

1978 August 30

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF THE CYPRUS OVERSEAS
RELIEF FUND

and

IN THE MATTER OF THE CHARITIES LAW, CAP. 41

Between:

THE TRUSTEES OF THE CYPRUS OVERSEAS RELIEF
FUND, NAMELY:

THE DIRECTOR-GENERAL OF THE MINISTRY OF
FINANCE AND 10 OTHERS,

Plaintiffs,

and

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Defendant.

(Charity Application No. 3/77).

Charitable Trusts—Trustees—Correction of description of—Possible under section 13 (b) of the Charities Law, Cap. 41—Misdescription an innocuous one—Correct description inextricably linked to proper administration of trust—Order for correction made as applied for.

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Charitable Trusts—Trustees—Appointment of new trustee—Principles applicable—New trustees cannot be appointed by the Supreme Court under section 40(1) of the Trustee Law, Cap. 193—But they can be appointed under section 13 (b) of the Charities Law, Cap. 41 and under the inherent jurisdiction of the Court—Prayer for appointment well-founded and supported by the Attorney-General of the Republic—Proposed new trustee signified his consent “to act in the trust”—Order for his appointment made—Rule 11 of the Charities Rules.

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This was an application by the trustees of the “Cyprus Overseas Relief Fund”, which is a charity incorporated under section

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2 of the Charities Law, Cap. 41, for an order of the Court directing (a) the correction of the description of Trustees Nos. 6 and 9 and (b) for an order appointing an additional trustee namely the "Head of the Service for Overseas Cypriots".

5 From the material before the Court it was obvious that the misdescription of the above two trustees was an innocuous one and that there did not exist the slightest doubt in relation to the true intention of the signatories to the trust deed, by means of which there was established the said Fund, as regards the
10 identity of the said two trustees.

There was no express provision in the trust deed creating the charity concerning the appointment of new trustees.

Held, (1) that this Court has power to order the correction of the description of trustees Nos. 6 and 9 as applied for in the
15 exercise of its jurisdiction under s. 13 (b) of the Charities Law, Cap. 41; and that as the correct description of the trustees in the trust deed is inextricably linked to the proper administration of the trust concerned, an order as applied for is hereby made.

(2) (*After stating the principles governing the exercise of discretionary power in relation to the appointment of new trustees by the Court—vide pp. 436–37 post*). That though this Court has no power to appoint a new trustee under section 40(1) of the Trustee Law, Cap. 193, it can do so in the exercise of powers vested in it under section 13(b) of the Charities Law, Cap. 41
20 and in the exercise of its inherent jurisdiction (see, also, s. 15 of Cap. 41 and Tudor on Charities 6th ed. pp. 411–412); and that as the prayer for the appointment of the additional trustee, which is supported by counsel for the Attorney-General, is well-founded, and as the proposed new trustee has signified, in
25 accordance with rule 11 of the Charities Rules, his consent "to act in the trust" this Court has no difficulty in making the order for his appointment.

Application granted.

Cases referred to:

35 *Lewis Simmons, Trading as the Discount Bank of London v. William Woodward and Eve Mary Heseltine* [1892] A.C. 100 at p. 105;

The Orphanage and Training School, Dimitrakis G. Dianellos of Larnaca v. The Attorney-General of the Republic (1977)

7-8 J.S.C. 1225, at p. 1232 (to be reported in (1977) 1 C.L.R.);

Attorney-General v. Stephens, 40 E.R. 132 at p. 134;

Re Browne's Hospital v. Stamford, 60 L.T. 288;

In re Burnham National Schools [1873] L.R. 17 Eq. 241 at p. 246; 5

In re Tempest [1866] L.R. 1 Ch. App. 485 at pp. 487-488.

Charity Application.

Application by the Charity known as the "Cyprus Overseas Relief Fund", made under section 13(b) of the Charities Law, Cap. 41, for an order for the correction of the description of Trustees No. 6 and No. 9 in the trust deed and for the appointment of the "Head of the Service of Overseas Cypriots" as an additional trustee. 10

E. Odysseos, for the plaintiffs.

N. Charalambous, Counsel of the Republic, for the Attorney-General of the Republic. 15

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. The plaintiffs, who are the trustees of the "Cyprus Overseas Relief Fund", seek the following relief:- 20

"The plaintiffs apply for an Order and/or for Directions of the Honourable Court as follows:

(A) for the correction and/or substitution of the description and/or Style of Trustees No. 6 and No. 9 as appearing in the Trust Deed to read as follows: 25

'6. Mrs. Stella Souliotis, President Cyprus Red Cross Society'.

