

1980 March 8

[TRIANTAFYLIDES, P.]

IN THE MATTER OF THE TRUST "DOREA NICOU AND
DESPINAS PATTICHI IS TIN POLIN LEMESOU "

and

IN THE MATTER OF THE CHARITIES LAW, CAP. 41

BETWEEN: THE TRUSTEES OF "DOREA NICOU AND
DESPINAS PATTICHI IS TIN POLIN LEMESOU ",

Plaintiffs,

and

THE ATTORNEY-GENERAL,

Defendant.

(Charity Application No. 1/79).

*Charitable trusts—Objects of the Charity—Amendment—Sanction
of the Court—Section 13(b) of the Charities Law, Cap. 41—No
longer possible to apply property left by the donors for specified
charitable objects due to changed circumstances—Court satisfied
that it is necessary and expedient for the administration of the
Charity to sanction amendments applied for, subject to condition
that sanction of the Court will have to be obtained in case of
sale or other disposition of property—Cy-près doctrine.*

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The plaintiffs, who are the trustees of a charitable trust known
as "Donation of Nicos and Despina Pattichi for the town of
Limassol" ("the Charity"), sought the sanction of the Court
to alter the name of the Charity into "Charitable Institution of
Nicos and Despina Pattichi for the town of Limassol" and to
amend the trust deed by adding to the initial objects of the
Charity, namely the grant of scholarships for university or
other of equivalent nature studies and the creation of a Municipal

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Nursery in Limassol, the further object of using the funds of the Charity for public utility projects in the town of Limassol or by the Limassol Municipality, as the plaintiffs, as trustees, may deem proper. The main reason for the decision to extend
 5 the ambit of the objects of the Charity was that, due to changed circumstances, there was not so much scope, as before, for grants of scholarships for university studies and the funds of the Charity had, therefore, to be diverted elsewhere.

The creators of the Charity were both alive and they agreed to the amendment of the objects as above. Therefore, this case was
 10 not a usual instance necessitating the application of the cy-prés doctrine, which is normally resorted to when the creator of a charity is no longer alive. Also, the defendant Attorney-General has signified his consent.

15 *Held*, that this Court is, by virtue of section 13(b) of the Charities Law, Cap. 41, empowered to sanction the applied for amendment; that, on the basis of the material before it, it is satisfied that it is necessary and expedient for the administration of the Charity in question to sanction all the amendments applied
 20 for by the plaintiffs, subject to the condition that in case of sale or other disposition of property of the charity the sanction of the Court will have to be obtained under section 13(c) of Cap. 41; and that, accordingly, the amendments applied for should be effected subject to the aforementioned condition.

25 *Application granted.*

Cases referred to:

- 30 *"The Orphanage and Training School, Demetrakis G. Dianellos of Larnaca" v. The Attorney-General of the Republic* (1977) 1 C.L.R. 302;
The Trustees of the Cyprus Overseas Relief Fund v. The Attorney-General of the Republic (1978) 1 C.L.R. 430;
In re Campden Charities [1881] 18 Ch. D. 310 at p. 323.

Charity Application.

35 Application by the Trustees of the Charity known as the "Dorea Nicou and Despinas Pattichi is tin polin Lemesou" under section 13(b) of the Charities Law, Cap. 41, for an order sanctioning the alteration of the name of the Charity into "Philanthropikon Idrima Nicou and Despinas Pattichi is tin

Polin Lemesou” and for an order amending the trust deed and the relevant Regulations.

J. Potamitis, for the plaintiffs.

Gl. HadjiPetrou, for the defendant.

Cur. adv. vult. 5

TRIANAFYLLIDES P. read the following judgment. The plaintiffs are the trustees of a charitable trust known as “Dorea Nicou and Despinas Pattichi is tin polin Lemesou” (“Donation of Nicos and Despina Pattichi for the town of Limassol”).

