

1976 September 9

[TRIANTAFYLIDES, P.]

Dr. G. N. MARANGOS LTD.,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE MUNICIPALITY OF FAMAGUSTA,

Respondents.

(Case No. 195/69).

*Administrative Law—Practice—Recourse for annulment—Withdrawal
—With liberty to apply for reinstatement if the terms on the
basis of which it has been withdrawn are not implemented—Said
terms not implemented through unjustifiable attitude of respon-
dent—Recourse reinstated.*

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This was an application for the reinstatement of a recourse on the ground that there has not taken place the implementation of the terms on the basis of which it was withdrawn on July 12, 1969.

The recourse was filed on June 27, 1969 and was directed against the decision of the respondent Council of Ministers, by means of which there were imposed restrictions regarding the number of storeys and the height of buildings in Famagusta.

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On July 12, 1969 Counsel for the Council of Ministers stated* before the Court that the appropriate authority of the Republic will grant a relaxation of the restrictions imposed by the *sub judice* decision “so as to enable the applicant to be issued by the respondent Municipality, at any time, within a year from to-day, with a building permit, in respect of the property, for a building which will consist of ten storeys.” Counsel for the respondent Municipality then stated that the Municipality had no objection to the grant of a building permit as above. There-

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* See the whole text of the statement at pp. 80–81 *post*.

upon the applicant sought leave to withdraw the recourse and the Court made the following order:

5 “Case struck out accordingly. Applicant to be at liberty to apply for this Case to be reinstated (so that it may be determined) if the terms on the basis of which it has been withdrawn are not implemented.”

10 On July 10, 1970, that is just before the expiry of the period of one year which had been fixed on July 12, 1969, the applicant applied for a building permit enabling him to erect in Famagusta a building such as the one envisaged by the agreement of July 12, 1969, and submitted new plans.

15 On September 8, 1970, the Municipality wrote to the applicant informing it that, as the new plans were submitted on July 10, 1970, it was impossible for the technical services of the Municipality to study them between then and July 12, 1970, till when, in accordance with the agreement reached on July 12, 1969, the permit could be issued and that they could not, in any event, have been dealt with by then as they were not accompanied by the necessary relaxation, which did not reach the Municipality till July 29, 1970; it was stated, further, that, eventually, a subsequent study of the said plans had disclosed certain technical reasons for which they could not be approved and the Municipality refused to grant the applied for permit.

Hence the above application for reinstatement of the recourse.

25 The Court having looked to the substance and not to the form of the agreement reached between the parties on July 12, 1969 (see pp. 83-85 *post*):

30 *Held*, that the agreement, on the basis of which this recourse was withdrawn and struck out, has not been implemented, through the unjustifiable attitude adopted by the respondent Municipality; and that, accordingly, the applicant is entitled to have this recourse reinstated so that it can be determined on its merits.

Recourse reinstated.

35 **Application.**

Application for the reinstatement of a recourse, against the decision of the respondents to impose restrictions on the number

of storeys and the height of buildings in Famagusta, on the ground that the terms on the basis of which it has been withdrawn have not been implemented.

J. Kaniklides, for the applicant.

L. Loucaides, Deputy Attorney-General of the Republic, 5
for respondent 1.

M. Papas, for respondent 2.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following decision. On June 10
27, 1969, the applicant company filed the present recourse seek-
ing, first, a declaration that the decision of the respondent Council of Ministers, which was published, on May 25, 1967, in the Official Gazette (see Not. 404, Third Supplement), and by means of which there were imposed restrictions regarding the number 15
of storeys and the height of buildings in Famagusta, is "in excess
or abuse of power, unconstitutional and/or ultra vires of the
Streets and Buildings Law Cap. 96... and illegal"; and, secondly, 15
a declaration that the decision of the respondent Municipality
of Famagusta, which was communicated to the applicant by
letter dated June 21, 1969, and by means of which the applicant 20
was prevented from erecting a building in Famagusta consisting
of a groundfloor and twelve storeys, is likewise invalid.

