

1988 August 29

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MOBIL OIL CYPRUS LTD.

Applicants,

v.

THE MUNICIPALITY OF AYIOS ATHANASSIOS,

Respondents.

(Case No. 17/88).

Streets and Buildings—Building permits—Application for—Regulation 5 of the Streets and Buildings Regulations providing that every application for a permit shall be signed by the owner or "his duly authorised agent"—Whether this expression means an agent "authorized by a power of attorney"—Question determined in the negative. 5

Words and phrases: "Authorized agent" in Reg. 5 of the Streets and Buildings Regulations—Whether the expression includes only the agents, who are authorized by a power of attorney—Question determined in the negative.

Words and phrases: "Authority" and "Authorized".

Agency—Definition of—The Contract Law, Cap. 149, sections 146 and 147. 10

Applicants were lessees of land. The relevant contract authorized them to submit applications for building permits as agents of the owners of the land. An application submitted under this authority was turned down on the ground that the conditions of the said Reg. 5 were not satisfied. Counsel for respondents explained that as the applicants were not the owners nor were they authorized by the owners by a power of attorney, the respondents correctly turned down the application. The reasoning of the Court, which led to annulment of the sub judice decision, is sufficiently indicated by the hereinabove headnote. 15

Sub judice decision annulled. 20
Costs in favour of applicants.

Recourse.

Recourse against the refusal of the respondent to issue a building permit for additions and/or extensions to the plants and/or works of an existing petrol station.

5 *A: Dikigoropoulos, for the applicants.*

Chr. Demetriades, for the respondents.

Cur. adv. vult.

10 SAVVIDES J. read the following judgment. Applicants by the present recourse pray for a declaration that the act and/or decision of the respondents to refuse to issue a building permit for additions and/or extensions to the plants and/or works of an existing petrol station which was communicated to applicants by letter dated 27th October, 1987, is null and void and of no effect whatsoever as having been made and/or taken contrary to the provisions of the law and/or the regulations and in excess and/or abuse of their powers.

15 The facts relevant to the present case are briefly as follows:

20 Applicants, a petroleum company operating in Cyprus, are contractual tenants of the immovable property under plots 221/4 and 221/5 of sheet/plan LIV/59 at Ayios Athanassios village in Limassol upon which they erected, operate and use a petroleum product service filling station in accordance with the terms of a tenancy agreement dated 29th July, 1976, signed by them and the owners of the said property (photocopy of which was attached to the application as exhibit 1).

25 The property in question was demised by the owners to the applicants for a term of 16 years with the right to have the term extended by further periods of five and four years after its expiration. By virtue of an express term in the said agreement under paragraph 4(e) thereof and for the purpose of enabling applicants

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to carry out the necessary works and plants for the operation of this station the owners as landlords agreed and undertook "to sign all necessary applications to the municipality or other competent authority"; and furthermore by the same agreement they constituted the applicants "as their duly authorized agents to sign all such applications and generally do all things necessary on their behalf". The applicants acting as duly authorized agents of the owners by virtue of the aforesaid agreement did in fact on the 7th December, 1976 and 1st August, 1984 submit to the Improvement Board of Ayios Athanassios (the predecessor in title of the respondents) applications signed by them for building permits which applications were accepted and the relevant permits were issued. A similar application was submitted by applicants to the respondents on the 6th March, 1987, which was on the 27th October, 1987, rejected on the ground that it did not satisfy the provisions of regulation 5 of the Streets and Buildings Regulations. The contents of such letter read as follows:

"I refer to your application dated 6th March, 1984, for the issue of a building permit for the construction of additions to the existing petrol station on plot 221/5, sh/plan LIV/51 at Ayios Athanassios village and wish to inform you that your application cannot be pursued as the provisions of regulation 5 of the Streets and Buildings Regulations are not satisfied.

2. For the aforesaid reason it is necessary that the application form and other plans be signed by the owners."

As a result applicants filed the present recourse challenging the sub judice decision.

In arguing his case counsel for applicants submitted that the application in question was not filed and does not fall within the provisions of the Streets and Buildings Regulation Law but it falls within the provisions of the Petrol Filling Stations (Regulation) Laws Nos. 94/68 and 7/72 and the regulations made thereunder which do not provide for the filing and/or signing of the necessary application forms by the owners of the property upon

which the petrol station is constructed. He contended that the respondents misdirected themselves as to the law applicable and/or misconceived the relevant statutory provisions.

