall also be filed in this Court by the trustees of the charity annually. The first of such accounts shall be filed in Court on the 1st March, 1972”.

Unfortunately, in disregard of the provisions of paragraph 4, above, the property described therein was mortgaged, without an order of the Court, on December 23, 1972, as security for a loan of C£100,000 and it was only later, on August 3, 1973, that there was sought covering approval for the mortgage concerned by means of charity application No. 2/73; at that time there was, also, sought approval to mortgage the same property by way of security for a further loan of C£100,000.

As regards both the said loans the indebtedness of the plaintiff charity was to be to the extent of one half of them.

On August 31, 1973, an order was made approving both loans and mortgages and it was directed, too, that relevant accounts should be filed annually. In the said order of August 31, 1973, there is to be found, *inter alia*, the following passage:-

“It is further necessary to stress that a serious view is taken of the fact that the loan of £100,000 (for which now leave has been granted by virtue of the order made in the present proceedings) was incurred on the 23rd December, 1972, without the prior leave of this Court; and it is only because there is no doubt about the good faith of all concerned that an order giving covering approval of this loan has been made today *ex post facto*”.

There was regrettably no compliance with the direction that relevant accounts should be filed annually and so up to the time when the present charity application was lodged no accounts at all were filed in respect of either of the two aforesaid loans of C£100,000 each.

It is stated, however, in an affidavit filed in the present case, and dated October 17, 1981, that the balance still due now in relation to the first of the said two loans is C£39,800.331 mils.

Furthermore, there has been no compliance at all with paragraph 5, above, of the order which was made in charity application No. 1/70, as no yearly accounts of the Sun Hall partnership were filed from 1972 onwards, as directed by means of such paragraph 5. Only when the present application was filed there were attached thereto accounts of the said partnership for solely the years 1979 and 1980.

This Court is, thus, faced now with a situation in which the plaintiff charity is seeking approval for building works entailing the contracting of a new loan (for C£275,000) and the mortgaging again of the Sun Hall building and yet the plaintiff charity has not duly complied with the orders made in charity applications Nos. 1/70 and 2/73.

I am of the opinion that, notwithstanding that I have no reason at all to doubt the good faith of the trustees of the plaintiff charity, I cannot overlook the failure to comply with the

aforesaid two orders; and that it will, indeed, render meaningless the exercise of relevant supervisory powers of this Court under the Charities Law, Cap. 41, in relation to the charity in question, if I grant the present application without, first, securing due compliance, even belatedly, with the above orders. 5

I, therefore, have decided, irrespective of the merits of the present application, on which I am not pronouncing at this stage, to afford the plaintiff an opportunity to comply duly with the aforementioned two orders and I grant, for this purpose, an extension of time of one month from today, which can be further extended, on good grounds, if necessary. 10

When there has taken place due compliance with the orders made in charity applications Nos. 1/70 and 2/73, I shall proceed to deal with the present application on its merits.

Order accordingly. 15