

1989 March, 31

(KOURRIS, J.).

IN THE MATTER OF ARTICLE 155.4 OF THE CONSTITUTION
AND S.9 OF THE COURTS OF JUSTICE (MISCELLANEOUS
PROVISIONS) LAW, 1964,

AND

IN THE MATTER OF AN APPLICATION BY THE ATTORNEY-
GENERAL OF THE REPUBLIC FOR AN ORDER OF CERTIORARI

(Application No. 194/88).

5 *Mortgages — Cancellation of — The Immovable Property (Transfer and
Mortgage) Law, 1965 (Law 9/1965), section 36(1)(a) — The words
«any other matter related thereto» (οιονδήποτε έτερον συναφές
ζήτημα) must be interpreted ejusdem generis — Court does not
have power to order the transfer of the mortgage to another plot of
land — Mortgagee's residence unknown — Rightly the Court did
not make an order as to the giving of notice to the mortgagee — As
under the law the giving of notice is discretionary, there is no
10 contravention of the Rules of Natural Justice, if a mortgage is
cancelled without prior notice to the mortgagee.*

15 The respondent obtained an order for the cancellation of a
mortgage under the said section of Law 9/65 on condition that he
would deposit the money with the Treasury Department of the
Government. Upon ex parte application to condition was set aside,
but an Order was granted for registration of a new mortgage. Upon a
second ex parte application an order was issued for the transfer of the
mortgage to another plot of land.

20 Having obtained the leave, the applicant applied for certiorari
quashing the orders obtained upon the said two ex parte
applications. The principles applied in granting the application and
quashing the orders appear in the hereinabove headnote.

*Application granted.
No order as to costs.*

Application.

Application for an order of certiorari to remove to the Supreme Court and quash the orders made by the District Court of Nicosia on 5.12.87 and 16.2.88 in Application No. 65/87 whereby previous orders were amended so that a new mortgage would be registered in favour of the mortgagee and that the original mortgage would be transferred to another plot of land without depositing the money with the Treasury Department. 5

Gl. Hjiptrou, for the applicant.

Chr. Triantafyllides, for the respondent.

Cur adv. vult.

KOURRIS J. read the following judgment. This is an application for an Order of certiorari to remove into this Court and quash the Orders made by the District Court of Nicosia on 5.12.1987 and 16.2.1988, in application No. 65/87. 10

On 29th October, 1988, leave was granted to applicant to move this Court for an Order of Certiorari and, in pursuance of such leave, applicant filed the present application. 15

The facts of the case as they appear from the affidavit filed in support of the application for leave to apply for an Order of Certiorari by M. Tsangarides, Lands Officer, 1st Grade, are as follows:- 20

On the 15th August, 1987, an application by summons was filed by the respondent of this application for the cancellation of a mortgage under Law 9/65 and a Judge of the District Court of Nicosia granted the application on 17.9.1987 on condition that the money would be deposited with the Treasury Department of the Government. 25

On 5th December, 1987, the applicant (present respondent) in that application filed an ex parte application for the amendment of the Order granted on 17th September, 1987, and the same Judge granted the Order amending the previous Order. The second Order amended the condition that the money would be deposited with the Treasury Department of the Government and granted an Order that a new mortgage would be registered in favour of the mortgagee, at the same time setting aside the condition that the money would be deposited with the Treasury Department of the Government. 30 35

Again, on the 1st February, 1988, the applicant, (present respondent) in that application filed another *ex parte* application for the amendment of the original Order granted by the Court. The same Judge again amended the said Order on the 16th February, 5 1988: he granted an Order that the original mortgage would be transferred to another plot of land without depositing the money with the *Treasury Department of the Government*.

The grounds on which the present application is based are:

10 (a) the said amending orders were wrong in law and there is an error of law apparent on the face of the record;

(b) that the trial Judge acted in excess or abuse of jurisdiction to issue the said amending orders; and

(c) the said Orders were made in breach of the rules of natural justice.