5 Without prejudice to the above and assuming that regulation 5 of the Streets and Buildings Regulations is applicable counsel submitted that the decision complained of is still based upon a misconception of fact and law relevant to the case in that regulation 5 does not require an authorization by a power of attorney but only provides that applications should be made by the owners or the duly authorized agent of the owners. In present case, counsel submitted, by virtue of the terms of the agreement between the owners and the applicants the applicants were expressly authorized to sign any applications for the erection of any plants or any additions thereto.

15 Counsel for the respondents, on the other hand, contended that Laws 94/68 and 7/72 should be read in conjunction with the Streets and Buildings Regulation Law, Cap. 96. In fact, he submitted that regulation 6(b) of the regulations made under s.13 of Law 94/68 provides that a prerequisite for the issue of a building permit for a petrol filling station is that such permit should satisfy the requirements of the Streets and Buildings Regulation Law and any regulations made by virtue thereof. By virtue of regulation 5 (1) of the Streets and Buildings Regulations an application can only be considered if it is submitted by the owner or his duly authorized agent which implies that such agent must be authorized to act by virtue of a power of attorney executed for such purpose. In the present case the respondents did not refuse to examine the application on its merits had it been submitted properly but referred it back to the applicants as not satisfying the provisions of the law in that it had to be signed by the owners or by a person holding a power of attorney acting on behalf of the owners as his duly authorized agent.

35 Before embarking on the argument as to whether the Petrol Filling Stations (Regulation) Laws Nos. 94/68 and 7/72 and the regulations made thereunder should be read in conjunction with

the Streets and Buildings Regulation Law, Cap. 96, I shall consider the case on the assumption that the Streets and Buildings Regulations are applicable and whether regulation 5(1) should be construed as suggested by counsel for the respondents, and then, if necessary, I shall revert to consider the question of applicability of such regulations in the present case. 5

Regulation 5(1) of the Streets and Buildings Regulations published in the Subsidiary Legislation of Cyprus, vol.1, p.307 provides as follows:

"5-(1) Every application for a permit to erect shall be signed by the owner or his duly authorized agent and shall be in such form as may be prescribed from time to time by the appropriate authority..." 10

The question which poses for consideration is whether the words "duly authorized agent" should be interpreted as to mean "an agent authorized by a Power of Attorney" and not an agent duly constituted in any other manner. 15

Reading from Bowstead on Agency, 14th edition, as to "Agency and Authority", the following appears at p.1: 20

"Agency is the relationship which exists between two persons, one of whom expressly or impliedly consents that the other should represent him or act on his behalf, and the other of whom similarly consents to represent the former or so to act." 25

Under our Contract Law, Cap. 149, the following provisions appear which relate to the appointment and authorization of an agent:

"Section 146: The authority of an agent may be expressed or implied. 30

Section 147: An authority is said to be express when it is given by words spoken or written..."

Again from Bowstead on Agency, under the heading "Authority and power", at p. 4 we read the following:

5 "When examined, this authority amounts to no more than a power of a special sort, a power by doing an act to affect the principal's legal relations as if he had done the act himself."

and further down it is mentioned that actual authority arises where there is agency by agreement.

10 For the purpose of the present case I have sought guidance from the definition of "authorize" and "authority" as given in various legal dictionaries.

In Black's Law Dictionary, 5th edition, we read the following at p. 122:

15 "*Authorize*: To empower; to give a right or authority to act. To endow with authority or effective legal power, warrant or right. *People v. Young* 100 111. App. 2nd 20, 241, N.E. 2d 587, 589. To permit a thing to be done in future. It has a mandatory effect or meaning, implying a direction to act.

20 'Authorized' is sometimes construed as equivalent to 'permitted', or 'divested', or to similar mandatory language. Possessed of authority; that is, possessed of legal or rightful power, the synonymous of which is 'competency' *Doherty v. Kansas City Star Co.*, 143 Kan. 802, 57 P. 2nd 43, 45."

