CASES

DECIDED BY

THE HIGH COURT OF JUSTICE OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE ASSIZE COURTS AND DISTRICT COURTS.

[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

1960
Dec. 8, 19

THE ATTORNEY-GENERAL,

Appellant,

v.

THE WATER BOARD OF NICOSIA,

Respondents.

(*Civil Appeal No.* 4315).

THE ATTORNEY-GENERAL
v.
THE WATER BOARD

Immovable property—Transfer of—Transfer fees payable—"Sale price"—Definition of—The Land Registration and Survey Department (Fees and Charges) Law, 1954, *now the Department of Lands and Surveys (Fees and Charges) Law, Cap.* 219, *Schedule to section* 3, *clause* 2(*b*) (iv).

By clause 2(b) (iv) of the Schedule to section 3 of Cap. 219 (*supra*) it is provided that in case of transfer of land by sale the fee payable will be reckoned on the sale price. The respondents (plaintiffs), who are the Water Board of Nicosia, purchased from His Beatitude the Archbishop of Cyprus a chain of water wells together with some other property in connection therewith for the sum of £30,000. Certain of the said lands had been leased to a third party and it was contemplated by both, the Archbishop and the Water Board, that certain damage would or might be suffered by the lessee as a result of the transfer of the property and a claim might eventually be made by the lessee against the Archbishop. The figure of £4,100 was put by both the vendor and the purchasers upon the lessee's possible future claim for compensation against the vendor. This sum was included in the total figure of £30,000 finally agreed upon between the vendor and the purchasers. When the property was about to be transferred the purchasers (plaintiffs-respondents) made a point that they should not pay to the Lands Office transfer fees on the aforementioned sum of £4,100, on the ground that this sum was not part of the "sale price" of the property

within the meaning of First Schedule, clause 2(b) (iv) to section 3 of the Lands Registration and Survey Department (Fees and Charges) Law 1954, now Schedule to section 3 of the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219. The Lands Office insisted that the whole sum of £30,000 constituted the sale price and the purchasers paid land transfer fees under protest on the full figure. Subsequently, the purchasers (the Water Board of Nicosia) brought an action against the Attorney-General claiming repayment of the sum of £146, which represents the amount of the transfer fee paid as is attributable to the said £4,100 alleged to have been illegally collected over and above the fees properly payable in connection with the transfer of the said immovable property.

The trial Court gave judgment in favour of the plaintiffs, holding that, as the sum of £4,100 was payable to the tenant by way of compensation, it was not part of the sale price. The Attorney-General appealed against this judgment.

Held : (1) "Sale price" in this case means the consideration in monies numbered given by the purchaser to the vendor in consideration of the vendor making to the purchaser a transfer of the property.

(2) The sum of £4,100 is part of the "sale price" as it was paid to the vendors and not to the lessee; and it is not correct in law to state that such sum must go to the lessee and not to the vendor. The lessee was not a party or privy to the contract, he has not made any claim against the vendor and even if he should have a claim in the future he would not be bound by the figure of £4,100.

(3) On the other hand, had the purchasers in this case undertaken to pay the tenant directly or for his (tenant's) account the vendor, the sum of £4,100 for the surrender of the lease or for the assignment of the tenant's interest in the water sold, and pay £25,900 to the vendor for the properties acquired, then, notwithstanding that the transaction cost the purchasers £30,000, the sum paid to the tenant would not have constituted part of the sale price; because the contractual interest the tenant had in the property sold did not amount to a legal right or interest over an immovable property which could be made subject of transfer by registration. It could not, therefore, be said that either in law or in fact the

tenant was a party to the transfer made before the Land Registry.

Appeal allowed. No order as to costs. Judgment of the Court below, including order for costs, set aside.

Appeal.

Appeal by the Attorney-General against the decision of the District Court of Nicosia (Pierides, D.J.) dated the 20th April, 1960 (Action No. 2419/58) whereby judgment for £162.600 mils with legal interest as from 20th April, 1960, and with £24.500 mils costs was granted to the plaintiffs in an action for the return of £146 representing transfer fee on £4,100 which was illegally collected over and above the fees properly payable in connection with transfer of immovable property.

L.N. Loizou, Counsel for the Republic, for the Appellant.

Stelios Pavlides for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgments delivered by O' BRIAIN, P. and ZEKIA, J.