'9. The General Secretary, Cyprus Workers Confederation'

and 30

(B) for the appointment of an additional Trustee namely the Head of the Service for Overseas Cypriots (Apo-dimi) and/or

(C) In case Trustee (9) above *i.e.* the General Secretary, Confederation of Trade Unions, as appearing in the 35

Trust Deed is found by the Hon. Court as not being simply misdescribed, for the appointment of an additional Trustee, namely the General Secretary, Cyprus Workers Confederation.

- 5 (D) Any other order and/or directions as may be appear to the Hon. Court necessary or expedient for the administration of the aforesaid Charity.”

10 In the course of the hearing of this case counsel for the plaintiffs has stated that Mrs. Stella Souliotis, plaintiff No. 6, is a trustee both in her personal capacity and as President of the Cyprus Red Cross Society. He, also, declared that he does not insist on the use of the word “Apodimi”, which is referred to in paragraph (B) of the motion for relief, above.

15 The aforementioned Fund is a charity incorporated under section 2 of the Charities Law, Cap. 41 (see Not. 232 in the 3rd Supplement, Part I, to the Official Gazette of November 19, 1976).

I shall deal first with the matter of the relief applied for as per paragraphs (A) and (C) above:

- 20 In the minutes of the meeting of the plaintiffs trustees, which was held on January 7, 1977, there appears the following paragraph:

25 “ It was further pointed out that the correct description of the title of Mrs. Souliotis is ‘President Cyprus Red Cross Society’ and that of the General Secretary of Confederation of Trade Unions ‘General Secretary, Cyprus Workers Confederation’.”

30 It is quite obvious from the material before me that the above quoted paragraph refers to two instances of innocuous misdescriptions, and that there does not exist the slightest doubt in relation to the true intention of the signatories to the trust deed, by means of which there was established the Cyprus Overseas Relief Fund, as regards the identity of the trustees who are plaintiffs Nos. 6 and 9 in the present proceedings. As was said by Lord Halsbury L.C. in *Lewis Simmons, Trading as The Discount Bank of London v. William Woodward and Eve Mary Heseltine*, [1892] A.C. 100, at p. 105 “there is no ambiguity in

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the sense in which an ambiguous instrument or an ambiguous deed is spoken of”.

It is quite clear that a Court can correct misnomers in names of parties to a deed (see, *inter alia*, Odger's Construction of Deeds and Statutes, 5th ed., p. 141); and, so, in the present instance, I have, in my view, power to order the correction of the description of plaintiffs trustees Nos. 6 and 9 as applied for by means of paragraph (A) in the motion for relief. I can do so in the exercise of the jurisdiction under section 13(b) of Cap. 41, which empowers this Court “to give all such directions and make all such orders as may appear to it necessary or expedient for the administration of any trust created for a charitable purpose”. In my opinion the correct description of the trustees in the trust deed is inextricably linked to the proper administration of the trust concerned and I, therefore, make an order as per the aforesaid paragraph (A); and, having done so, it is superfluous to deal any further with the matter of the alternative relief claimed by means of paragraph (C), above.

I shall consider next the question of the appointment of an additional trustee, namely the “Head of the Service for Overseas Cypriots”, which is sought by means of paragraph (B) in the motion for relief:

It has been suggested by counsel for the plaintiffs that I may act, in this respect, under the first paragraph of section 40(1) of the Trustee Law, Cap. 193, which reads as follows:—

“40.(1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.”

The above provision corresponds to the first paragraph of section 41(1) of the Trustee Act, 1925, in England. There the competence under the said section 41(1) is vested in, *inter alia*, the High Court (see section 67 of the Act), whereas in view of the definition of “Court” in section 3 of Cap. 193 as “a District Court of competent jurisdiction of the District in which the trust property is situate”, it seems that the Supreme Court

cannot appoint a new trustee under section 40(1) of Cap. 193.

5 It is provided, however, by means of section 15 of Cap. 41, that all proceedings under such Law “shall be instituted, heard and determined by the Supreme Court in accordance with the law relating to charitable trusts for the time being in force in England” (see, also, *The Orphanage and Training School Dimitrakis G. Dianellos of Larnaca v. The Attorney-General of the Republic*, (1977) 7–8 J.S.C. 1225, 1232); and it is well settled
10 that the High Court in England—and, consequently, the Supreme Court in Cyprus—has inherent jurisdiction to appoint, in a proper case, an additional trustee.

In Halsbury’s Laws of England, 4th ed., vol. 5, p. 455, para. 746, the following passage is to be found:—

15 “Apart from any statutory jurisdiction, the High Court has an inherent jurisdiction to appoint new trustees of charities, even where there is in existence a power of appointment capable of being executed, and under this jurisdiction can appoint additional trustees.

