

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LORDOS APARTOTELS LIMITED,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE OFFICIAL RECEIVER AND REGISTRAR,

*Respondents.*

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LORDOS  
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LIMITED  
v.  
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(OFFICIAL  
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(Case No. 46/73).

*Executory act—Confirmatory act—Distinction—Administrative act merely confirming an earlier executory decision—Such confirmatory act cannot be made the subject of a recourse under Article 146 of the Constitution—Executory decisions alone can be challenged by such recourse—Cf. Article 146.1 of the Constitution—See further immediately herebelow.*

*Confirmatory act—Administrative act confirming a previous decision to the same effect—It becomes an executory act or decision i.e. a new executory decision in cases where there had been a new inquiry into new facts—Application for registration of business name—Preceded by previous decision to the same effect i.e. refusing such registration—Latier decision merely confirmatory of the said previous one and not a decision of an executory nature—Because no new facts calling for a new inquiry have been submitted to the respondent Registrar by the applicants—Recourse against second refusal has, therefore, to be dismissed, the act complained of being outside the ambit of the acts or decisions dealt with in paragraph 1 of Article 146 of the Constitution and which alone can be challenged by the recourse under that Article.*

*Recourse under Article 146 of the Constitution—Executory acts or decisions—As distinguished from merely confirmatory ones—See supra.*

*Administrative acts or decisions—Executory decision as distinguished from a merely confirmatory act—See supra.*

The facts of this case sufficiently appear in the judgment of the learned Judge, dismissing this recourse on the ground that

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the administrative act complained of (refusal of the respondent Registrar to register the business name applied for) is not of an *executory nature*; but merely an act confirmatory of a previous *executory decision* (refusal) of the respondent to the same effect.

**Recourse.**

Recourse against the refusal of the respondents to register one of applicants' hotels under the business name of "Golden Palms Hotel".

*A. Adamides*, for the applicants.

*R. Gavrielides*, Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

The following judgment was delivered by:-

MALACHTOS, J.: The applicants in this recourse are a company formed and incorporated in Cyprus with limited liability. By letter dated 12.7.72 they applied to the respondents for the registration of one of their hotels under the business name of "Golden Palms Hotel". The respondents replied by letter dated 21.7.72, *exhibit 1*, that they were unable to accept and register the above name as there was already registered a similar one but that they were prepared to consider other names.

By letter dated 21.11.72 the applicants applied again for registration of the same business name. In that letter they referred to their previous application and to the letter of the respondents dated 21.7.72, and further added the fact that there was no objection on the part of two other hotels owned by them under the business names of "Golden Plage" and "Golden Marianna" to the registration of the above business name. In fact, it was desirable on their part that the names of all their hotels should resemble one another.

By letter dated 30.11.72 the respondents informed the applicants that they could not accept registration of the said business name but that they were prepared to consider other names.

The applicants by letter dated 7.12.72 asked the respondents to give them the reasons for non accepting registration of the said business name. To that letter the respondents replied by letter dated 15.12.72 giving as a reason the existence of a similar name that of "Golden Sands Hotel Ltd."

It is not in dispute that at the time the respondents were considering the new application of the applicants dated 21.11.72, they did not have before them the previous records of the case as the file had been lost.

On the 16th day of February, 1973, the applicants filed the present recourse claiming a declaration of the Court that the act and/or decision of the respondents by which the respondents refused to accept the business name proposed by the applicants is *void* and contrary to law and of no effect whatsoever.

The application is based on the following grounds of law –

1. The act and/or decision complained of is the result of abuse and/or excess of discretionary powers by the respondents;
2. The act and/or decision complained of was taken contrary to law; and
3. The act and/or decision complained of is not duly reasoned.

The respondents based their opposition on the following four grounds of law:

1. The recourse is out of time;
2. The decision complained of is not executory;
3. The decision complained of was lawfully taken by the respondents under the powers vested in them by virtue of section 55 of the Partnership and Business Names Law, Cap. 116, on the basis of all the facts and circumstances and in the right exercise of their discretionary powers; and
4. The decision of the respondents is duly reasoned.

When the case came on for hearing grounds 1 and 2 in the opposition, on the application of counsel for the respondents and with the consent of counsel for applicants, were first heard as preliminary legal issues.

Counsel for the respondents argued that the filing of the recourse is out of time as the decision of the respondents rejecting the application of the applicants for registration of the business name in question was taken on 21.7.72 and proceedings were not instituted within the 75 days time limit provided

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by Article 146.3 of the Constitution. He further argued that the decision contained in the letter of the respondents dated 30.11.72 does not constitute an executory act but it is merely confirmatory of the decision contained in the letter of 21.7.72, *exhibit 1*.

Counsel for the applicants on the other hand, argued that because the records of the previous decision of 21.7.72 had been lost and could not be traced, a new enquiry must have taken place and so the decision contained in the letter of 30.11.72 is a new decision and of an executory nature.

As to when there is a new enquiry it is stated in *Stassinopoulos* on the Law of Administrative Disputes (1964) 4th edition at page 176 as follows:

“ When does a new enquiry exist, is a question of fact. In general, it is considered to be a new enquiry, the taking into consideration of new substantive legal or factual elements, and the used new material is strictly considered, because he who has lost the time limit for the purpose of attacking an executory act, should not be allowed to circumvent such a time limit by the creation of a new act, which has been issued formally after a new enquiry, but in substance on the basis of the same elements. So, it is not considered as a new enquiry, when the case is referred afresh to a Council for examination exclusively on its legal aspect, or when referred to the Legal Council for its opinion or when another legal provision other than the one on which the original act was based is relied upon if there is no reference to additional new factual elements. There is a new enquiry particularly when, before the issue of the subsequent act, an investigation takes place of newly emerged elements or although preexisting were unknown at the time which are taken into consideration in addition to the others, but for the first time. Similarly, it constitutes new enquiry the carrying out of a local inspection or the collection of additional information in the matter under consideration”.

It seems to me from the facts and circumstances of this case that the facts submitted by the applicants in their letter of the 21st November, 1972, cannot be considered as new substantive facts calling for a new enquiry since all along there was registered another hotel under a similar name *i.e.* the “ Golden Sands

Hotel". Furthermore, the fact that the original file of the case was lost and was not available at the time when the letter of the respondents dated 30.11.72 was addressed to the applicants, is of no significance since in the letter of the applicants dated 21.11.72 clear reference is made to the contents of the letter of 21.7.72 where the applicants were informed that the respondents could not accept the registration of the business name "Golden Palms Hotel".

In view of the above I consider the decision of the respondents contained in their letter of 30.11.72 confirmatory of their previous one and, consequently, of no executory nature.

For the reasons stated above, this recourse fails.

Under the circumstances I make no order as to costs.

*Application dismissed. No order as to costs.*

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