O' BRIAIN, P.: In this case the defendant, the Attorney-General appeals from the judgment given in this action by the District Court of Nicosia on the 20th April, 1960. The grounds of appeal are that the trial Court was wrong in holding that a sum of £4,100.- was not part of the "sale price" of certain immovable properties sold and transferred to the plaintiffs within the meaning of the Land Registration and Survey Department (Fees and Charges) Law, 1954.

Briefly, the facts of the case are as follows: The Plaintiffs — the Water Board of Nicosia — are a statutory body corporate by virtue of Law 20 of 1951. For the purpose of maintaining the supply of water for Nicosia they negotiated and finally purchased from His Beatitude the Archbishop of Cyprus a chain of water wells known as the Makedonitissa water, together with some other property in connection therewith. The negotiations were protracted and extended over by an agreement set out in two documents ; the first — a

letter dated 24th February, 1956, from the Chairman of the Water Board to the Archbishop of Cyprus ; and the other — a letter dated 7th March, 1956, written on behalf of the Archbishop and addressed to the Water Board:

"24th February, 1956.
Your Beatitude,

Referring to the letter dated 29.12.55 sent to me by His Reverence the Abbot of Kykko Monastery and the negotiations with him which followed as to the value of the chain of wells etc. near the Makedonitissa Monastery, I wish to inform you that the Water Board of Nicosia has now agreed to offer the sum of £30,000.- (thirty thousand pounds) for the said chain of wells, the water and the two plots of land as shown on the copy of plan No. W.S.995 which was forwarded to you together with my letter W.B.N.40 (32) of the 9th December, 1955, as well as for the injurious effect on the olive trees which will no longer be irrigated, the tank which has been left without water which is now used for swimming purposes and for all the palm trees in the area of the chain of wells which have been uprooted.

2. It is of course understood that Your Beatitude will make the necessary arrangements with the lessees of the lands of the Makedonitissa Monastery so that they may not bring any obstacle for the acquisition of the said lands by the Board and that if any claim may arise by them for any damage which their interests (emanating from the lease agreement) have suffered by taking the water etc., as above, Your Beatitude should satisfy such claim from the above-mentioned purchase price.

3. Payment will be effected on receipt of Your Beatitude's approval of the contents of this letter.

(Sgd) Chairman

Water Board of Nicosia".

"7th March, 1956, from the Archbishopric of Cyprus to the Water Board.

We acknowledge receipt of your letter of the 24th February last, by which we are informed that the Water Board of Nicosia offers to the Holy Archbishopric the

sum of £30,000.- (thirty thousand pounds) as compensation for the Makedonitissa water, for two plots of land as shown on a copy of plan No. W.S.995 and for the destroyed palm trees.

In reply we inform you that we accept the above sum of thirty thousand pounds, provided of course that 5% compound interest will be calculated on this sum from the date your Department acquired the water till the date the sum is paid to us.

We also inform you that we undertake this responsibility for any claim which the lessee of Makedonitissa may have for damages for taking the water etc.

On instructions from His Beatitude
(Sgd) Salaminos Genadhios".

Certain of the lands, the subject matter of this agreement had been leased prior thereto to a third party for a term of thirty years and it was contemplated by both, the Archbishop and the Water Board, that certain damage would or might be suffered by the lessee as a result of the transfer of the property to the Water Board and that a claim for compensation might be made by the lessee against the Archbishop of Cyprus and might have to be met by the latter. This matter was, not unnaturally, one of the factors taken into reckoning by the vendor in the course of the negotiations in connection with the question of the price he should ask of and receive from the Water Board. The figure £4,100 was that put upon the lessee's claim for compensation (if made) by both the vendor and the purchaser, and is the matter referred to in paragraph 2 of the letter of 24th February, and in the final paragraph of the letter of 7th March. This sum of £4,100 was included in the total figure of £30,000 finally agreed upon between the vendor and the purchasers. On the 23rd November, 1956, the declaration of sale was produced to the Lands Office by the agents of the Water Board ; but in subsequent correspondence a point was made on behalf of the Water Board that this sum of £4,100 was not part of the sale price of the property and that therefore no transfer fees were payable thereon. The Lands Office insisted that the whole sum of £30,000 constituted the sale price and on the 21st of May, 1958, the respondents paid land transfer fees on the full figure of £30,000 under protest.

