

1984 June 11

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTODOULIDES BROTHERS LTD.,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR OF THE DISTRICT LANDS OFFICE,

*Respondent.*

(Case No. 548/83).

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*Department of Lands and Surveys (Fees and Charges) Law, Cap. 219  
(as amended by Law 31/76)—Transfer by a general or limited  
partnership to a successor to it company—Refund of transfer  
fees—Prerequisites—Section 9(1) of the Law and its proviso.*

On the 27th January, 1978 the Partnership Christodoulides 5  
Bros., which was dissolved on the 1st May, 1974, transferred to  
the applicants, a limited company registered under the Companies  
Law, Cap. 113, two pieces of immovable property by a declara-  
tion of transfer made at the District Lands Office Nicosia; and  
an amount of C£2,500 was paid as transfer fees. On the 13th 10  
July, 1983 the applicant Company invoking the provisions of  
section 9\* of the Department of Lands and Surveys (Fees and  
Charges) Law, Cap. 219, as amended by Law No. 31/76, applied  
to the respondent District Lands Officer, Nicosia for the refund  
to them of the aforesaid fees. The respondent refused\*\* to 15  
make the refund applied for on the ground that the prerequisites  
laid down by the said section 9 were not satisfied because on  
the date of the transfer the only shareholders of the transferee  
company were not the partners of the transferor partnership.

Hence this recourse in which the sole issue was the construction 20  
of s. 9(1) of Cap. 319 and the proviso thereto.

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\* Section 9 is quoted at pp. 619-620 post.

\*\* The refusal is quoted at p. 618 post.

5 *Held*, that the stand of the respondent is the correct one; that the two basic prerequisites of the proviso are conjunctive and not disjunctive and the expression "close relatives" refers exclusively to the second prerequisite and not to the first; that the proviso applies to the case of a transfer of immovable property from a partnership to a company whenever first, the only shareholders of the transferee company are the partners of the transferor partnership and secondly when proof satisfying the Director is produced that during a period of five years following
 10 the date of the transfer, no person other than those who at the time of the Declaration of transfer were shareholders of the company and their close relatives acquired any share in the company; that the only permissible exception to the acquisition of shares during those five years, apart from close relatives, is in
 15 the case of acquisition by reason of death; accordingly the recourse must fail.

*Application dismissed.*

#### **Recourse.**

20 Recourse against the refusal of the respondent to refund to applicants the transfer fees collected on the day of transfer of applicants' properties.

*P. Sarris*, for the applicants.

*A. Vladimirov*, for the respondent.

*Cur. adv. vult.*

25 A. LOIZOU J. read the following judgment. By the present recourse the applicant Company claims:

30 "(a) A Declaration of the Court that the decision of the respondent dated 18.10.1983 by which he refused to refund the transfer fees which were collected on the day of the transfer of properties F.697 and F.698 in the village of Latsia, as per the Declaration of Registration D.566/78, is null and void and/or contrary to law and/or without legal effect and/or same has been taken in abuse and/or in excess of power, and/or,

35 (b) A Declaration and/or judgment of the Court that the applicants are entitled to the refund of the transfer of fees which they paid to the respondent for the properties F. 697 and F. 698 in the village of Latsia as per Declaration of Sale D.566/78".

The facts of the case are not in dispute. The applicants are a limited company registered under the Companies Law, Cap. 113. On the 27th January, 1978, by a Declaration of Transfer made at the District Lands Office, Nicosia, two pieces of immovable property were transferred by the partnership Christodoulides Bros., the partners of which were Solis Christodoulides and Theoclis Christodoulides, and which was dissolved on the 1st May, 1974, to the applicant Company. An amount of C£2,500.- was paid as transfer fees.