On July 12, 1969, counsel appearing for the Council of Ministers made the following statement:-

"I am authorized to state that the appropriate authority of 25
the Republic will grant a relaxation of the restrictions im-
posed by the Notice which was published on the 25th May,
1967, under regulation 6(6) of the Streets and Buildings
Regulations (as amended, in this respect, on the 25th May,
1967, by the Streets and Buildings Regulation (Amendment) 30
Regulations 1967) so as to enable the applicant to be
issued by the respondent Municipality, at any time within
a year from today, with a building permit, in respect of
the property concerned, for a building which will consist
of ten storeys (including the ground floor but excluding 35
the basement) or which will not exceed in height 107 feet,
in accordance with the plans already submitted, or in
accordance with new plans to be submitted, provided that
in the latter instance the building to be erected will not be
a cinema or a building of a similar nature. 40

It is to be understood that such plans will be otherwise in accordance with the Streets and Buildings Regulations."

Then counsel appearing for the Municipality of Famagusta stated:-

5 "The respondent Municipality has no objection to the grant of a building permit as stated by Mr. Loucaides and, in particular, no objection will be raised, to the number of storeys or the height already mentioned, by virtue of the powers in section 8 of the Streets and Buildings Regulation
10 Law (Cap. 96)."

As a result, counsel for the applicant stated:-

15 "In the circumstances, and in spite of the fact that I dispute the validity of the Notice of the 25th May, 1967 and of the regulation under which it was published, I seek leave to withdraw this recourse. Furthermore, I state that there is being abandoned any claim for compensation in respect of the fact that the specific building permit applied for was refused by the respondent Municipality and as a result this recourse had to be made."

20 Consequently, the following order was made by this Court:-

"Case struck out accordingly.

25 Applicant to be at liberty to apply for this Case to be reinstated (so that it may be determined) if the terms on the basis of which it has been withdrawn are not implemented."

30 On June 14, 1971, counsel for the applicant filed an application for the reinstatement of this case, of which he gave notice to the respondent Municipality; and on July 1, 1971, he filed a second identical application, of which he gave notice to the respondent Council of Ministers.

The Municipality opposed the reinstatement of the case, but counsel appearing for the Council of Ministers elected not to say anything in this respect.

35 The circumstances which led to the application for reinstatement appear, on the material before me, to be as follows:

On July 10, 1970, that is just before the expiry of the period

of one year which had been fixed on July 12, 1969, when the agreement between the parties was reached on the basis of which this recourse was withdrawn on that date, the applicant applied for a building permit enabling him to erect in Famagusta a building such as the one envisaged by the said agreement. 5

July 10, 1970, was a Friday and the plans which were submitted in relation to the application for a building permit were new plans, and not the old plans in respect of which a building permit had been refused in June 1969. The application was not accompanied by the relaxation of the relevant restrictions which had to be issued by the appropriate authority, namely the Department of Planning and Housing, but such relaxation was, in fact, granted on the day after, that is on Saturday July 11, 1970; it did not, however, for some unknown reason, reach the Municipality till July 29, 1970. 10 15

On September 8, 1970, the Municipality wrote to the applicant informing it that, as the new plans were submitted on July 10, 1970, it was impossible for the technical services of the Municipality to study them between then and July 12, 1970, till when, in accordance with the agreement reached on July 12, 1969, the permit could be issued, and that they could not, in any event, have been dealt with by then as they were not accompanied by the necessary relaxation, which did not reach the Municipality till July 29, 1970; it was stated, further, that, eventually, a subsequent study of the said plans had disclosed certain technical reasons for which they could not be approved. 20 25

On May 19, 1971, counsel for the applicant wrote to the Municipality pointing out that the plans in question had been submitted within a year as from July 12, 1969, that the necessary relaxation had been granted by a letter dated July 11, 1970, and he, therefore, requested the Municipality to re-examine its decision to refuse a building permit; it was added that the technical objections to the new plans, which had been raised by the Municipality, had been considered and that all necessary readjustments had been made. 30 35

The Municipality refused to grant the applied for building permit and as a result the applicant filed this application for the reinstatement of the present recourse on the ground that

the terms on the basis of which it has been withdrawn were not implemented.

