

THE TRUSTEES OF THE "MITSIS LEMYTHOU
COMMERCIAL SCHOOL",

Plaintiffs,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Defendant.

(Charity Application No. 3/71).

THE TRUSTEES
OF THE
"MITSIS
LEMYTHOU
COMMERCIAL
SCHOOL"
v.
THE
ATTORNEY -
GENERAL OF
THE REPUBLIC

Charitable Trusts—Charity trustees—Application to sanction mortgage of property belonging to the charity for the purpose of securing loan to finance building of a block of flats—Section 13 (c) of the Charities Law, Cap. 41—Transaction in question held to be for the benefit and advantage of the Charity—Application granted subject to terms.

The Court granted this application to sanction mortgage of property belonging to the charity for the purpose of securing a loan to finance building of a block of flats, the transaction in question held to be for the benefit and advantage of the Charity. The facts sufficiently appear in the judgment of the Court granting, subject to terms, the said application.

Cases referred to :

The Bishop of Kitium and Others as Trustees of the Dianellos Charity (No.1) v. The Attorney-General (1971) 1 C.L.R. 92.

Charity Application.

Application by the Trustees of the Charity known as the "Mitsis Lemythou Commercial School", under s. 13 (c) of the Charities Law, Cap. 41, for an order sanctioning the mortgaging of five immovable properties belonging to the charity, for the purpose of securing a loan of £650,000 in order to finance the building on four of the said properties of a block of flats and shops to be known as "Mitsis House No. 3".

C. Myrianthis, for the plaintiffs.

A. Evangelou, for the defendant.

Cur. adv. vult.

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The following judgment was delivered by :—

TRIANTAFYLIDIS, P. : The plaintiffs, being the trustees of a charity registered as a corporate body under the Charities Law (Cap. 41) (hereinafter to be referred to as “ the charity ”), have applied, under section 13 (c) of the said Law, for an order of this Court sanctioning the mortgaging of five immovable properties (plots 99, 99/1, 99/2, 100 and 377, Sheet/Plan XXI, 46.5.IV, in the Trypiotis Quarter of Nicosia) which belong to the charity, for the purpose of securing a loan of £650,000, from a Provident Fund known as “ Ταμείον Προνοίας τῶν Ἐργατοῦπαλλήλων τῆς Οἰκοδομικῆς Βιομηχανίας καὶ ἄλλων Δομικῶν Ἔργων. ” (“ Building Industry Employees Provident Fund ”), of Nicosia, in order to finance the building on four of the said properties (those other than plot 99) of a block of shops and flats to be known as “ Mitsis House No. 3 ”; the loan to be repaid in fourteen equal annual instalments, with interest at $7\frac{1}{2}\%$ per annum.

Shortly after the institution of these proceedings a new certificate of registration (No. 2521 of the 18th March, 1971) has been issued in respect of the five properties in question ; such properties are described therein as plot 785 (Sheet/Plan XXI, 46.5.IV, in the Trypiotis Quarter of Nicosia). There already exists on the old plot 99 a building belonging to the charity and known as “ Mitsis House No. 1 ”. The value of the properties concerned is approximately £2,000,000.

The loan of £650,000 was deemed by the trustees to be needed for the following purposes : (a) To meet the cost, including incidental expenditure, of “ Mitsis House No. 3 ”, *viz.* about £614,000, and (b) to pay off the balance of an earlier mortgage debt due to Barclays Bank D.C.O., of Nicosia, which burdened “ Mitsis House No. 1 ”; such payment being necessary in order to enable the said property to be amalgamated with the other four properties in question and to be mortgaged together with them as security for the loan needed for the construction of “ Mitsis House No.3 ”.

In view of the value of the properties to be mortgaged and of the magnitude of the loan the Court required the trustees to place before it cogent evidence which would satisfy it that the mortgaging of the properties, for the sake of financing “ Mitsis House No.3 ”, was a step taken for the benefit and advantage of the charity.

As a result Mr. Renos Solomides, a qualified economist who has a Research and Investments Bureau in Nicosia,

studied the whole matter. His report is before the Court and it has proved to be, due to the very great thoroughness with which it has been prepared, of, indeed, considerable assistance to this Court in reaching its decision.

The study made by Mr. Solomides caused a revision—and reduction to £447,806—of the construction cost of “Mitsis House No. 3” and, thus, a loan of no more than £500,000 (instead of £650,000 as originally envisaged) is required to meet such cost, to repay the aforesaid balance of the mortgage debt burdening “Mitsis House No. 1” and to meet certain other minor items of incidental expenditure.

Mr. Solomides has sworn an affidavit to the effect that the building project concerned—the construction of “Mitsis House No. 3”—is “justified and profitable” even if the liability to be incurred in connection therewith is going to be £500,000.

In the light of the foregoing, and bearing in mind the law applicable to a matter of this nature (see, *inter alia*, *The Bishop of Kitium and Others as Trustees of the Dianellos Charity (No. 1) v. The Attorney-General* (1971) 1 C.L.R. 92) I, being satisfied that the transaction in question is for the benefit and advantage of the charity, order as follows:—

The mortgaging of the property of the charity under registration No. 2521, of the 18th March, 1971, (comprising the properties previously known as plots 99, 99/1, 99/2, 100 and 377) to the Provident Fund “Ταμείον Προνοίας τῶν Ἐργατοῦπαλλήλων τῆς Οἰκοδομικῆς Βιομηχανίας καὶ ἄλλων Δομικῶν Ἔργων”, of Nicosia, as security for a loan not exceeding £500,000, repayable within fourteen years, with interest at $7\frac{1}{2}\%$ per annum (on the terms embodied in the document attached to the affidavit of Mr. C. Michaelides—the Secretary of the Board of Trustees of the charity—dated the 15th April, 1971) is sanctioned on condition (a) that the net yearly income from both “Mitsis House No. 1 and “Mitsis House No. 3” shall be used, in the first instance, for paying off the annual instalment of the mortgage debt and the interest thereon (in accordance with the calculations attached to the affidavit of Mr. C. Michaelides dated the 29th February, 1972,) and (b) that the trustees of the charity shall file yearly, as from the 31/12/72, duly audited accounts showing the state of the indebtedness of the charity in relation to the loan concerned and the amount paid by the charity in each particular year in respect of such indebtedness.

Application granted.

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