Subsequently an action was begun against the Attorney-General claiming repayment of the sum of £146, which represents the amount of the transfer fee paid as is attributable to the said £4,100, alleged to be illegally collected over and above the fees properly payable in connection with the transfer of the said immovable property.

The learned trial Judge, in a lengthy judgment in which he very carefully reviewed the facts and the arguments of the parties, gave judgment in favour of the plaintiffs, the Water Board, and ordered the refund of the sum of £146. Against that order the Attorney-General has brought this appeal.

The net point for consideration by this Court is, whether or not, the sum of £4,100 is in fact and in law part of the "sale price" of the said property, or whether, as found by the learned trial Judge, it is a sum payable to the tenant by way of compensation and which, to use his words, "must go to the tenant and not to the owner" and for that reason dehors the "sale price".

The relevant statutory provisions are section 3 of the Law 10 of 1954 and the Schedule thereto clause 2 (b) (iv). These provide that in a case such as the one we are considering the fee is to be "reckoned" on the "sale price". No definition of the words "sale price" is to be found in the statute. Mr. Loizou and Mr. Pavlides have not been able to find or refer the Court to any reported cases in which these words have been judicially considered. Nonetheless I think the words in their context in the statute referred to are reasonably clear. I do not disagree, in the least, with the definition given by the trial Judge (at p.26). In my opinion, "sale price" in this case means simply the consideration in monies numbered, given by the purchaser to the vendor in consideration of the vendor making to the purchaser a transfer of the property.

It is important to bear in mind that the parties to the contract in this case were His Beatitude the Archbishop of Cyprus and the Water Board of Nicosia, and nobody else. The lessee was not a party or privy to the contract. He is not mentioned in the statement of claim. There is nothing whatever on the record to show that the lessee, as yet, has made any claim against the vendor or ever will, though it is agreed by both advocates that his claim, if any, must be brought against the vendor. It is also conceded by both

advocates that if the claim be brought and damage be proved the lessee may recover a sum greater or less than the sum of £4,100. He is in no way bound by the figure of £4,100 and his compensation will depend entirely upon the proof of damage which he adduces. It is not correct in law, in my opinion, to state, as was stated by the learned trial Judge, that this sum of £4,100 "must go to the tenant and not to the owner". It did not in fact go to the tenant. It is not pleaded that it was payable to him. Furthermore, as I read the judgment, this view of the matter governed the learned judge's view of the legal position and from it he concluded that the sum of £4.100 was not part of the "sale price".

If I be correct in thinking that this view was erroneous and if the £4,100. was payable and in fact paid to the vendor and not to the tenant, it follows that it was as truly part of the "sale price" as the rest of the sum of £30,000. My interpretation to the contract is that this £4,100 represents the figure put by the vendor upon one of the factors or heads of claim — a contingency which he considered relevant to the question of what price he should accept for the property which the Water Board desired to acquire. Manifestly, there were several other factors as well. The vendor evaluating all these factors and adding them altogether arrived at the figure of £30,000. He stood out for that figure though it was in excess of a valuation that had been put on the property at an earlier stage of the negotiations. There is no evidence that he was prepared to take any less. The Water Board finally agreed to this figure and paid this sum to the vendor by cheque dated 23rd November, 1956.

In my view this sum of £30,000 whole of it, was the "sale price" and the learned trial Judge was wrong in holding otherwise. I am of the opinion that his order must be reversed.

ZEKIA, J.: The President of the Court having gone into the facts of the case I need not repeat them.

The fees payable on the registration of a title in case of sales are to be reckoned on the sale price (First Schedule, clause 2 (b) (iv) of section 3 of the Land Registration and Survey Department (Fees and Charges) Law No. 10 of 1954*). The sale price referred to is no doubt the money consideration paid by the purchaser to a vendor for the immovable property

(*) Now the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, Schedule to section 3, clause 2 (b)(iv).

which is the subject-matter of a transfer. The purchasers-respondents in this case offered to buy the immovable property of the vendors (a chain of wells and a small piece of land) for the sum of £30,000. The letter embodying the offer contains the following:-

> "2. It is of course understood that Your Beatitude will make the necessary arrangements with the lessees of the lands of the Makedonitissa Monastery so that they may not bring any obstacle for the acquisition of the said lands by the Board and that if any claim may arise by them for any damage which their interests (emanating from the lease agreement) have suffered by taking the water etc. as above, Your Beatitude should satisfy such claim from the above-mentioned purchase price".