On the 13th July, 1983, the applicant Company invoking the provisions of section 9 of the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, as amended by Law No. 31/76, applied to the District Lands Officer, Nicosia, for the refund to them of the aforesaid fees. The decision of the respondent by which such refund was refused was communicated to the applicant Company by letter dated the 18th October, 1983, which reads as follows:-

“With reference to your application dated 13th July, 1983, for the refund of the transfer fees which were collected on the day of the transfer of properties F.697 and F.698 in the village of Latsia in accordance with the Declaration D 566/78, I inform you that one of the necessary prerequisites which are mentioned in the proviso to subsection 1 of section 9 of Cap. 219 for the refund of fees, is that on the date of the transfer the only shareholders of the transferee company must be the partners of the transferor partnership or company. In your case this prerequisite is not satisfied and so there is no question of the refund of fees”.

As against this decision, the present recourse was filed, but the admitted facts of the case have to be completed. On the date of the transfer the shareholders of the transferee applicant-company were:

1. Theoclis Christodoulides
2. Solon Christodoulides
3. Irene Christodoulidou
4. Ioannis Christodoulides
5. Marianna Christodoulidou.

Irene Christodoulidou is the wife of Solon Christodoulides and Ioannis and Marianna are his children. Partners of the transferor partnership "Christodoulides Bros". were only the first two, as it appears from the Certificates of the Official Receiver and Registrar of Companies attached to the opposition,

Moreover, the relevant file of the respondent has been produced as exhibit 1. In it there is a certificate to the effect that Solon and Theoclis are brothers from the same father and mother, in addition to a statement as to the relationship of the rest of the shareholders among themselves and the other two shareholders.

Section 9(1) of Cap. 219, as added by Law No. 31 of 1976, reads as follows:

" Ὅσακίς ἀκίνητος ἰδιοκτησία μεταβιβάζεται ὑπὸ ὁμορρυθμοῦ ἢ ἑτεορρυθμοῦ ἐταιρείας (partnership) εἰς διαδεχομένην ταύτην ἐταιρείαν (company) ἐπιβάλλονται καὶ εἰσπράττονται τὰ κατάλληλα δικαιώματα χωρὶς νὰ ληφθῇ ὑπ' ὄψιν τὸ γεγονός ὅτι ἢ πρὸς ἢν ἢ μεταβίβασις δικαιοδόχου ἐταιρείας διαδέχεται τὴν μεταβιβάζουσαν δικαιοπάρουχο ὁμόρρυθμον ἢ ἑτερόρρυθμον ἐταιρείαν, εἴτε καθολικῶς εἴτε ἄλλως:

Νοεῖται ὅτι ὅσακίς μόνοι μέτοχοι τῆς δικαιοδόχου ἐταιρείας εἶναι οἱ ἐταῖροι τῆς δικαιοπάρουχο ὁμορρυθμοῦ ἢ ἑτεορρυθμοῦ ἐταιρείας καὶ καθ' οἴουδήποτε χρόνου προσάγεται εἰς τὸν Διευθυντὴν ἰκανοποιητικὴ, κατὰ τὴν κρίσιν αὐτοῦ, ἀπόδειξις τοῦ γεγονότος ὅτι, κατὰ τὴν διάρκειαν πενταετίας ἀπὸ τῆς ἡμερομηνίας τῆς δηλώσεως μεταβιβάσεως, ἢ, ἐὰν τοιαύτη εἶναι ἡ περίπτωσις, μέχρι τῆς ἐντὸς τῆς προαναφερθείσης περιόδου τυχόν διαλύσεως ἢ ἐκκαθαρίσεως τῆς ἐταιρείας, οὐδὲν πρόσωπον ἄλλο τῶν κατὰ τὸν χρόνον τῆς προαναφερθείσης δηλώσεως μεταβιβάσεως μετόχων τῆς ἐταιρείας καὶ στενῶν συγγενῶν αὐτῶν ἀπέκτησεν οἰανδήποτε μετοχὴν τῆς ἐταιρείας ἄλλως ἢ αἰτία θανάτου, ὁ Διευθυντὴς ἐπιστρέφει εἰς τὴν ἐταιρείαν τὸ ποσὸν τῶν κατὰ τὸν χρόνον τῆς δηλώσεως μεταβιβάσεως ἐπιβληθέντων καὶ εἰσπραχθέντων τελῶν καὶ δικαιωμάτων, μειωμένον κατὰ ποσὸν ἴσον πρὸς 4 ἐπὶ τοῖς ἑκατὸν τῆς κατὰ τὴν ἡμερομηνίαν τῆς προαναφερθείσης δηλώσεως μεταβιβάσεως ἐκτετιμημένης ἀξίας τῆς μεταβιβασθείσης ἀκινήτου ἰδιοκτησίας".