On July 9, 1971, when the application came up before the Court, counsel appearing for the Municipality stated that as
5 the relaxation, which was granted by the Department of Planning and Housing, was dated July 11, 1970, but had reached the Municipality only on July 29, 1970, the inference could be drawn that such relaxation had been granted antedated. There is nothing, however, before me to support, even in the least,
10 such a grave imputation.

Then, while the application for reinstatement was still pending, a further recourse, No. 3/72, was filed by the applicant on January 5, 1972, attacking the refusal of the respondent
15 Municipality to grant the building permit sought for by the applicant, which was communicated to the applicant on December 13, 1971; and, by means of its new recourse the applicant seeks, also, certain further ancillary relief.

I shall today give, separately, two decisions in relation, respectively, to the application for reinstatement and to the
20 said new recourse*.

I have reached the conclusion, in the light of all the material before me, that the applicant is entitled to succeed in its application for the reinstatement of the present recourse, because there has not taken place the implementation of the terms on
25 the basis of which such recourse was withdrawn on July 12, 1969.

In reaching this conclusion, I have looked, as, of course, I ought to have done, to the substance and not to the form of the agreement reached between the parties on that date.

In my opinion, the basic element of such agreement was that
30 the applicant would be enabled to obtain, within a year from the aforesaid date, a building permit for a building of the nature specified in the said agreement. The applicant would be so enabled by means of the granting of a relaxation of the relevant restrictions by the Department of Planning and Housing, and
35 the applicant could apply for such building permit either on the basis of the plans already submitted earlier or on the basis of new plans.

* See p. 73 ante.

The applicant did obtain the said relaxation within the prescribed period of a year, that is on July 11, 1970, and did apply for a building permit on the basis of new plans on July 10, 1970. So, all the prerequisites for the issuing, in accordance with the
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aforementioned agreement, of the building permit by the respondent Municipality existed, subject to the respondent Municipality making sure that the said plans were otherwise in
accordance with the relevant Building Regulations, and, if not,
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requiring the applicant to amend them so as to bring them into
accord with such Regulations.

I do not think that it can rightly be said that because the Municipality might not have had adequate time to examine
duly the new plans between July 10, 1970, and July 12, 1970,
or because, allegedly, such plans were, in certain respects, not
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exactly in accordance with the relevant Regulations, the Municipality was entitled, on a fair understanding and application of
the aforesaid agreement, to refuse to deal, within the ambit of
such agreement, with the application of the applicant for a
building permit; especially, after the applicant, on having been
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informed that the plans were not in accordance, in certain
respects, with the relevant Regulations, proceeded to modify
them accordingly.

All that had to be done after the said new application was
submitted within a year after the conclusion of the agreement
of July 12, 1969, was routine technical work which, depending
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on the nature of the plans, would have required, in order to be
completed, a certain period of time. If one were to take the
view that such period of time should be deducted from the
period of a year during which the applicant was entitled to seek
to enjoy the benefit under the said agreement, I think that this
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would be contrary to both the substance and the spirit of such
agreement.

Also, I do not think that it can be said that the applicant
forfeited the benefit to be derived from that agreement if in
relation to certain technical aspects the new plans were not in
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accordance with the relevant Regulations and had to be modified,
as it may, indeed, happen in the normal course of events
on many occasions when building permits are applied for.

Moreover, even if the applicant had made the application for
a building permit about a month in advance of the deadline
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of July 12, 1970, and even if the plans were fully in accordance with the relevant Regulations, again the permit could not have been issued then, for the simple reason that, due to no fault of the applicant, the relaxation which was granted by the Department of Planning and Housing did not, actually, reach the office of the Municipality until July 29, 1970, though it had been granted on July 11, 1970.

For all the above reasons I am of the opinion that the agreement, on the basis of which this recourse was withdrawn and struck out, has not been implemented, through the unjustifiable attitude adopted by the respondent Municipality, and, therefore, the applicant is entitled to have this recourse reinstated so that it can be determined on its merits.

Of course, the Municipality can no longer be held to be bound, on the basis of the agreement in question, to issue the permit applied for by the applicant, because that was only an agreement reached with a view to the withdrawal of the recourse and since the recourse has been reinstated that agreement cannot be treated as being operative any longer.

Recourse reinstated.