25 In Radin Law Dictionary, 2nd edition, we read the following at p.28:

"Authority: 1. The power granted to an agent by his principal to make contracts and enter into transactions on the principal's behalf. See AGENCY."

In Stroud's Judicial Dictionary, 4th edition, Volume 1, the word "authorize" is defined as follows:

"In Australia it has been said that 'authorise' should be read in its ordinary sense of sanction, approve or countenance (*Winstone v. Wurlitzer Automatic Phonographic Co. of Aus. Pty Ltd.* (1946) A.L.R. 422) but it may, like any other word, be controlled by its context (*Ex p. Johnson, Re MacMillan*, 47 N.S.W.S.R. 16)." 5

In the Oxford Universal Dictionary, volume 1, "authorize" is defined as follows at p. 125: 10

"Authorize:
II.1. To endow with authority; to commission.
2. To found one's authority upon. 3. To give legal or formal warrant to (a person) to do; to empower, permit authoritatively 15

Authorized: 1. Possessed of authority; thoroughly established;2. Placed in or endowed with authority. 3. Legally or duly sanctioned or appointed."

In the Words and Phrases Legally Defined, Volume 1, 2nd edition, we read the following at p. 140: 20

"AUTHORITY:

Express authority.

By express authority is meant a real or actual authority, whether it has been expressly conferred in so many words or not 25

Implied authority

By an implied authority is meant an authority which is not express, but which is implied by the court in the same way in which any term is implied in a contract....."

In Jowitt's Dictionary of English Law, 2nd edition, pp. 164-165 we read:

5 "Authority, a right; an official or judicial command; also a legal power to do an act given by one man to another: A person is said to be authorised or to have an authority when he is in such a position that he can act in a certain manner (defined by the authority) (a) without incurring the liability to which he would be exposed in the absence of the authority; and (b) so as to produce the same effect as if the person granting the authority had himself done the act. Thus, if I authorise A to sell goods for me and he does so, he incurs no liability for so doing, and confers a good title on the purchaser. See AGENT; WARRANTY;

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15 With reference to the mode of its creation, an authority may be either express (as in the above instance), implied (or inferred), implied in law, customary (e.g., the right of a lord of a manor to make grants of land in the manor (Co. Litt. 52(b)), or statutory, etc. See FACTORS ACT.

20 With reference to its extent, an authority may be general, to act in all the principal's affairs, or special, concerning some particular object (e.g., to buy a particular piece of land); it may be limited by certain instructions as to the conduct he is to pursue, or unlimited, i.e., leaving his conduct to his discretion.....".

25 Bearing in mind the above definitions, I find myself unable to agree with the submission of Counsel for the respondents that to constitute somebody an agent duly authorized to act on behalf of another, a Power of Attorney is a prerequisite and that such authority can only be given by a Power of Attorney. In the present case under the terms of the lease agreement, the applicants were

30 under paragraph 4(e) constituted by the owners of the property as "their duly authorized agents to sign all such applications and generally do all things necessary on their behalf" for the purposes of the said plants and works and concerning any applications to

the Municipality or other competent authority.

In the light of the above term which expressly constituted the applicants as the duly authorized agents of the owners for the purposes of any additions or erections on the property in order to operate such property as a petrol filling station, I am of the view that the requirements of Regulation 5(1) of the Streets and Buildings Regulations are fully satisfied and that the refusal of the respondents to accept applicants' application, which was signed by them as duly authorized agents of the owners and to which a copy of the lease agreement was attached, was not justified. In fact, on a number of previous occasions the Improvement Board of Ayios Athanassios, the predecessor in title of the respondents, had accepted similar applications, properly, in my view, acting under regulation 5(1) of the Streets and Buildings Regulations. 5 10

I, therefore, find that the applicants' recourse succeeds on this ground and the sub judge decision of the respondents should be annulled. Having found as above, I find that it is merely of academic interest to consider whether the Streets and Buildings Regulation Law, Cap. 96 should be read in conjunction or not with the Petrol Filling Stations (Regulation) Laws Nos. 94/68 and 7/72. 15 20

In the result, the sub judge decision is hereby annulled with costs in favour of the applicants.

Sub judge decision annulled with costs in favour of applicants.