In English it reads:

“Whenever immovable property is transferred by a general or limited partnership to a successor to it company, the appropriate fees are imposed and collected without taking into consideration the fact that the transferee company to which the transfer is made, succeeds the transferor general or limited partnership, either wholly or otherwise:

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Provided that whenever the only shareholders of the transferee company are the partners of the transferor general or limited partnership and at any time is produced to the Director, satisfactory, in his opinion, proof of the fact that, during the five-year period from the date of the declaration of transfer or, if such is the case, until the within the aforesaid period dissolution or liquidation of the company, no person other than the at the time of the aforesaid declaration of transfer shareholders of the company and their close relatives acquired any share in the company other than by reason of death, the Director refunds to the company the amount of at the time of the declaration of transfer imposed and collected fees and charges, reduced by an amount equal to 4% on the assessed value of the transferred immovable property as on the date of the aforesaid declaration of transfer”.

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It has been argued on behalf of the applicant company that they were entitled to the refund of the transfer fees because its shareholders during the five years following the date of the Declaration of transfer did not change otherwise than by one of its shareholders transferring shares by way of gift to his wife and children who, no doubt, come within the notion of close relatives to be found in the proviso to the aforesaid section.

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On the other hand, counsel for the respondent has urged that the said proviso contains two prerequisites, in so far as this case is concerned. The first one is that on the date of the transfer the only shareholders of the transferee company are the partners of the transferor partnership. And the second prerequisite is that within a period of five years following such date—or in the case of dissolution or liquidation of the company, within that period until then—no person or persons have become

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shareholders of the transferee company except close relatives of the shareholders of the company who were such at the time of the Declaration of the transfer. He further pointed out that the argument of counsel for the applicant Company referred to  
5 the second prerequisite of the said proviso.

The aforesaid text, trimmed of the various provisions that are not relevant to our case and which are included to cover certain eventualities, with which we are not concerned now and ascribing to the words used their ordinary and natural meaning,  
10 has led me to the conclusion that the stand of the respondent is the correct one. To my mind the two basic prerequisites of the proviso are conjunctive and not disjunctive and the expression "close relatives" refers exclusively to the second prerequisite and not to the first. The proviso applies to the case of a transfer  
15 of immovable property from a partnership to a company whenever first, the only shareholders of the transferee company are the partners of the transferor partnership and secondly, when proof satisfying the Director is produced that during a period of five years following the date of the transfer, no person other  
20 than those who at the time of the Declaration of transfer were shareholders of the company and their close relatives acquired any share in the company. The only permissible exception to the acquisition of shares during those five years, apart from close relatives, is in the case of acquisition by reason of death.

25 In other words, the shareholders of the transferee company who must be the same as those of the transferor partnership, must remain the same except if changed by a transfer of shares to close relatives, a term defined by subsection 3 of the law as meaning the husband or wife of the shareholder and his relative  
30 up to the third degree of relationship, or shares devolved on a person during those five years by reason of death of an existing shareholder.

It is when both these prerequisites are satisfied that a company is entitled to a refund of the fees and charges paid at the time of the transfer less 4% of the assessed on the date of the transfer value of the transferred immovable property. Any other interpretation would defeat the intention of the legislator as it emanates from the words used.  
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For all the above reasons, this recourse is dismissed, but in the circumstances there will be no order as to costs.

*Recourse dismissed with no order  
as to costs.*