20 The Court has no power to appoint judicial trustees for any charity.”

In Tudor on Charities, 6th ed., pp. 411–412, it is stated that “the High Court has an inherent jurisdiction to appoint new trustees of charities” and that “it appears that the Court has
25 an inherent jurisdiction to appoint new trustees even where there is a power of appointment in existence and there are persons capable of exercising it; but, in general, it is improper in such a case to make an application to the Court, except in cases of misconduct or refusal to exercise the power”.

30 Examples of the exercise of the relevant inherent jurisdiction in England are to be found in *Attorney-General v. Stephens*, 40 E.R. 132, 134, *Re Browne’s Hospital v. Stamford*, 60 L.T. 288 and *In re Burnham National Schools*, [1873] L.R. 17 Eq. 241, where Sir G. Jessel M.R. said (at p. 246) that “it is not
35 disputed that, even independently of the Trustee Act, the Court of Chancery, on information filed, has jurisdiction to appoint additional trustees of a charity”.

In *In re Tempest*, [1866] L.R. 1 Ch. App. 485, Sir G. J. Turner

L.J. stated as follows (at pp. 487-488) the principles governing the exercise of the discretionary power in relation to the appointment of new trustees by a Court:—

“ It was said in argument, and has been frequently said, that in making such appointments the Court acts upon and exercises its discretion; and this, no doubt, is generally true; but the discretion which the Court has and exercises in making such appointments, is not, as I conceive, a mere arbitrary discretion, but a discretion in the exercise of which the Court is, and ought to be, guided by some general rules and principles, and, in my opinion, the difficulty which the Court has to encounter in these cases lies not so much in ascertaining the rules and principles by which it ought to be guided, as in applying those rules and principles to the varying circumstances of each particular case. The following rules and principles may, I think, safely be laid down as applying to all cases of appointments by the Court of new trustees.

First, the Court will have regard to the wishes of the persons by whom the trust has been created, if expressed in the instrument creating the trust, or clearly to be collected from it. I think this rule may be safely laid down, because if the author of the trust has in terms declared that a particular person, or a person filling a particular character, should not be a trustee of the instrument, there cannot, as I apprehend, be the least doubt that the Court would not appoint to the office a person whose appointment was so prohibited, and I do not think that upon a question of this description any distinction can be drawn between express declarations and demonstrated intention. The analogy of the course which the Court pursues in the appointment of guardians affords, I think, some support to this rule. The Court in those cases attends to the wishes of the parents, however informally they may be expressed.

Another rule which may, I think, safely be laid down is this—that the Court will not appoint a person to be trustee with a view to the interest of some of the persons interested under the trust, in opposition either to the wishes of the testator or to the interests of others of the cestuis que

trusts. I think so for this reason, that it is of the essence of the duty of every trustee to hold an even hand between the parties interested under the trust. Every trustee is in duty bound to look to the interests of all, and not of any particular member or class of members of his *cestuis que trusts*.

A third rule which, I think, may safely be laid down, is,—that the Court in appointing a trustee will have regard to the question, whether his appointment will promote or impede the execution of the trust, for the very purpose of the appointment is that the trust may be better carried into execution.”

In the trust deed creating the charity to which the present proceedings relate there is no express provision concerning the appointment of new trustees. Nor, for the reasons already explained, can the additional trustee, who is referred to in paragraph (B) of the motion for relief in this case, be appointed in the exercise of the competence conferred by section 40(1) of Cap. 193.

It is correct that section 13 (b) of Cap. 41 is framed in such wide terms that it can be said that there is included therein the power to appoint a new trustee of a charity; and it may be added that the provisions of rule 11 of the Charities Rules (see Subsidiary Legislation of Cyprus, Revised Edition, 1954, Vol. II, p. 417) do point to such a conclusion. But, as I have advised, and having not heard sufficient argument on this point, I am not prepared to hold that section 13 (b) is a provision of such a nature which excludes having resort to the inherent jurisdiction of this Court to appoint a new trustee of a charity; I have, therefore, decided that I can proceed to appoint the new trustee, referred to in the aforesaid paragraph (B), both in the exercise of the powers which appear to be vested in me by virtue of section 13(b), above, and, also, in the exercise of my inherent jurisdiction in this respect.

As regards the merits of the prayer of the plaintiffs for the appointment of the additional trustee I find that such prayer, which is supported by counsel for the Attorney-General, is well-founded, and as the proposed new trustee has signified, in accordance with rule 11 of the Charities Rules, his consent “to

act in the trust" I have no difficulty in making an order for his appointment.

In the result there are hereby made orders as per paragraphs (A) and (B) in the motion for relief in the present case; and, in the circumstances, no order of any kind need be made as per paragraphs (C) and (D) in the motion for relief. 5

As regards the costs of these proceedings it is ordered that each side shall bear its own costs.

Order accordingly.