15 Counsel for the applicant argued that all the Orders of the Court under consideration were made without affording an opportunity to the mortgagee to be heard, in breach of the rules of natural justice. Counsel also contended that the learned Judge acted in excess of jurisdiction in that he made the orders dated 5th 20 December, 1987 and 16th February, 1988, contrary to ss. 4,5,8,28 and 36 of the *Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65)*.

25 Counsel for the respondents argued, that the Judge of the District Court did not act in excess of jurisdiction, that he was empowered to make the amending orders, in view of the wording of s.36 of the Law, and that there has been no breach of the rules of natural justice.

30 Thus, the outcome of the present application turns on the interpretation of s.36 of the *Immovable Property (Transfer and Mortgage) Law 1965*; and particularly on s.36(1)(c) which reads as follows:-

«36.-(1) Εἰς οἰανδήποτε τῶν ἀκολουθῶν περιστάσεων, ἤτοι-

35 (α)

(β)

(γ) εἰάν ὁ ἐνυπόθηκος δανειστής εἶναι ἀγνώστου διαίτησης, ἢ εἶναι εταίρεια ἢ συνεταιρισμός οὐχὶ πλέον

εν ζωή, ή απέθανε και ο προσωπικός αντιπρόσωπος ή
 οι κληρονόμοι αυτού είναι άγνωστοι, και εις
 οιαδήποτε των ως είρηται περιπτώσεων είτε ο
 ενυπόθηκος οφειλέτης αδυνατεί, ως εξ οιοιδήποτε των
 προμνησθέντων λόγων, να πληρώση εις τον δικαιούχον 5
 το διά της υποθήκης εξασφαλιζόμενον ποσόν αφού
 τούτο κατέστη πληρωτέον, είτε ή δια της υποθήκης
 εξασφαλιζόμενη υποχρέωσις εξωφλήθη ή έπαυσεν
 υφισταμένη, ο ενυπόθηκος οφειλέτης δύναται να 10
 ζητήσει παρά του Επαρχιακού Δικαστηρίου την έκδοσιν
 ακυρωτικού της υποθήκης διατάγματος, το δε
 Επαρχιακόν Δικαστήριον άμα τη υποβολή της τοιαύτης
 αιτήσεως δύναται να εκδώση το κατά το δοκούν
 δίκαιον υπό τας περιστάσεις διάταγμα, αναφορικός 15
 προς την γνωστοποίησιν της γενομένης αιτήσεως προς
 οιοιδήποτε πρόσωπον, την ακύρωσιν της υποθήκης,
 την κατάθεσιν χρηματικού τινος ποσού παρά τω
 Επαρχιακώ Δικαστηρίω, την διάθεσιν του ούτω
 κατατεθεισομένου ποσού και οιοιδήποτε έτερον 20
 συναφές ζήτημα».

The English translation prepared by the Ministry of Justice reads
 as follows:-

«36.-(1) In any of the following circumstances that is to say -

- (a)
- (b) 25

(c) where the mortgagee is of unknown residence, or is a
 company or partnership which is no longer in existence, or
 has died and his personal representative or heirs are
 unknown, and in any of the cases hereinbefore mentioned 30
 either the liability secured by the mortgage has been satisfied
 or has ceased to exist, or the mortgagor is for any of the
 reasons aforesaid unable to pay the amount secured by the
 mortgage, after such amount has become payable, to the
 person entitled thereto, the mortgagor may apply to the 35
 District Court for an order cancelling the mortgage, and upon
 such application the District Court may make such order as to
 the giving of notice of the application to any person, the
 cancellation of the mortgage, the deposit of any money into
 the District Court, the disposal of any money so deposited and

any other matter related thereto as the District Court may deem just.»