This charitable trust (to be referred to hereinafter as the “Charity”) was created by a trust deed dated June 6, 1974, which has been enrolled in the Supreme Court on August 5, 1974, under section 12 of the Charities Law, Cap. 41. 10

Nicos Pattichis and his wife Despina Pattichi who, as donors, are the creators of the Charity, are alive, and Nicos Pattichis is one of the plaintiffs—trustees in this case. 15

In addition to the aforesaid trust deed there were, also, executed, on the same date as the deed, that is on June 6, 1974, the Regulations of the Charity.

By means of the present application the sanction of this Court is sought for altering the name of the Charity into “Philanthropikon Idrima Nicou and Despinas Pattichi is tin polin Lemesou” (“Charitable Institution of Nicos and Despina Pattichi for the town of Limassol”), and, also, for amending the trust deed in so far as the second paragraph of the preamble to such deed and clauses 4, 5, 6 and 7 thereof are concerned, as well as for amending paragraphs 3, 4 and 5 of the aforesaid Regulations. 20 25

The plaintiffs adopted this course as a result of relevant decisions reached at a meeting on April 26, 1979; and as it appears from the minutes of such meeting the main purpose of the aforementioned amendments is to add to the initial objects of the Charity, namely the grant of scholarships for university or other of equivalent nature studies and the creation of a Municipal Nursery in Limassol, the further object of using the funds of the Charity for public utility projects in the town of Limassol or by the Limassol Municipality, as the plaintiffs, as trustees, may deem proper. 30 35

It is expressly stated in the said minutes that the amendments in question are being made in accordance with the express desire, in this respect, of the creators of the Charity.

5 This Court is asked to sanction the said amendments in the exercise of its powers under section 13(b) of Cap. 41, which reads as follows:-

“13. The Supreme Court shall have power and jurisdiction-

(a)

10 (b) 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;

(c)

15 In “*The Orphanage and Training School, Demetrakis G. Dianellos of Larnaca*” v. *The Attorney-General of the Republic*, (1977) 1 C.L.R. 302, and in *The Trustees of the Cyprus Overseas Relief Fund v. The Attorney-General of the Republic*, (1978) 1 C.L.R. 430, I have dealt with the extent of the powers of this Court under section 13(b), above, of Cap. 41; and I think that
20 I am empowered to sanction the applied for amendments.

As it is to be derived from the minutes of the meeting of the plaintiffs on April 26, 1979, the main reason for the decision to extend the ambit of the objects of the Charity is that, due to changed circumstances, there is not so much scope, as before,
25 for grants of scholarships for university studies and the funds of the Charity have, therefore, to be diverted elsewhere (see, in this respect, *inter alia*, Halsbury’s Laws of England, 3rd ed., vol. 4, p. 418, para. 870).

30 In the case of *In re Campden Charities*, [1881] 18 Ch. D. 310, Jessel M.R. stated (at p. 323):-

35 “In the first place, the scheme is made in pursuance of what is commonly known as the cy-prés doctrine, and, in cases like this, it is applied where, from lapse of time and change of circumstances, it is no longer possible beneficially to apply the property left by the founder or donor in the exact way in which he has directed it to be applied, but it can only be applied beneficially to similar purposes by different means.”

It has to be pointed out that the present case is not a usual instance necessitating the application of the cy-prés doctrine, which is normally resorted to when the creator of a charity is no longer alive; because the creators of the Charity with which we are concerned in this case are both alive and they have, as already stated earlier on in this judgment, agreed to the amendment of the objects of the Charity in respect of which the sanction of this Court is being sought. Also, the defendant Attorney-General has signified his consent. 5

In the light of all the foregoing, and on the basis of the material before me, I am satisfied that it is necessary and expedient for the administration of the Charity in question to sanction all the amendments applied for by the plaintiffs, subject, however, to the condition that in case of sale or other disposition of property of the Charity the sanction of the Court will have to be obtained under section 13(c) of Cap. 41. 10 15

In the result, it is hereby ordered that the amendments applied for by the plaintiffs should be effected subject to the aforementioned condition.

I am making no order as to the costs of these proceedings, but it is expected that the Limassol Municipality, which will benefit to a very large extent from the said amendments, will indemnify the plaintiffs in respect of the costs which they incurred in this case. 20

Application granted. 25