The vendors in this case, the Archbishopric, in their letter of acceptance regarding paragraph 2 stated:

> "We also inform you that we undertake this responsibility for any claim which the lessee of Macedonitissa may have for damages for taking the water etc."

In the protracted negotiations preceding the final proposal and acceptance it is clear that in the assessment of the purchase price the loss which the tenant or the vendors would sustain, when left without adequate water, in his business (in keeping a swimming pool and from the adverse effect on the crop of the fruit-bearing trees growing on the land under his lease) was taken into account. The sum of £4,100. or part thereof was included in the original assessment as representing the loss occasioned to the tenant by the proposed sale. Neither in the sale nor in the agreement of sale, however, the tenant was made a party. The vendors have undertaken to meet any claim which might be made by the tenant on account of the sale. The purchasers, the respondents, in law acquired the chain of wells and the piece of land free from any claim of right or interest of the tenant in respect of them, not by virtue of any collateral agreement but by the registration of the sale. The kind of encumbrances which are recognised and attach the immovable property and which continue to attach such property even after alienation is given in section 11 of the Immovable Property (Registration, Tenure, etc.) Law Cap. 224. The contractual interest of a tenant over the immovable property is not included in the said section. Furthermore by section 4 of the Immovable Pro-

perty (Tenure, Registation and Valuation) Law Cap. 224 the tenant's right or interest in respect of an immovable property created by a contract of lease cannot attach such property.

The respondents, as purchasers, and the Archbishopric as vendors, agreed to sell the chain of wells known as the Makedonitissa water with a tiny piece of land free from any claim over the water by the tenant for the sum of £30,000. Registration in the name of the vendee by itself transfers not only the ownership of the water in question, but also the right of its immediate use of possession, free from any claim by the tenant over the water. The registration transferred all rights and interests for which the whole consideration of £30,000 was paid for.

On the other hand, had the purchasers in this case undertaken to pay the tenant directly or, for his (tenant's) account, the vendor, the sum of £4,100 for the surrender of the lease or for the assignment of the tenant's interest in the water sold, and pay £25,900 to the vendor for the properties acquired then, notwithstanding that the transaction cost the purchasers £30,000, the sum paid to the tenant would not have constituted part of the sale price ; because the contractual interest the tenant had in the property sold did not amount to a legal right or interest over an immovable property which could be made subject of transfer by registration. It could not, therefore, be said that either in law or in fact the tenant was a party to the transfer made before the Land Registry.

In the absence of any express agreement in ascertaining the sale price I would prefer to be guided by the consideration paid for the right and interest over the immovable property proposed to be transferrred by an owner which right and interest he was able to transfer by registration.

The amount has been paid to the vendors by the purchasers for the said immovable property and for such rights and interests over such property which a transfer entails.

The various factors taken into account by the purchaser, including his contractual obligation to meet possible claims by his tenant, in working out the price he would accept for a sale of the immovable property in question does not in my view as far as the nature and amount of the sale price is concerned make any difference. In case where a definite agreement is not available I would rather be guided by the figure representing the value of the rights and interests the pur-

tenant's chasers have acquired under a transfer rather than by the net amount left or might have been left in the hands of the vendors out of sale.

I agree therefore that the appeal should be allowed.

VASSILIADES, J.: I had the advantage of reading the judgments just delivered by the President of the Court and my brother Zekia, J., and I agree that this appeal must succeed.

The fees paid by the respondents in this appeal were levied and were paid under Law 10 of 1954 (Cap.219) for the registration of title in their name, by "transfer" "upon sale"; and were reckoned "on the sale price" not on the value of the property to be registered. Under this Law, the sale price must be the money consideration paid by the buyer for the transfer and registration of the property in his name; in this case the sum of £30,000.

JOSEPHIDES, J.: I have had the privilege of reading the judgments which have just been delivered by the President of this Court and my brother Zekia, J.

I agree with their conclusions and with the reasons they give for allowing this appeal, and I desire to say this only. The sum of £30,000, no matter how you sub-divide it, no matter how you deal with it, is the price paid by the respondent Water Board to the vendor in one shape or other for the right of transfer and the immediate possession of the immovable property purchased, and, in my judgment, it forms the consideration for the sale, i.e. it is the "sale price" within the meaning of the law, and registration fees should accordingly be reckoned on that basis.

I would allow the appeal.

Appeal allowed. No order as to costs. Judgment of the Court below, including the order for costs, set aside.