The argument of counsel for the respondents is that where the mortgagee is of unknown residence, as in the present case, the District Judge, upon an application by the mortgagor, may cancel the mortgage and in the exercise of his discretion, may make any order which it may deem just. He went on to say that it is not obligatory upon the District Court to make an Order, upon the cancellation of the mortgage, to deposit any money in the District Court. The District Court, he said, may make any Order it may deem just where the mortgagee is of an unknown residence and this is apparent, he said, from the wording of the said section and particularly the words «και οιαδήποτε άλλο συναφές ζήτημα» which in English is «and any other matter related thereto».

He submitted that the District Judge by the amending Order of 16.2.1988, whereby he made an Order for the transfer of the mortgage to another plot, he secured the mortgagee sufficiently because he had before him the report of an expert valuer who assessed the value of the plot on which the mortgage would be transferred at £50,000 whereas the mortgage debt was £8,000 only.

Counsel for the applicant disputed the fact that the Turkish Bank, the mortgagee in the present case, is of unknown residence and relied on paragraph 8 of the affidavit in support of the application for leave to apply for an Order of Certiorari where it is stated that the Postal Authorities of the Republic of Cyprus accept and deliver letters, through the United Nations, to known addresses to the Turkish Occupied area of Nicosia.

I agree with learned counsel for the respondent that this evidence is not sufficient to establish that the mortgagee is of known residence and address. Assuming that the Turkish Bank operates within the Turkish occupied part of Nicosia, then still its address is unknown because none is stated in the affidavit. Furthermore, the affidavit does not state that the Turkish Bank is one of the known addresses where the post office accepts and delivers letters to it. Consequently, for the purposes of s.36(1)(c) of the law, I shall consider that the mortgagee is of unknown residence.

Counsel for the applicant argued that the object of s.36 of the law is to enable a mortgagor to apply to the Court for an Order cancelling the mortgage and the Court may make an Order as to the deposit of any money into the District Court and the disposal of any money so deposited. He contended that the deposit of money into Court is a prerequisite for the granting of the Order for cancellation of the mortgage under s.36 of the law. He went on to say that this becomes obvious when s.36 is read in conjunction with s.35 of the law. 5

I have considered the arguments of both counsel and I am of the view that in the present case the *eiusdem generis* rule is applicable and the general words will be restricted to things of the same nature as those which have been mentioned. (vide Halsbury's Laws of England, 3rd edn., Vol. II paragraph 693, p. 430). 10

In the present case, I am of the view that the words in s.36 «and any other matter related thereto», (και οιονδήποτε έτερον συναφές ζήτημα), it refers to the powers of the District Court with regard to his discretion for making an Order (i) as to the giving of notice of the application to any person, (ii) the cancellation of the mortgage; (iii) the deposit of any money into the District Court, and (iv) the disposal of any money so deposited. The District Judge has no power to make any order apart from those enumerated in the section, or any other matter related thereto. 15 20

I hold the opinion that rightly the District Judge exercised his discretion not to make an Order as to the giving of notice of the application to the mortgagee, as the mortgagee was of unknown residence and address, but I think he acted outside the law when he made an Order for the transfer of the Mortgage. He was not empowered to do so under s.36 of the law or under any other section of the law. He could make an Order cancelling the mortgage on condition that the mortgagor would deposit any money into the District Court. 25 30

For these reasons, I am satisfied that the said amending Orders were wrong in law and there is an error of law apparent on the face of the record and, furthermore, I am satisfied that the trial Judge acted in excess of jurisdiction to issue the said amending Orders. 35

Now I propose to deal with the third ground of the application to the effect that the said Orders were made in breach of the rules of natural Justice.

In my view, the said Orders were not made in breach of the rules of natural Justice, because the trial Judge under s.36 of the law had discretion to make an Order as to the giving of notice of the application to any person. I think the trial Judge exercised his
5 discretion properly not to give notice of the application to the mortgagee because he was of unknown residence. Therefore, there has been no breach of the rules of natural justice.

For all these reasons, I direct that the proceedings reviewed be quashed. Order of certiorari to issue. No order for costs.

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*Order of certiorari granted.
No order as to costs.*