

1987 August 26

[DEMETRIADES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SUNSET BOULEVARD TOURIST AND  
ESTATES CO LTD ,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR AND/OR,  
THE DISTRICT LANDS OFFICE OF PAPHOS,

*Respondents*

*(Case No 526/82)*

*Immovable property — Transfer of — Transfer fees — The Department of Lands and Surveys (Fees and Charges) Law, Cap 219, as amended by Laws 31/76 and 66/79, sections 8 and 3 and the Schedule to section 3 (para 3 of such schedule) — The Immovable Property (Transfer and Mortgage) Law 1965, sections 13 and 50 — Power of Director to amend or revoke a registration in case of false declaration — Mere suspicion that a declaration is false does not justify a decision — If such suspicion is raised, there must be due inquiry with the object of ascertaining the true facts*

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The applicants are a company limited by shares, the shareholders of which are Mr and Mrs Chrysostomou and their two children

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On 3 11 80 a declaration of transfer by way of gift from Mrs Chrysostomou to the applicants of certain immovable property, registered in the name of Mrs Chrysostomou, was lodged with the District Lands Office of Paphos

The 15th February 1975 was given as the day of the agreement to make the gift Attached to the declaration was a certified copy of the minutes of a Director's meeting of the applicants to the effect that the applicants accepted the gift and that the transfer of the property was to take place in due time

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The value of the property as on 15 2 75 was estimated at £8,000, and, as a result, the applicants paid £400 250 mils by way of transfer fees

On 18 9 82 the District Lands Officer of Paphos, relying on the advice of the auditors that the value of the property on the day of the transfer was £90,000, demanded £5,800, as being the balance of the transfer fees due

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Hence this recourse Counsel for the respondent stated that a doubt arose in the mind of the District Lands Officer as to the genuineness of the aforesaid minutes of the Director's meeting as regards the true date of the gift

5 Held, *annulling the sub judice decision* (1) The law governing the fees payable for the transfer of immovable property is Cap 219, as amended. The fees payable in each case are contained in the schedule to section 3. In the present case the fees payable are governed by para 3(b)(v) of the schedule. Section 13 of the Immovable Property (Transfer and Mortgage) Law, 1965 gives power to the Director to make inquiries from the persons making the  
10 declaration, before the exercise of his discretion, whereas section 50 of the same law gives to the Director power to amend or revoke a registration effected as a result of, inter alia, a false declaration.

(2) The powers of the Director in a case of false declaration have been hereinabove stated. However, it has to be established that a declaration is false. Mere suspicion is not enough, but once a suspicion is raised, there must be a due inquiry for ascertaining the true facts. A decision cannot be based on  
15 a mere suspicion.

*Sub judice decision annulled*

**Recourse.**

20 Recourse against the decision of the respondents by which the applicants were required to pay an additional amount of £5,800 - as transfer fees for the transfer, in 1980, in their name of immovable property.

A. S. Angelides, for the applicants

25 A. Vladimirov, for the respondents

*Cur adv vult*

DEMETRIADES J read the following judgment. By their recourse the applicants challenge the decision of respondent No 2, contained in a letter dated the 18th September, 1982, by which  
30 they were required to pay an additional sum of £5,800.- as transfer fees for the transfer, in 1980, in their name, of immovable property.

The applicants are a private company, the shareholders of which are Mr. Zenon Chrysostomou, his wife Afroula Chrysostomou and their two children.  
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On the 3rd November, 1980, a declaration of transfer of the immovable property of Mrs. A. Chrysostomou, under Registration

No. 2909, plot 30 of Sheet Plan L1/19 situated at Kato Paphos, was lodged at the District Lands Officer of Paphos by which the said Mrs. Afroula Chrysostomou declared that she had on the 15th February, 1975, agreed to transfer by way of gift, into the name of the applicants, her said property. Attached to the declaration of transfer, which is an exhibit before me, is a certified copy of the minutes of a Directors' meeting of the applicants in which it is stated that the company had decided to accept the gift of Mrs. Afroula Chrysostomou which was made without any consideration and that the transfer of the property in the name of the company was to take place in due time. 5 10

After the lodgment of the declaration of transfer, the value of the property, as on the 15th February, 1975 - that is the date of the acceptance of the gift - was assessed by the respondents at £8,000.- and the applicants were asked to pay the sum of £400.250 mils as transfer fees which they did. 15

The property was officially registered in the name of the applicants on the 10th November, 1980.

On the 18th September, 1982, the District Lands Officer of Paphos addressed a letter to the applicants by which he demanded the payment of the sum of £5,800.- being, as he alleged, the balance of the fees due and payable for the transfer of the property of Mrs. Afroula Chrysostomou into the name of the applicants. The Lands Officer based his demand on advice from the auditors that the value of the property as on the date of the transfer was £90,000.- and that the fees ought to be paid on the value of the property as on such date and not on its value on the date of the acceptance of the gift. By his said letter the Lands Officer informed the applicants that the sum of £5,800.- was made a charge on their property. 20 25 30

As a result of the decision of the respondents, which is contained in the said letter of the District Lands Officer of Paphos, the applicants filed the present recourse by which they pray for its annulment.

The application is based on the grounds that the sub judice decision offends against the principles of good and proper administration, that it was taken without a due inquiry into the matter and that it lacks due reasoning. 35

In para. 4 of the facts set out in support of the opposition, counsel for the respondents states that reasonable suspicion was raised in the minds of the officers of the Department that the minutes of the meeting of the applicants were invented at a later date for the purpose of evading payment of transfer fees on the value the property had on the date of the transfer. This suspicion, he further states, was supported by the following facts:

5 (a) The purchase value of the property had increased considerably between the 15th February, 1975 and the 3rd November, 1980 (from £8,000.- to £90,000.-).

10 (b) The donor was the registered owner of the immovable property on the 15th February, 1975.

15 (c) There was no impediment over the property and no prohibition against the donor between the 15th February, 1975 and the 3rd November, 1980, which prevented the transfer and justified such a long delay.

Counsel for the applicants, in expounding on his legal grounds argued that the respondents are bound by their own act of accepting the registration in 1980, which was perfectly lawful and was made unreservedly after the declaration was examined by the responsible officer. He also argued that the failure of the respondents to afford the applicants the right to be heard before they took their decision resulted to an insufficient inquiry on their part; that the sub judice decision lacks due reasoning and that the contents of paragraph 4 of the opposition constituted subsequent reasoning and cannot therefore, cure the defect of lack of due reasoning. Lastly, counsel contended that the sub judice decision has to be annulled as it was based on a mere suspicion and not on ascertained facts.

20 30 Counsel for the respondents argued that the sub judice decision amounts, in effect to a revocation of the decision of the 3rd November, 1980, by which the document containing the gift was accepted. Counsel contended that such document was illegal, that there can be no gift of property from a person to a company and that the decision of 1980, which was based on an illegal document, was itself illegal and could, therefore, be revoked.

35 The relevant law under which fees for the transfer of immovable property are imposed is the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, as amended. Thus, by

section 8 of the Law, which was introduced by section 4 of Law 31/76, certain clarifications are made for the sake of lifting any doubts raised in the application of the law. Under para. (c) of this section it is made clear that a shareholder of a company may transfer property to the company, in which case the appropriate fees are imposed and collected without taking into consideration the fact that the transferor is a shareholder. The fees payable in each case of transfer are contained in the schedule to section 3 of the Law, as these are set out in section 2 of Law 66/79.

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In the present case the fees payable were governed by the provisions of para. 3(b)(v) of the schedule and were, in accordance with the provisions of this paragraph, calculated on the basis of the market value of the property on the date of the agreement for the gift. It is pertinent to say here that provision is also made that in cases in which the Director is not satisfied with the declared value of the property, he can impose additional fees provisionally and proceed to value the property within the next three months.

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Section 13 of the Immovable Property (Transfer and Mortgage) Law, 1965, as amended, gives power to the Director, before the exercise of his discretionary power, to make any inquiries he considers necessary, from the persons making the declaration for transfer. Also, section 50 of the same Law gives power to the Director to amend or revoke any registration effected as a result of a mistake, omission, false declaration or false pretences made either in good faith or fraudulently.

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As stated by counsel for the respondents, a doubt was raised in the mind of the respondents that the minutes of the applicants embodying the acceptance of the gift were not genuine as to the date of the offer and acceptance of the gift but were made afterwards for the purpose of evading the payment of additional fees. The powers of the Director in the case of false declarations have been stated above. However, it has to be established that a declaration is false. Mere suspicion is not enough, but once such suspicion is raised, a due inquiry has to be carried out into the matter, for the purpose of establishing the true facts before resorting to any decision. A decision cannot be based on mere suspicions.

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Having carefully considered the facts and circumstances of this case, I find that no due inquiry was carried out into the matter and

**3 C.L.R.                      Sunset Boulevard v. Republic      Demetriades J.**

the sub judice decision must, therefore, be annulled on this ground.

In the result, this recourse succeeds and the sub judice decision is hereby annulled.

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*Sub judice decision  
annulled.*